

TAX REVIEW COMMISSION

MINUTES FOR THE SEVENTH MEETING OF THE
TAX REVIEW COMMISSION
HELD AT 830 PUNCHBOWL STREET
HAWAII STATE CAPITOL CONFERENCE ROOM 225
IN THE CITY AND COUNTY OF HONOLULU
STATE OF HAWAII, ON TUESDAY, DECEMBER 13, 2016 AT 1:00 PM

The Commissioners of the Tax Review Commission (TRC) met at the Hawaii State Capitol Conference Room in the City and County of Honolulu, State of Hawaii, on Tuesday, December 13, 2016.

Members Present: Colleen Takamura, Chair
Vaughn Cook, Vice-Chair
William Pieper II
Nalani Kaina
Raymond Blouin

Member Absent: Dawn Lippert and John Knox

Staff: Ted Shiraishi, Jonathan White, Titin Sakata and Noe Kaawa

Others: Randall Nishiyama, Department of the Attorney General
Mallory Fujitani, DOTAX
Ben Park, WAM
Peter Fritz
Jana Moore, CAN
Sam Lee, CAN

CALL TO ORDER:

Chair Takamura called the meeting to order at 1:00 pm.

APPROVAL OF MINUTES FROM PREVIOUS MEETING:

Approval of the minutes from the December 5, 2016 meeting has been deferred.

DISCUSSION AND ACTION ON THE SOLICITATION FOR QUALIFIED PROFESSIONALS WHO HAVE A WORKING KNOWLEDGE OF HAWAII'S TAX STRUCTURE AND OF HAWAII'S ECONOMY TO PREPARE STUDIES OF HAWAII'S TAX SYSTEM:

Chair Takamura said at the last TRC meeting, the investigative committee recommended the approval of the proposal received from the vendor. She asked for a motion.

Commissioner Pieper made a motion to accept the proposal from the vendor, and Commissioner Cook seconded the motion. The motion carried unanimously.

DISCUSSION AND ACTION ON POTENTIAL ADDITIONAL STUDIES BY THE COMMISSION:

Chair Takamura said the TRC now has a study that would help prepare the TRC report to the legislature. TRC Commissioners had been selected by the legislature because of their expertise and profession to enhance and supplement the path the TRC had already taken. She would like to have additional discussions on tax policies during the meetings and the purpose was not to redo what the TRC has already done, but bring up more issues to maybe add to the report. She wanted to know what tax policies TRC members felt were important other than what was in their study or if the topics in the study needed to be expanded.

She said in her profession, she does a lot of GET and TAT returns, and many of those clients were non-residents. One area she would like to look at was the HARPTA, a withholding tax on sales of property by non-residents. Her understanding of HARPTA was it's a buyer's requirement and she would like to see changes in this area especially if these properties were rented or used commercially, then they should be paying their fair share in taxes too.

Commissioner Pieper asked if Chair Takamura was looking to do a study on compliance with HARPTA laws or what that potentially could look like.

Chair Takamura said she would like to see what the TRC could do or suggest to the legislature that maybe they need to look at the HARPTA laws and maybe the five percent withholding was not enough and maybe the withholding should be at ten percent so it hurts if people don't file a tax return.

Commissioner Pieper said at this point, the TRC really needs to quantify exactly what was wanted and cannot keep bringing up ideas since there was a time and resource limitation. He also said he was good with the study even if it was not all encompassing, but felt there was good to come out of it. He wanted to have a deeper discussion with the vendor to tell them exactly what was on his mind, the finer points, not just the items in the solicitation.

Commissioner Blouin said he agreed with the study as presented and it was going to be a good study, but he felt what Chair Takamura was trying to convey was for the TRC to have a discussion on potential additional studies that the TRC may want to do. He thought a good place

to start that discussion would be the different topics and the emphasis on each topics members had that were previously discussed, and to exclude topics that would be addressed in the study and see if there were any remaining topics.

Chair Takamura said the TRC could do that as a starting point but she wanted to know what was important to each TRC member. Each member brings so much knowledge here and the TRC has things listed but wanted to know what their thoughts were, specifically on what the TRC could look at, not necessarily study but maybe get suggestions.

