

State-County Functions Working Group (Transient Accommodations Tax)

(Established by Act 174, Session Laws of Hawai'i 2014)

State of Hawai'i

<http://auditor.hawaii.gov/>

Minutes of Meeting

Date: Wednesday, January 7, 2015

Time: 10:00 a.m.

Place: State Capitol
415 S. Beretania Street
Conference Room 414
Honolulu, Hawai'i

Present: Simeon R. Acoba, Chair, Chief Justice Appointment
Sananda Baz, County of Maui Appointment
Ed Case, House Appointment
Steven Hunt, County of Kaua'i Appointment
George Kam, Senate Appointment
Neal Miyahira, Governor Appointment
Ray Soon, City and County of Honolulu Appointment
Jesse Souki, Governor Appointment
George Sziget, House Appointment
Kerry Yoneshige, Governor Appointment

Roderick K. Becker, Deputy Director of Finance
Dan Purcell

Jan K. Yamane, Acting State Auditor, Office of the Auditor
Jayna Oshiro, Analyst, Office of the Auditor
Pat Mukai, Secretary, Office of the Auditor
Kathleen Racuya-Markrich, General Counsel, Office of the Auditor

Excused: Mary Alice Evans, Governor Appointment
Deanna Sako, County of Hawai'i Appointment
Ronald Williams, Senate Appointment

I. Call to Order: Chair Acoba called the meeting to order at 10:03 a.m., at which time quorum was established. The agenda for this meeting was filed with the Office of the Lieutenant Governor, as required by Hawai'i Revised Statutes, Section 92-7(b).

II. Public Testimony

None.

III. a. Announcements, introductions, correspondence

Chair Acoba made the following announcements:

- 1) A complaint was filed with the Office of Information Practices (OIP) concerning the December 3, 2014 meeting as to when public testimony may be received by the Working Group (WG). The WG's response was filed with OIP on December 23, 2014. The WG is awaiting a determination from OIP.

- 2) The WG's Interim Report was transmitted to the 2015 Legislature and WG members.
 - 3) Member Sako submitted the "Structure of County of Hawai'i," which includes general government, public safety, highways and streets, health, education, and welfare, culture and recreation, and sanitation. Copies were distributed to members. This will be added to the materials received.
- b. Minutes of December 3, 2014 meeting

It was moved by Member Baz, seconded by Member Hunt, and unanimously carried to approve the minutes of the December 3, 2014 meeting.

IV. Discussion – Act 174, Section 2(a)(1): "Evaluate the division of duties and responsibilities between the state and counties relating to the provision of public services."

Chair Acoba stated the Auditor's Office compiled materials and identified sources based on prior discussions that may be helpful in the WG's discussion and preparation of the final report. Sources need to be identified and used as a common base to give the Auditor's Office guidance as to the areas to review.

Member Souki arrived at 10:08 a.m.

Chair Acoba began the discussion by reading an excerpt from Governor Ige's interview in the *Star Advertiser* relating to the TAT.

Question: "Are you open to sharing the TAT with the counties?"

Answer: "I've had good conversations with the mayors and talking about working together. I think it's about . . . roles and responsibilities and who's responsible for doing what, and then, we can talk about resources and how resources are apportioned. So, my commitment is to have full discussion about the roles and responsibilities; services that the county and State provide; looking at areas of overlap; and trying to work to eliminate that. . . . TAT/tax revenues are all part and parcel of that whole mix. I still believe that we don't collect all the taxes that are owed and clearly as I think, the State does a better job of collecting taxes owed that would help with the taxes that end up at the county level. I just believe that we really should take a look at roles and responsibilities and if these are functions and services that are better provided by the counties, we ought to do that, and vice versa. . . ."

Chair Acoba stated it is not an official statement and the WG may or may not consider it.

The WG proceeded to review and comment on the January 7, 2015 meeting handouts as follows:

- a. "Public service" – Chair Acoba referred to Black's Law Dictionary definition of public service. Members had no specific comments.

Chair Acoba then referred to the Department of Budget and Finance's "About State Government," which provides general data about Hawai'i and describes state government and the counties and their relationship to the State. Members had no specific comments.

