

TAX REVIEW COMMISSION

**MINUTES FOR THE SIXTH MEETING OF THE
TAX REVIEW COMMISSION
HELD AT 830 PUNCHBOWL STREET
HAWAII STATE CAPITOL CONFERENCE ROOM 016
IN THE CITY AND COUNTY OF HONOLULU
STATE OF HAWAII, ON MONDAY, DECEMBER 5, 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 Monday, December 5, 2016.

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

Member Absent: Dawn Lippert, Raymond Blouin and John Knox

Staff: Jonathan White, Titin Sakata and Noe Kaawa

Others: Randall Nishiyama, Department of the Attorney General
Mallory Fujitani, DOTAX
Tom Yamachika, Tax Foundation of Hawaii
Peter Fritz
Jana Moore, CAN
Sam Lee, CAN

CALL TO ORDER:

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

COMMUNICATION AND PUBLIC COMMENTS TO THE COMMISSION:

Chair Takamura asked if there were any communications or public comments to the TRC.

Chair Takamura thanked Mr. Yamachika from the Tax Foundation for their letter to the TRC. The TRC responded to the letter regarding the people that attended the Executive Session and also apologized for the length of that meeting.

Mr. Fritz raised a number of issues to the TRC. First, was a concern that there were Co-Executive Directors of the TRC that had been appointed by DoTax? He raised issues as to the appropriateness of such appointments. Chair Takamura asked that Mr. Nishiyama provide clarification as to the role of the Co-Executive Directors of the TRC.

Second, Mr. Fritz was unclear how Mrs. Fujitani was appointed to the solicitation committee as he did not recall such an appointment happening at a meeting.

Mr. Nishiyama clarified that the state statute for procurement under Chapter 103D, requires that there must be at least three state employees.

Third, Mr. Fritz also raised concerns that the issues being discussed in Executive Session did not need to be in Executive Session.

Finally, Mr. Fritz reiterated his concerns that documents produced by DoTAX and posted on-line are not readable and accessible to those with disabilities.

Chair Takamura thanked Mr. Fritz for his comments.

APPROVAL OF MINUTES FROM PREVIOUS MEETING:

Chair Takamura said the second order of business was the approval of the minutes from the November 14, 2016 meeting and asked if there was any motion to amend or approve the minutes. Commissioner Kaina moved the motion to approve the minutes with edits of November 14, 2016, and Commissioner Pieper seconded the motion. The motion carried unanimously.

Chair Takamura said she wanted to make an amendment to add an Executive Session to the agenda. She asked for a motion.

Mr. Nishiyama said she needed a motion by a TRC member and approved by two-third vote to amend the agenda.

Mr. Fritz said he thought it was seventy-five percent of all people able to vote and didn't think the TRC had that.

Chair Takamura asked for a motion to amend the agenda so the TRC could go into Executive Session. Commissioner Cook made a motion to amend the agenda to add an Executive Session and Commissioner Pieper seconded the motion. The motion carried unanimously. She said it had been moved and second to add an Executive Session to discuss with counsel the proposal from the solicitation.

EXECUTIVE SESSION:

Chair Takamura adjourned to go into Executive Session at 1:20 PM.

CALL TO ORDER-Reconvene:

Chair Takamura called the meeting to order at 1:36 PM

REPORT OF THE INVESTIGATIVE COMMITTEE 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 the TRC went into Executive Session to discuss the report of the investigative committee on the solicitation for qualified professionals who have working knowledge of Hawaii's Tax Structure and of Hawaii's Economy to prepare studies of Hawaii's Tax System. The investigating committee would like to recommend the vendor for the proposal provided to DoTAX, thus recommending the proposal from the vendor for the TRC study.

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 the investigating committee was recommending approval of the proposal received from the vendor at the next meeting. A meeting date will be determined by the end of meeting.

DISCUSSION AND ACTION ON POTENTIAL ADDITIONAL STUDIES BY THE COMMISSION:

Chair Takamura said when members first started the TRC; we were just feeling out way and after reviewing the 2005 and 2010 TRC reports, both talked about what makes up a sound tax structure policy. She would really like the TRC to look at that. There were certain things that made sound tax policy. One was fairness, efficiency, simplicity, transparency, accountability, stability and competitiveness. She asked TRC members to review those reports. She felt the

solicitation did mention some of those things, but the TRC needs direction to determine what to follow up on including additional studies.

She felt like the driving force of the TRC was is Hawaii's Tax Structure adequate and a study should be done on that. She knows the TRC has been busy with the solicitation and that there's so much more support the TRC needs to complete the final report.

Commissioner Kaina asked for clarification from Chair Takamura if she would be requesting for another study.

Chair Takamura said yes she would be.