Commissioner Kaina said part of the TRC members being here would be to bring issues, but we also need to listen and to find out what's going on in the community. She thinks the TRC should go back to and figure out what topics were left, where the holes were and have some public hearings on these issues. To ask each TRC member bring in their own personal perspective on what needs to change in tax policy made her unsure if that's the direction the TRC should be moving in. She was nervous of the path Chair Takamura was trying to move the TRC towards.

Chair Takamura said she was not trying to change the direction but was looking for ideas. The TRC did have a list and she thought if the TRC members had any additional ideas they wanted to bring up, she wanted to hear about it, maybe not today, but at the next meeting to discuss them and decide what to do for the rest of the report.

Commissioner Cook said what he heard Chair Takamura suggesting was the TRC discuss and have a little more discussion amongst themselves on policies that were important. The TRC didn't have that kind of discussion in the beginning and maybe the TRC should do it in the framework of hearings to hear from the public what they were the topics.

In the beginning, the TRC did a straw poll and the results were the topics of interest and ranked according to importance which was what the TRC focused on for the study. What Chair Takamura was trying to talk about would be discussions that would flush out what could be some of the tax policy issues of interest to the TRC and use that to have public hearings and it doesn't have to be a studies. There were a lot of studies that have been done already including prior TRCs, and it might just be a matter of stating it still maybe a valid suggestion or maybe this TRC may or may not agree. That's the nice thing about having seven people coming up with a report and its neat to hash it out a little bit about what the issues were, and we may not always agree. For example, fairness and progressivity maybe important to some of us, but one of us may think horizontal equity was more important. So the TRC could have an interesting discussion without the TRC telling the public what we want, but hearing from them on these different topics.

Commissioner Pieper said he agreed. Having discussions was one thing, but getting data, having something substantial and validated to present was another. He thought the TRC would agree that the unfunded liabilities was an issue, creating new revenue sources, new taxes or new ways to generate revenues for the state were issues, or creating new revenue sources that wouldn't affect the low income or people who were already struggling. The TRC could argue that we would like to export some of the taxes, but to kill or affect industries? From a discussion perspective, he felt the TRC could agree on many things, except to go down policy by policy would be a big job, and felt that was why things were broken into chunks because the TRC can't sit there, look at holistically and pontificate that this policy was good, not that one and so forth. The TRC needs to get data and evaluate the study. He asked what the alternative would be

versus getting together with the vendor to review what they were going to do, put forth what else the TRC would like done and how it would like the study tailored.

Chair Takamura said what it got down to was how the TRC would want their report to look like to the legislature.

Commissioner Pieper said he didn't know what the report was going to look like. The TRC doesn't have data or information nor have we had the opportunity to discuss anything with the vendor. He hoped if the vendor came up with great ideas and best practices from across the nation that people were deploying and was working. He also hoped that the vendor could show something about how exporting tax supports revenue from tourism and other things of that nature, and if they don't, the TRC should press them. The TRC was paying the vendor.

Chair Takamura said that the TRC would get bi-weekly reports from the vendor, but was not sure how detailed they would be.

Commissioner Pieper said neither does any of the TRC members. With all due respect, he hears Chair Takamura in what seems to be an unsatisfied feeling of how the TRC has this report, but wants more, yet she has not articulated specifically what that something more could be and it's hard to agree to pursue whatever that may be. What's important for himself was the study and he would like to see what the vendor comes back with.

Commissioner Kaina said it would have to be systemic and would ask if DoTAX could assist with what Commissioner Blouin suggested, to review which areas were not covered in the study for the TRC to bring back to the table and to review notes to help the TRC identify areas thought to be important. The TRC may want to set up hearings to get more information whether it through briefings from DoTAX or community members, looking at the list and then if anything was missing beyond that. She felt that would be the TRCs starting point. She needs information she can review, reflect and try to understand, not just broad conversations. She agreed with Commissioner Pieper about values and things we care about within the community, yet the TRC can't have these types of conversations in a vacuum.

Mr. Shiraishi said it may be helpful to elicit specific sub-points under the major topics of the procurement and maybe that could be the starting point of the homework before the final contract was entered into since that would be the immediate goal. As far as sub-topics or more specific things the TRC was absolutely certain fell under a topic should be discussed with the vendor. However, he cautioned that the TRC can't go too far from the procurement to avoid a violation of that. DoTAX could work on what Commissioner Kaina asked, but he stressed that the procurement needs to get finalized, and after that, the TRC would have more time to decide what they would like to do next.