- b. Division of services provided by State and Counties
 - (i) Comprehensive Annual Financial Reports (CAFR) – State and counties (excerpts only)

Chair Acoba stated that staff identified the CAFRs as a possible starting point for discussion. They relate to expenditures and revenues that are somewhat uniformly identified and described from each of the counties and the State. The reason for referring to the FY2013 CAFR is that not all FY2014 reports have been finished. The State and County of Kaua'i have their 2014 reports.

- (ii) Other sources – State Constitution, Hawai'i Revised Statutes (HRS), County Charters, and *Guide to Government in Hawai'i* (Legislative Reference Bureau)

Chair Acoba stated the State Constitution, Article 8, pertains to local government. Chapter 26, HRS, describes the executive branch and administrative departments; Chapter 27, HRS, describes the State's functions and responsibilities. The 2013 DBEDT Data Book has population estimates and Department of Taxation Annual reports include FY2013-2014 statistics on the TAT.

- c. Review data sources for population, visitor data, lodging, per room revenue, non-traditional accommodations, State and counties' gross income, tourism expenditure categories, other.

Member Case provided a set of slides (handout) relating to visitor information compiled by Outrigger Hotels from a variety of sources. He explained that:

- Slides 1-7 are HTA derived.
- Slides 8 and 9 on RevPAR (revenues per available room) come from Smith Travel Research (STR). STR is an international subscription service that aggregates the data provided by hotel companies. Hotels use the service to judge how they're doing overall measured against competitors without running into anti-trust issues. All of the major hotels subscribe to STR to get data that is comparable in a time sequence and across markets. RevPAR is the most commonly used factor by the hotel industry; it reflects the relative health of a company, industry, and location, matched up with the units by supply and demand against how much money is being brought in. This is what the industry uses to judge itself.
- Slide 10 is from DoTax indicating the historical distribution of the TAT.
- Slide 11 is straight from the statute, and reflects the current allocation of \$93 million to the counties.
- Slides 12 and 13 are subjective and illustrate the relative allocation of the TAT to the counties. In this case, visitor spending is the benchmark.

Member Case clarified that STR uses member-recorded numbers. The condo management businesses count condo units as TAT. Everyone in the business, including Outrigger, uses STR for their condo management.

Member Soon asked if bed and breakfasts are missing.

Member Case stated that there are some TAT-oriented people who don't participate in the STR. You clearly have the issue of whether people are reporting TAT.

Member Soon stated it fascinates him that the information does not source the kinds of units.

Member Case stated the HTA information is actually considered to be both TAT units and lodging units. He said HTA issued a report about three weeks ago that attempted to re-

calculate lodging units through the State, including bed and breakfast and individual online units. HTA reported about 22,000 out of a total of 80,000 units.

Member Szigeti stated that at the last HTA meeting, the study identified 22,000 bed and breakfasts. He does not think this tracks all the data.

V. Discussion – Act 174, Section 2(a)(2) “Submit a recommendation to the legislature on the appropriate allocation of the transient accommodation tax revenues between the State and counties, that properly reflects the division of duties and responsibilities relating to the provision of public services.”

1) Allocation options discussed at prior meetings – Allocation of TAT revenues among the State and counties based on:

1) Expenditures for provision of public services

Chair Acoba stated that one model of allocating TAT revenues is to: 1) identify the expenditures for the provision of public services; 2) compare the total of State and county expenditures; and 3) derive a ratio of the State expenditures to the total of each county's expenditures.

Member Hunt stated that if we only look at expenditures, the counties will be on the very short-end of the stick.

Total expenditures

Member Baz stated that he did some calculations based on information from the CAFRs. The State's total expenditures = \$9,947,000,000, collectively; the counties = \$2,941,000,000; that would be a ratio of 77% to 23%.

Member Hunt indicated that those calculations reflect only the expenditure side. Visitors also contribute to spending—for example, they pay GET (general excise tax), fees that are generated from rental cars, and other things the counties don't participate in. The counties only participate in the TAT. He stated that if the WG only looks at expenditures, the counties may disagree.