Commissioner Kaina said in terms of asking for another study, would you also be recommending the TRC to ask the legislature for additional funds to do an additional study?

Chair Takamura said yes, the TRC would need additional funds and time which she may brought up in the last meeting because part of what the Senate wanted was a study on the GET. She did ask when the TRC could be able to get information related to GET, an area that the legislature wanted the TRC to look at. GET is the major revenue provider for the state. However, information would not be available until June, 2017.

Chair Takamura's list of potential studies was GET, tax structure, exporting of taxes and tax credits.

Commissioner Cook said when the TRC had its first meeting in June, and took a straw poll to get a sense of the different tax policies that were important to each member as well as the people of Hawaii since the TRC was a public commission, the TRC's mandate was to conduct a systemic review of the state's tax structure using such standards of equity and efficiency. He felt it was appropriate at the time to consider the senses of all TRC members of what was important. Since there was a rush and timing issues for getting our solicitation out this should be ending soon but will see how it goes at the next meeting.

With the TRC at the point there would be a potential study, now would probably be a good time and support Chair Takamura's notion to look at other topics or areas because the TRC's mandate was very broad. Now would be the time to turn and talk about in more details and continue to solicit public comments on these ideas of our tax structure and to consider other studies that may help the TRC with their report, and ultimately help the legislature as they formulate tax policies.

Chair Takamura said she would like the TRC to review past TRC reports to see what makes tax policies. Each TRC member may have an area of interest, however, the TRC would need to come back and see what the TRC's focus could be for the report which would be our final report to the legislature. She would like the TRC to provide a united report and believes the legislature would rely on the TRC's report. So it would be important to provide them valid suggestions to help them make policies when they go back into session.

Commissioner Pieper said that the TRC would be proposing for additional studies on top of the three studies we've already procured? He would like the TRC to be mindful of the time involved. The TRC basically dragged their feet to get to this point and the TRC has nothing to show for it or feels like we've just cracked the surface, and now the TRC maybe proposing

additional studies. He would like to start working. He appreciates what Chair Takamura said but at the same time the TRC must understand we had just gone through this process back in June and may have to go through it again. He wanted the TRC to be mindful of what it's trying to do here. We can't be everything, of all things to everyone, and it would be great if the TRC could do twenty five studies of what makes up good tax policies, but the TRC needs to focus a little bit. The TRC just can't say we should do everything. We don't have an unlimited budget. It's very specific and he would argue if you reviewed the past studies, they have a lot of what this TRC has talked about, and he would go so far to say the TRC should have brought that up with a phone call to the vendor. The TRC should be smarter about how they're using people's time.

Commissioner Kaina said she agreed with Commissioner Pieper. She has a hard time going back to the legislature saying the TRC needs to do more studies, asking for an allocation of additional funds and an extension of time. She was unclear of exactly what Chair Takamura was looking for or what she was trying to get to, and was concerned about the time. The TRC has had long discussions about where we wanted to focus the limited funds we did have. If the TRC was looking for that, she wanted a better understanding from Chair Takamura exactly what she's looking for and not just a statement of adequacy or our broad mission. She wanted to know exactly the study on GET, exactly the study on adequacy, exactly the study on exporting the taxes. The legislative session would be starting very soon and any request for additional funding would have to be done as soon as possible, and not by DoTAX, but by the TRC.

Commissioner Pieper wanted to clarify the 2012 study had three different scenarios that spoke to optimistic, pessimistic and baseline, and only optimistic showed the state had enough revenue to fund the unfunded liabilities. If the TRC thinks about that, the baseline was the state won't have enough. He doesn't know why the TRC would need a study for the fact that there was a delta in revenues and expenses.

Chair Takamura said from 2010 to almost 2017, things have changed.

Commissioner Pieper said that the forecasting model was still available and had access to that. The TRC's focus should be on how to address that gap. If we wanted to quantify that gap and understands the adequacy part of quantifying what that gap was. However, the TRC can't do everything for all people. Let's find a way to close that gap and make recommendations to those people who make laws. A lot of these things will be addressed in the study like generating more revenue through new and existing resources.

Commissioner Cook said he disagreed and that there was a discussion about a gap between revenues and expenses, and what the TRC does definitely affects that but different from what the legislature does. He felt the TRC was not in the business of or the goal and mandate was not to say that this was how the legislature has to spend money or raise more taxes to meet their budget. That's a political decision. At the end of the day, the legislature would either have to raise enough revenues to meet what they want to spend or cut their budget level of spending. The TRC was in agreement that we weren't telling the legislature they need to spend "X". What the TRC suppose to do is look if the tax structure was adequate for the people of Hawaii and he doesn't see a huge difference from the TRC was saying other than hearing Chair Takamura talking about looking more at the structure of the taxes. For example, GET. Hawaii is fairly unique in the country with the GET which is close to a European VAT, a broad tax, regressive with a relatively low rate compared to a sales tax. That was part of the discussion that the TRC

had because GET has a huge role in the budget. Some of the past TRCs did look at should we change the way of raising revenues. It's more like questions of do we do things like get rid of the income tax or raise GET.