Chair Takamura asked who would do the contract and how would the TRC go about listing sub-topics under each topic of the proposal.

Mr. Shiraishi said final negotiations need to occur before the contract gets entered into. Generally those items would get incorporated and become part of the contract. He knows that the TRC can't stray too far from the scope, but sub-topics or more specific items under the scope

would not be in violation. Therefore, if the TRC was certain and had more specific items to include in their study, those things would be best addressed now.

Chair Takamura asked if the TRC would have to provide a list now.

Mr. Shiraishi said the TRC doesn't have to, however, if there were sub-topics or additional items that have come up now since the request for bids went out, the TRC should probably have those items compiled so it could be added into the contract, but if the TRC were satisfied with the topics as listed in the scope, that's fine too.

Chair Takamura said there was things she brought up that were in the proposal but she didn't know what the vendor would come back to the TRC and say these were the things they were going to look at.

Mr. Shiraishi said that was his point. If the TRC knows the general items within the proposal and would like the vendor to take a more specific direction, then that should be written into the contract or negotiated.

Chair Takamura asked the TRC members if there was anything to be added that fit within the scope.

Commissioner Blouin said when the vendor looks at new revenue sources; he would like the vendor to target that money to benefit the community. The goal and objective was to make sure we live in a place that was outstanding like the top ten places to retire, top ten places that were action and activity oriented, or top ten most beautiful places. In Hawaii, we have most everything. However, as it related to the challenges for businesses and challenges with taxation, we may not reach those top ten places to retire just as an example. If the study could focus on new revenue sources and make recommendations that could benefit communities to be a better place to live, that would be important. It would be more than just additional revenue, but an attraction that benefits the state.

Commissioner Pieper said that every tax decision has a social impact and being mindful of that was important especially with regards to new revenue sources.

Mrs. Sakata said to clarify and serve as a reminder, the vendor, before they started the work would interview each TRC member and ask for direction. If there were any specific topics each member wanted them to focus on within the three broad topics that were in the proposal. The vendor will constantly ask for the TRCs input and feedback for the direction of the report. She reminded the TRC they did scale back public interviews by the vendor, but added that if the TRC decided the vendor would be needed to testify, they would be here.

Chair Takamura asked if the contract was set-up like the proposal and would the TRC members sets up their own interviews with the vendor, would that be enough direction for the vendor rather than stating items in the contract. Maybe what the TRC should do was to formulate what each member would like to discuss with the vendor to help direct the vendor on what their report should cover,

Commissioner Kaina said wouldn't part of the negotiations include milestones and discussions, and that could be when the time period would be in terms of the interviews with the TRC members.

Commissioner Blouin said he like the ability of being interactive with the vendor. That was clear and concise, and enables flexibility within the agreement. It would be an interaction with the TRC and the public.

Chair Takamura asked if that was when they would come in to discuss their plan of action with the TRC.

Mrs. Sakata said the topics were spelled out within the proposal.

Mr. Shiraishi said anything more specific or terms need to be added. So as far as time, would be hard to say depending on negotiations. If the TRC was real demanding compared to what the proposal looked like, then there can't be a contract. As of right now, none of the parties involved were obligated to do anything. Therefore, this would be the time for the TRC to do what needs to get done. How long that takes would be how fast it takes for the TRC to get things together, the TRC members agree and the vendor agrees, and goes from there.

Commissioner Pieper asked would the TRC be able to contact the vendor.

Mr. Nishiyama said it could only be members of the investigative committee.

Chair Takamura asked while in negotiations leading to the contract, would that be the time for each TRC member to discuss their ideas with the vendor? What specific information would be needed by the investigative committee during this period?

Mrs. Sakata said what DoTAX was striving for is more details to expand on top of the proposal.

Mr. Shiraishi said before the call to the vendor can occur, suggestions or opinions should be compiled from all TRC members and a timeline for this contract. For instance, if the TRC would like the vendor come and do a presentation from the start and that should be included in the timeline. At this point, the first step was to make sure the investigative committee knows how the TRC feels about the direction for this procurement.