Member Baz clarified that his calculations used the 'primary government' total for FY2013 from each of the State's and counties' CAFRs. He referred to page 19 of the State's CAFR, 'total expenditures', 4th line from the bottom. The 'primary government' total is \$9,947,300,000, which includes governmental activities and business-type activities. Government activities alone is \$9 billion for the State.

Chair Acoba asked whether business-type activities should be included.

Member Baz stated that business-type activities are generated through income and enterprise funds such as airports, harbors, unemployment compensation, and some non-major funds. For the counties, it would be water supply, wastewater, and golf courses.

2) Tourism Expenditures

Member Baz said the broad definition of public services includes everything government does or is done on behalf of government.

Member Miyahira stated that the TAT is supposed to provide support for general government services—that includes everything. However, if one looks at it more narrowly in terms of services to support tourism activities, it would not include education and welfare. However, one can argue that we need people working the hotels and they have to be educated, etc. What you define as the purpose of the tax and which types of services are associated with the tax will yield various ratios.

Chair Acoba suggested that the WG's first task is to get the ratios down, then argue about what should go in.

Member Baz stated that when the State Legislature created the TAT, it appropriated revenues to the counties and the State's general fund. The general fund revenues include GET, TAT, real property taxes, so there's no specific purpose other than to pay for different things. For example, if a visitor is in a hotel and using water, then the hotel is paying for water out of the room fee. The WG could just look at the general fund.

Chair Acoba asked whether primary government and business-type activities can be used as expenditure allocations.

Member Souki commented that some state agencies have authority to raise revenue from users paying for services similar to hotels paying for water. But parks and trails managed by DLNR have needs that are not being met by the TAT in the general fund allocated for tourism uses.

For expenditures, Chair Acoba asked whether some expenses should be excluded, such as interest expenses.

Member Baz stated that interest expenses are expenditures of government on capital projects for public services.

Member Case stated that business-type expenses and activities should be included because they are self-funding and target highways, sewers, wastewater, airports, and harbors.

Member Hunt stated the enterprise funds are not necessarily self-sufficient. General funds subsidize a large portion of business activities; for example, solid waste contributes significantly to golf even though the counties collect golf fees from visitors.

Member Baz stated that at the state level, education is not completely self-funded since it receives general fund moneys and moneys in revolving funds. He asked whether the WG should include everything or expenditures that relate specifically to visitors.

Member Hunt suggested the WG identify where the burden or impacts are to each of the agencies to show visitors, who are paying the TAT, where the moneys are going and show a nexus to the TAT. For example, maintaining parks and roadways are enjoyed by visitors.

Member Souki favors tracing the TAT revenues because it's hard to make a decision not knowing where the TAT goes.

3) Population

Chair Acoba stated the allocation based on population data may be another ratio since it was mentioned in Act 174's legislative history.

Member Baz stated that population was the basis of the allocation between the counties.

Chair Acoba stated the WG should go through the process of looking at population data to determine whether it should play a part in the WG's determinations. He asked whether the WG should look at the State's total population as opposed to each of the counties' populations.

De-facto population data

Member Hunt agreed to consider the de-facto population—the percentage of visitors relative to the total population for each county.

Member Hunt stated the de-facto population takes into account visitor arrivals and their length of stay and converts it on a given day. For example, there are 22,000 visitors on Kaua'i, and on average, 22 visitors every single day; add that number to the population base and calculate the percentage. On Kaua'i, one in four people is a visitor.

Chair Acoba clarified that resident data measures the resident population and de-facto data includes both visitors factored into the resident population.

Member Case stated the information he provided includes the de-facto population.

4) Ratio of visitor population to resident population

Chair Acoba said the de-facto population goes up as compared to resident population and referred to DBEDT Tables 1.04, 1.06, and 1.08.

Referring to Slide 2, Member Hunt stated that one can determine daily visitor counts by taking the total visitor days for 2013, divided by 365 days. Even though Honolulu has the largest percentage of visitors, it amounts to only about 9.77 percent of the de-facto population. On Kaua'i, it's 33 percent, or one in four persons on the island. Some weighting factor must be considered.