Commissioner Pieper said that's political too. The TRC shouldn't be making recommendations from a law making standpoint. The TRC needs to provide data and reality of what people are doing, what works and what doesn't or what have we tried in the past instead of saying get rid of GET or change the income tax rates. Those things may come to surface by the research that's done, but the TRC would not be in the position to go to the legislature and make a recommendation that the tax structure was broken and they need to do X, Y and Z. We need to show them the information and from there they can say the soda tax sounds great or we need to change the GET structure. The TRC shouldn't be slanted in the approach of presenting that information in its review of the system.

Chair Takamura said she understood, however, she thought that the TRC didn't ask in their proposal to have the vendor look at the tax structure. We asked for the burden, regressivity, new revenue source and maybe the first topic should have been was out tax structure adequate.

Commissioner Pieper said he was still not clear of what Chair Takamura meant by adequate. But if it meant does the state have enough money to pay their expenses, we all know the answer, its simple right? The TRC can't do a study on broad; it needs to be specific like who bears the burden. We can't do a study on adequate or if the tax structure okay. He felt there were building blocks to the structure.

Chair Takamura said the TRC should give them a report that tells them as of now what kind of taxes Hawaii has, incomes generated from each and would it be adequate. Should there be an increase in GET, get rid of corporate tax, that's the legislature's choice, but that's the foundation of the taxes Hawaii and are those taxes right for Hawaii.

Commissioner Pieper asked Chair Takamura how she would break that down, what would she study.

Chair Takamura said what taxes were available and how much revenue each generates, how much revenue was available from all revenue sources and that would tell them how much they got. Is it adequate to cover the expenses?

Commissioner Pieper felt that the legislature has that figured out.

Commissioner Cook said as far as the dollar amount and whatever the tax structure was, we can get to an adequate number since the legislature has to do it every year when they have to balance the budget. They either have to cut spending or raise taxes.

Commissioner Pieper wanted the report to be meaningful too, but the TRC hasn't started anything yet so let's start something. In the mean time sharpen the pencil a little bit to figure out specifically what other studies may enhance what the TRC already agreed on, and then perhaps go back to the legislature.

For example, ask the legislature for more funding to do a study of the adequacy of the tax structure. They would say great, but what about the adequacy of the tax structure. They're going

to ask the same questions we're asking about. We need more specific information before going to the legislature for more money although they may have said to comeback and we'll give the TRC money, which would be something they say all the time but the reality of that would be very difficult and it has to be justified.

He felt the TRC was on the right path as far as what has been talked about and let's not forget what we did agree on then take our eye off the ball and go on something else. Some of those concerns perhaps being brought up could be addressed with the vendor.

Mrs. Sakata said she wanted to clarify from the notice to providers of professional services and reads study three:

A study on the best ways to generate more revenue through new and existing sources, and through improved compliance with Hawaii's tax laws. The study should consider, at least broadly, how much revenue will be needed to maintain the current level of government services (tax adequacy), including unfunded or underfunded liabilities for pension and health care benefits for retired state workers. The study can be combined with a study of tax adequacy, or it can take as the goal raising enough additional revenue to fund the annual required contribution (ARC) to the Employer-Union Benefits Trust Fund. (Funding the ARC will be required by Act 268, Session Laws of Hawaii 2013, starting July of 2018.) The study should include a qualitative assessment of the effects of the proposals on the overall economy and on its major sectors. Examples of studies of tax adequacy are the reports prepared for the Tax Review Commissions 1989, 2005-2007, and 2011-2013.

Commissioner Pieper said that's what he's been talking about too, and that's a great point but we're not talking about just money.

Commissioner Cook said he was talking about the statutes, the system of the state tax structure.

Commissioner Pieper said to Commissioner Cook's point and what the TRC has agreed on may not be exactly the same but if Chair Takamura could articulate exactly what she was thinking about from an adequacy perspective then the TRC could ask that question to the legislature but for now the TRC was on the right path.

Commissioner Kaina said she had to point out that the TRC did discuss all of these issues and prioritized certain things, but to go back to the legislature now and say the TRC has other things to do. She has concerns about doing that and that any allocation of funds from the legislature would not be distributed until May, 2017 unless there will be an earlier appropriation, and going through this procurement process has been difficult.