Commissioner Blouin said he thought that would be appropriate as a first appointment for the vendor to do a presentation of the layout of their understanding of how they were going to address and proceed with the study that was outlined in the contract. He also felt the need to empower the administration to negotiate on behalf of the TRC.

Mr. Shiraishi said if there were other things to be added to the contract, now would be the time to do it, but the vendor has express some flexibility in their approach, welcomes feedback, wanted to provide bi-weekly updates and their intention was not to get to the end of the process with a product that was not satisfactory.

Chair Takamura asked the TRC if they needed topics to express now or wait until the vendor came to do the presentation of what they were going to produce.

Commissioner Pieper said the TRC should proceed with a contract and express some of the concerns Chair Takamura has. It was not like the TRC was going to completely change direction or add another study to the contract. Within the scope there were three very broad topics and could ask the vendor to focus more here or learn more about that, or what impact would this have. That can happen after the TRC has a contract so the vendor can get started.

Commissioner Kaina said she agreed with Commissioner Pieper to push forward with the contract. The scope was there and could use some fine tuning. She liked Commissioner Blouin's idea of having the vendor come and do a presentation of their direction and if there were concerns, it could be raised then. If the TRC continues to tinker and tinker, we would be in the month of March with no contract.

Chair Takamura said what she was hearing from TRC members was to let DoTAX proceed with the contract with the vendor. However, she wanted to know if the TRC would be able to see the terms and timeline of the contract.

Mr. Nishiyama said terms of the contract were still subject to negotiations by parties. As far as the timeline, that was a disclosable item.

Mrs. Sakata said on the solicitation, there were some guidelines and when the TRC wanted its final product. However, the TRC was running about two to three weeks behind.

Commissioner Kaina said what Chair Takamura was asking for would be more like a project calendar in terms of the milestones and would that need to part of the negotiations or can the TRC discuss that with the vendor after the contract was signed.

Mr. Nishiyama said that could be negotiated by parties after the contract was signed.

Chair Takamura asked if the TRC was comfortable with DoTAX negotiating the contract with the vendor stated as it was in the proposal then having the vendor come and discuss areas to focus on.

Commissioner Kaina said she would like a project calendar from the vendor.

Mr. Shiraishi asked Mr. Nishiyama if whether or not it would be okay if DoTAX tried to work out a timeline with the vendor, obtain a project calendar and set up a presentation which was what the TRC wanted. Then get back with the TRC with what was negotiated.

Commissioner Blouin said he hope that there has been discussion with the vendor to produce in a timeline that meets the TRC requirement.

Colleen asked for a motion to allow DoTAX to negotiate the contract with the vendor and provide the TRC with the timeline information by the next meeting.

Commissioner Blouin made a motion for the TRC to direct DoTAX to negotiate the final details of the proposed contract to include a specific schedule and report back to the TRC at the next meeting in hopes the TRC would be presented with a product for final approval. Commissioner Kaina seconded the motion. The motion carried unanimously.

Chair Takamura said DoTAX had the authorization to negotiate the contract with the vendor. She also requested for DoTAX to provide the TRC with the topics from the straw poll and scope from the solicitation to see what topics would not be included in their study.

Commissioner Blouin said what maybe good background and in their best interest during the final stages of negotiations would be for the vendor to read the minutes from previous meetings.

DISCUSSION AND ACTION ON INTERIM REPORT TO THE 2017 LEGISLATURE:

Discussion and action for the interim report to the 2017 legislature was deferred.

DISCUSSION AND ACTION ON REQUESTING EXTENSION ON DEADLINE TO SUBMIT REPORT OF THE TAX REVIEW COMMISSION TO LEGISLATURE:

Chair said going through this process has been time consuming and the TRC had a late start with some unexpected events during this term. The TRCs goal was still to submit the report to the legislature by mid December, 2017, but the TRC has one chance to get an extension. If the TRC should find out later in 2017 that something has come up and couldn't provide the report in a timely fashion, the TRC would have to rush to the report done under the circumstances. She asked for a motion to request an extension of the due date for the TRC report by one year.