Military population

Chair Acoba asked whether both the resident population and the de-facto population include the military.

Member Souki stated that it makes sense to look at the population if the WG assumes or agrees the TAT should be used as a general fund. However, if the WG is looking for a connection between TAT and services, then visitor arrivals, not just resident population, should be considered.

Member Miyahira stated that the resident population includes the military and their dependents.

Member Szigeti stated 10 percent of the State's population is military and is mostly on O'ahu.

Member Baz stated that assuming the WG is looking at total services, the resident and de-facto population should be used as a comparison to determine what impact visitors have on the total population.

Chair Acoba stated the WG is looking at de-facto population, which includes the resident population and tourists. Tourism expenditures from here on out will fall within the group's expertise.

Allocation of TAT between State and counties

Member Soon stated he is not interested in the political battle over re-allocating the county distribution. It's not a question the Legislature asked the WG to re-visit. He stated the WG's primary discussion should be the allocation of the TAT between State and counties. The WG should list the major allocations being discussed. For example, expenditures for appropriation of public services relating to tourism is more important than tourism expenditures or population.

Chair Acoba replied that the re-allocation of the county distribution may be revisited by the Legislature and it is looking to the WG for guidance.

Member Case stated that as a matter of public policy, some counties decide to spend more of their resources on tourism than others. One can argue that a larger share of the overall TAT should be allocated to the counties.

Chair Acoba stated tourism expenditures are proxies for how much each county does with respect to tourism. Tourism expenditures and tourist arrivals in each county might impact how the TAT should be allocated.

Allocation ratio based on state and county budgets and visitor expenditures

For tourism expenditures, Chair Acoba asked whether the WG should look at what the State spends on tourism. This is a more complex question because what the State spends, flows to the counties.

Member Miyahira stated that subsidies are built into the counties' TAT allocation because there are more hotel rooms on O'ahu than the neighbor islands.

Member Soon said the City and County of Honolulu likes the approach of looking at the State's and each of the county's budgets, compared to visitor expenditures. The counties went through the exercise with HTA about a year ago and used ratios derived from visitor population versus resident population as allocation. A set of formulas were used to estimate spending for the visitor industry. It would be a good approach for the WG to develop and agree to some reasonable allocation ratios between the State and counties.

For the State's percentage, Member Miyahira suggested that the WG look at the types of services the State provides, with the exception of parks and harbors.

Member Souki stated that if the State were to identify how much agencies are spending on tourism-related activities, DLNR would come out on top; but that allocation would not match what DLNR is actually spending.

Allocation based on State and county expenditures related to tourism

For tourism expenditures, Chair Acoba asked whether it is acceptable to look at expenditures by the State and by the different counties and compare those expenditures to the total.

Member Hunt suggested obtaining visitor expenditures from the operating budget, or actual expenditures directly related to tourism, and identifying the services tourists proportionately share with residents. In the past, the county developed a ratio of allocation based on police and fire servicing the same percentage of visitors to residents.

For the State, Member Hunt suggested one could use the total number of visitors. He calculated the percentage of visitors per island. Based on HTA information in Slide 2, Hawai'i Island = 13.29 percent; Kaua'i = 25.13 percent; and Maui = 25.28 percent.

Member Miyahira does not think the formula will work for the State. The State's costs related to tourism would be overly inflated due to services provided for education, the UH, and welfare.

Member Yoneshige asked what is the theory behind the allocation? Once the theory is established it becomes easier to arrive at the basis for all the different factors behind the allocation. He suggested trying to make the TAT allocation methodology simple by applying more logical factors.

TAT revenue collected by each county

Member Yoneshige stated that he wants to see the TAT revenues from each island in the schedule.

Dan Purcell, a member of the public, asked to make a public comment.

Member Baz stated the State statistics are found on the Department of Taxation's website.

Member Yoneshige stated that if the WG is going to allocate the TAT, the revenues collected by each county can be one basis for allocation. The basis for the State's allocation would be measured by a portion of the total collected against the total expenditures. For example, the total TAT collection in 2014 was \$395 million; the allocation to the county was approximately 25% of the TAT.