Commissioner Cook made a motion for the TRC to request a one year extension of the deadline for reporting to the legislature and extending the life of the TRC until the report was submitted. Commissioner Blouin seconded the motion but wanted a discussion.

Chair Takamura said the TRC would have a discussion on the motion.

Commissioner Blouin said the one thing the TRC may want to consider adding a phrase "regarding circumstances beyond the TRCs control" as a reason why the TRC would be making that request for an extension.

Chair Takamura said the TRC did have a late start and was unsure of the negotiated contract too, so she was trying to be proactive in case the TRC runs into trouble with meeting the report due date.

Commissioner Blouin asked if the TRC was trying to ensure the quality of the report and that it was outstanding as the reason the TRC may need an extension.

Chair Takamura said if the TRC doesn't need the extension, they won't use it.

Commissioner Kaina asked if there would also be a request for an additional appropriation of funds for travel and potentially other expenses. She was concerned whether or not the TRC should extend for another year. She felt the TRC could get the report done with clarity and purpose. She was worried that an extension would allow the TRC to be less intentional.

Commissioner Cook said he had similar concerns just knowing how he worked or how human nature was. He said the TRC has a realistic possibility of getting a good and readable report done within the timeframe given. The TRC has thirty days until the 2018 legislative session opens, which makes it mid-December 2017, which was about a year. Whenever he looked at the "what if" in case something happens to the report, right now the TRCs eggs were in one basket as far as reports. That would be the report that TRC had requested although there was no signed contract yet. Hopefully that goes well. He would like to request an extension and hopefully not need it. Ideally, everything will go smoothly if we have good discussions with the vendor, the TRC would be pleased with the product, have good public input and was able to put out a report. However, in case the TRC cannot meet that deadline, it would be nice to have that extension and the TRC would not have to wait to submit until the following December. We could submit while the legislature was in session though he wasn't sure how much they would pay attention, but felt they may find it helpful.

Looking back at a previous discussion, Commissioner Kaina did mention the fact that the next TRC would be commissioned in the summer of 2020. So, if the TRC used up the requested extension of one year to submit the report assuming the legislature grants it, that would take the TRC to December, 2018. That would be a year and six months before the next TRC starts, in theory.

Commission Pieper said the TRC would need a reason, something specific like we started six months late so we need a six month extension. He agreed with Chair Takamura's concerns too and doesn't want to slap a report together or not have a product the TRC was not proud of, but to Commissioner Kaina's point, the TRC could do it this year.

Commissioner Blouin said this was an interesting motion and he understood the intent and thinks there was a way to get all TRC member to agree. That would be while in negotiations, when the schedule was discussed, importance should be emphasized regarding the date upon which the TRC wanted the project completed. If the report was not completed by that date, then within the contract there should be something that states there are ramifications if not completed on time. If that were to be true in negotiations, this motion would be appropriate for the reason of getting a good quality product as long as the TRC doesn't jeopardize Do Tax's ability to negotiate the contract.

Chair Takamura said she thinks the contract date with the vendor and the TRCs date for submitting the report should have nothing to with when the vendor gives us their report, and whether the TRC has an extra year or not, their obligation would be to give us the report by the contract deadline date. This process was suppose to be fluid and hoped that as they moved along, the TRC would be getting information from the vendor regarding our focus points so the TRC could start formulating the report needed to submit to the legislature.

Commissioner Kaina asked DoTAX what would be the consequences for not getting the TRC report submitted when it was due.

Mr. Nishiyama said there were no sanctions but the legislature maybe counting on that information for its activities.

Mr. Shiraishi said since it was the TRCs intent to frequently update the legislature, he thought if the TRC was a little late, you were a little late and the legislature would understand. He couldn't imagine the vendor taking twice as long as they promised with those payment milestones in place to meet those targets. For those types of consultants to continue to do state work need to meet those criteria's because they don't want to be known as the consultants who couldn't produce on time and left everyone hanging. He also seconds what Commissioner Cook said about being commissioned a year later so it's a year back, and adding an extra year throws that schedule off. It would be better to be late than taking a whole year from another TRC, but updating the legislature frequently would address that and they were reasonable people.

Chair Takamura said she would still like to get an extension. The TRC had a late start and we all would like to produce a report that would be practical, useful and readable, and thinks if the TRC stayed on top of the vendor with their bi-weekly reports and communications, the report the TRC gets from them would be what was needed to do part of the TRC report. She doesn't think that was everything the TRC had to submit to the legislature. She thinks the extension was a good thing to do and doesn't expect to submit the report in December, 2018. If anything, the report would be one to two months late.

Commissioner Pieper asked Mr. Shiraishi if he was suggesting that instead of the TRC asking for an extension, just have regular communications with the legislature on the TRCs status, and if we can't make the deadline but were able to give the report one, two or three months later was the route to go instead of asking for an extension through the formal method.

Mr. Shiraishi said yes. In the past, TRCs had released draft reports so there would be a product to show. Either way, even if the report would be done on time, you should keep the legislature updated to let them know how things were going anyway. The extension would be a statutory change for the TRC. The extension this TRC was given was a statutory change with an appropriation that was part of the executive package. This year any type of extension would not be.

Chair Takamura said if the TRC could get legislation done for an extension with additional funding done, would the TRC support it?

Commissioner Pieper said he personally would rather do what Mr. Shiraishi suggested.

Commissioner Kaina said she was voting no. She felt there was a reasonable option, but the TRC doesn't have the resources unless Chair Takamura was going to take on the burden of lobbying a bill through the legislature since it was not going to be part of the administration's package, and that part of that responsibility the TRC may not be able to direct DoTAX to take the lead on, and that's an issue. She also felt as long as the TRC provided updates they would get to the same ends without needing a bill the TRC would have to shepherd on top of the work they were trying to do as the TRC, which was to finish the report.

Mr. Shiraishi said practically speaking, if the TRC was a year late, the intended legislature would not get the report. For example, if the TRC knew in October or November, 2017 that the report was not going to be done by the due date would be the same result as having an extension going into the next year because the legislators would not have enough time to propose potential legislation anyway. The only difference with the extension was the TRC member's duties would get extended. He felt the TRC would know when the study was done if they would be able to submit the report or not to the legislature.

Mrs. Sakata said the TRC would dissolve when the 2018 legislative session ends in May, 2018.

Commissioner Kaina said even if the TRC submitted the report in January 2018, it may not potentially result in legislation and the TRC would still exist to answer questions from the legislature. So, the TRC could meet during that session without needing a full extension.

Commissioner Cook said this may not be the last chance to get an extension if by December 2017 the TRC foresees they can't finish by the time their term ends in May 2018 when the legislative session ends. They could then ask the 2018 legislature at that time for an extension.

Mr. Shiraishi said in theory.

Chair Takamura said her concern was that the final due date for the report was thirty days prior to the legislative session beginning and that was her driving point for the extension, but if it was not, then she was okay with that.

Commissioner Blouin said before the TRC finalizes the discussion, the TRC should drive and try to be an assertive commission to ensure that the vendor knew about the deadline DoTAX would put in place to hold them accountable and look forward to those milestone dates, and if there were faults along the way that the TRC would know about them ahead of time so corrective action could be taken.

Commissioner Takamura said there was a motion and second to extend the life of the TRC on the table and the TRC needed to take a vote.

All those in favor of the extension of time of the TRC were none. All those opposed to the extension of time of the TRC carried unanimously.

WRITTEN COMMENTS ON HAWAII TAX STRUCTURE:

Letter with attachments dated December 8, 2016 from Tom Yamachika of the Tax Foundation of Hawaii, regarding existing interstate tax studies.

- Tax Foundation 2017 State Business Tax Climate Index
- Tax Foundation State-Local Tax Burden Rankings FY 2012
- ALEC Unaccountable and Unaffordable 2016: Unfunded Public Pension Liabilities Near \$5.6 Trillion

- ALEC Rich State, Poor States, 9th edition

PUBLIC COMMENTS ON HAWAII TAX STRUCTURE:

Mr. Fritz suggested that perhaps the TRC could recommend legislation related to:

- Fill vacant positions of the Boards of Taxation Review
- Resolving the backlog of disputes in Tax Appeals Court
- Taxing E-Commerce

NEXT MEETING:

The next meeting is tentatively scheduled for Monday, January 23, 2017 at 1:00 PM.

ADJOURNMENT:

The meeting was adjourned at 2:30 PM.