Member Hunt stated did not think the collection mechanism is an equitable distribution for the neighbor island counties since 80 percent of visitors are visiting O'ahu with visitor days close to 45 percent. For example, if the City and County of Honolulu received \$319 million of the \$395 million or 80.73 percent of the TAT collected in 2014 that would leave the other three counties sharing less than 20 percent.

Chair Acoba questioned whether the WG should look at the ratio of TAT expenditures, and whether the WG should look at tourism expenditures for the counties but not for the State.

Member Miyahira stated it may depend on how the State's tourism expenditures are defined.

Member Hunt suggested the State look at expenditures with a direct (100 percent) nexus to tourism. For expenditures without a nexus, the WG could use a ratio of total State visitors to total State population, which is a little over 14 percent of its budget. The counties would probably have more direct tourism, so the counties could identify expenditures with a 100 percent nexus to tourism on certain items and then allocate proportional shares for items that are not.

Member Soon stated prisons at the State level should be excluded.

Chair Acoba asked Member Hunt to develop a formula.

4) Visitor arrivals

Member Case stated visitor days—not visitor arrivals—impact public services. Arrivals are deceptive because you cannot do arrivals without days; and expenditures are deceptive because some tourists spend more than others, but that doesn't mean you're not accessing the police department equally.

Chair Acoba acknowledged using a ratio based on visitor days.

Chair Acoba stated the following:

Population: There are benefits to looking at population holistically. Nobody wants to visit a state with a high crime rate.

Expenditures: Look at all the expenditures that make the state what it is, benefits residents, and makes the state attractive to visitors. It's artificial to distinguish the benefits to residents versus visitors.

Act 174: The Legislative intent is an open-ended question. If the intent is to provide reimbursements, this will lead the WG to look at the budget costs for providing services such as police. But this is not the way the statute seems to work as the TAT revenue is not simply for tourism. Act 174 provides that the TAT will be used to "cover retirement benefits." That's a deviation from the original purpose of the TAT. The original purpose is not tied to reimbursements.

VI. Consultant Services - Discussion

ASA Yamane stated more direction is needed in order for the Office of the Auditor to draft the consultant scope of services.

Dan Purcell, a member of the public, apologized for interrupting the discussion and asked the chair to acknowledge and allow him to provide comment. He addressed the chair as follows: "You don't orally acknowledge me . . . this isn't a court of law, this is a public sunshine meeting. You're not a judge and you carry on as if you are. I do have comments."

Chair Acoba informed Mr. Purcell that he was past the time for public testimony.

Mr. Purcell explained that some people take time off from work to attend meetings, while other people fly in from other islands to attend since there is no video-conferencing for testimony. He asked whether the chair was telling him that even if he's five minutes late, he cannot testify.

Chair Acoba explained that since the WG passed the time for public comment, he invited Mr. Purcell to submit written testimony and provide oral testimony at the next meeting. He informed Mr. Purcell that the meetings start at 10:00 a.m., the first Wednesday of every month. "We welcome your comments, we really do, but we need to follow some structure."

Dan Purcell replied, "You're not following legal structure, I can tell you that."

After Chair Acoba asked ASA Yamane about an RFP, ASA Yamane introduced Kathleen Racuya-Markrich, the Office of the Auditor's general counsel/HR manager who helps with the office's procurement. ASA Yamane suggested an economist may be needed to propose models from which the WG may decide which factors to apply and offered to develop some language based on the discussions to date.

Ms. Racuya-Markrich commented that based on a review of the past meeting minutes, she could not glean what the WG wants in terms of the scope of services for the contract. It's unclear what qualifications are required and what exactly does the WG want the consultant to do.

Member Hunt suggested an accounting firm may be needed to look at ways to define cost allocation plans.

ASA Yamane offered to begin drafting and leave blanks for the WG to fill in.

Member Soon commented that if the scope of services is too broad, the WG could get priced out of the market. The specifications must be relatively specific as to what exactly the WG wants the consultant to do and a schedule of deliverables in order to hit our deadline of 20 days before the next session. Every month lost will make the procurement more difficult.

Member Soon was excused at 11:19 a.m.

Chair Acoba stated the WG wants models.

Member Baz suggested developing a scope of work from the information available and the WG can add information at the next meeting.

ASA Yamane stated she will start drafting and proceed with the budget request for consultant funding.

VII. Policy Issue

Chair Acoba asked to open up to the floor for discussion and a motion to adopt a policy that persons, who appear as a resource in place of a WG member, shall not be counted towards quorum or be allowed to vote.

Member Souki spoke in favor of the policy. He stated that because he was not able to attend the last meeting (December 3, 2014), he sent Mr. Quinn from DLNR to provide public testimony. Chair Acoba explained that Mr. Quinn provided testimony recommending a footnote in the report.

It was moved by Member Case, seconded by Member Souki and unanimously approved to adopt the policy.

Member Miyahira announced that this meeting was his last. Mr. Rod Becker, deputy director of finance will replace him. Chair Acoba thanked Member Miyahira for his work and welcomed Mr. Rod Becker.

Member Souki stated he will remain as a WG member but is ready to step down when the governor appoints a replacement from DLNR.

In the time remaining, Member Case asked the WG to discuss the allocation between the State and counties, identify a direct nexus, and develop a formula or a relationship to the State and counties based on that approach.

Member Case referred to the excerpt from "About State Government," (B&F), which he described as the most direct and safe comment:

The State government of Hawai'i has total responsibility for many functions that are performed by or shared by local governments in most other parts of the United

States. For example, the State pays all costs in connection with the public school system, libraries, public welfare, and judiciary. The greatest expenditures by the State in past years have been in the areas of education and public welfare. The counties' major areas of responsibility and expenditure are in police and fire protection, waste disposal, water and sewer facilities, and secondary streets and highways.

Member Case suggested using this as an outline to break down responsibilities between the State and counties; and then ask, "what services are directly related to tourism?"

Chair Acoba asked Member Case if the CAFRs are a good way to look at these factors.

Member Case stated yes, but he would like the counties to identify, within the programmatic areas, how much of it is tourist-related.

Member Hunt stated the Kaua'i budget looked at economic development moneys spent by the Kaua'i Visitor Bureau as 100 percent tourism spending, followed by police, fire, civil defense, parks and recreation, some transportation, and some public works.

Member Case stated it would be helpful if the counties and the State provided a more refined perspective. He suggested that the State needs to identify its responsibilities and services related to tourism so the WG can determine the actual percentage.

Member Souki stated that each state agency is almost like a county in itself when you look at revenues generated or received. He suggested using the counties' model and eliminate services like education to arrive at the State's ratio.

Member Case suggested asking all departments to identify what percentage of their budget is tourism-related.

Member Souki also suggested giving the departments a consistent methodology.

Chair Acoba asked the county WG members to use the CAFR as a starting point and develop a list of the counties' functions.

Chair Acoba also assigned WG members to identify in their CAFRs those expenditures that relate to tourism.

Member Miyahira asked for the county's to describe what they use to determine what is visitor-related and whether he can get a working definition at the March meeting. As for the State, it will be difficult for B&F to work on this because it's busy revising budget proposals for submission to the Legislature, which will cause a delay.

ASA Yamane asked whether the WG is looking for a nexus to tourism since the charge is to evaluate the division of duties and responsibilities between the State and counties relating to the provision of public services.

Mr. Becker added that the purpose of the TAT isn't necessarily to provide for tourism-related expenses.

Chair Acoba clarified the goal for the next meeting is to have a broad list from the counties that sets out their duties and obligations using the CAFR as a starting point. The second list should identify the functions with a nexus or responsibilities that directly impact tourism. He asked ASA Yamane to look into different ratios and for Member Hunt to provide separate ratios.

ASA Yamane asked Member Hunt for his methodology.

- VII. Adjournment: With no further business to discuss, Chair Acoba adjourned the meeting at 11:46 a.m.

Reviewed and approved by:

Jan K. Yamane
Acting State Auditor

Approved as circulated.

TATWG/20150107

DRAFT