She thinks what the TRC has asked for was adequate and as the TRC, we should be looking for other things like potentially asking for public comments they might have, testimonies and gathering information from people that can help inform of what the TRC was trying to do.

With respect to a topic thrown out there in terms of credit, there was an auditor's report that looked at whether a credit was appropriate. There may be other studies that could provide information the TRC maybe looking for and somehow it could be organized in a better way. If anything, maybe there could be an allocation, if the TRC was looking for funding for assistance,

to hire someone to research information and compile a report. Maybe that's the missing piece the TRC was looking for amongst the need for support

Commissioner Cook said if the TRC looked at the last two TRCs, they had a whole bunch of reports. The mandate of the TRC was broad and part of the idea was some of these studies have become outdated and were good studies done by DoTAX TRP staff, but they don't have the personnel and resources to update those reports.

Chair Takamura said the TRC does need support and help for some of the things they could be trying to do and that could be why additional funding maybe needed. She felt there was a need for a study on GET and the TRC should come back to that, and the timing for the information on GET would not be in time to finish a report by December, 2017. That's why she was thinking of asking for additional time.

Commissioner Kaina said another point the TRC should be aware of was that the legislature was late in appointing this TRC, so technically the next TRC would suppose to be formed in 2020. She thinks there would never be enough time for the TRC to do everything that needs to be done and given some of the data issues surrounding GET, we may not be the right TRC to do that study and the legislature may ask for that to be done separately. Realistically, the TRC has to figure out what we can do within the time limit given. There's always the goal to do more with an all volunteer TRC with limited funding and staffing. There's only so much the TRC accomplish and doesn't feel like anyone on the TRC has taken enough time to state more specifically what to additional studies or anything else as to what we're trying to accomplish. Unless Chair Takamura was going to take this task on, she would support her, but felt that no one else on the TRC had the time to do all that work that was being asked to be done.

Chair Takamura said as chair, she felt there was need to bring it up, exactly what she would like to see in the report or a direction or focus. She apologized for not having the chance to do that and maybe by the next meeting could have a better idea of what she would like. It would help the TRC report from the public standpoint. She sees things from a tax practioner and taxpayer's view. She would like to see some of those problems addressed.

The proposal was broad, but there were certain other ideas she would like to look at that would likely be another study. She would like to be specific so that it would give the legislature at least an idea of what's going on out there and what they could look at. The proposal would give them general ideas of what they could do, but there would be other things that should be looked at and maybe brought out through public comments. To give them a report based on one proposal and maybe getting staff to help with a few things to give the legislature more than just a few ideas.

Commissioner Pieper said to have faith. The TRC hasn't approved the vendor and we haven't had a chance to communicate with them to know what this report could look like. The TRC shouldn't worry too much yet. Let the TRC look at what we have on hand and focus on that, and after we approve the proposal, make it public and if we still feel like there's a hole, then absolutely. He wanted to make sure it accomplishes what the TRC and Chair Takamura wanted. It's not just about getting a report and be done with it.

Chair Takamura said she felt the TRC had to look ahead too!

Commissioner Pieper said all he meant was all that Chair Takamura mentioned was in the proposal. Perhaps the TRC can drill down on certain things, but everything talked about today was in the proposal. Let's wait and see about our product and what the TRC was going to get, then see if there was any way to tailor it and see if the potential vendor could do more of what Chair Takamura wanted. The TRC can't delay another six months to try and get another study approved which was how long it took the TRC to get here, and to him that was a waste of time. The TRC has to be smarter and mindful of getting something done versus just talking and noodling over things that might possibly be out there. He thinks the TRC would be okay and we may be surprised to see what we could hear back directly from the potential vendor as far as what could be done.

Commissioner Kaina said to follow up on some of the issues she was raising, felt it wouldn't hurt to set up public hearing around the GET issues. Let DoTAX present what's going on, ask professional or people in the community with knowledge around the area of GET and to talk about the issues. We might as well take that public testimony and build that into the TRC report.

Chair Takamura said the reason she brought up timing was if the TRC was going to ask for an extension or more funding, there would be a time limit. She said she couldn't wait to see how the report was coming along.

Commissioner Pieper said to be fair, none of this was brought up till today and six months later the TRC has to be smarter about the time. We just can't keep re-tooling and recalibrating. At some point, we have to just pick and go, and hopefully make adjustments to go deeper on certain things. If not, the TRC would be twelve months from now trying to procure another contract.

Chair Takamura said she would try to have ideas by the next meeting and go from there. She was definite about the TRC needing staff support and with writing the report.

Mrs. Fujitani said she wanted to make the TRC aware that the opening of the upcoming legislative session was January 18, 2017 and there was approximately one week to introduce bills which means the TRC would have to agree to and finalize bills if they were going to do anything for the upcoming session.

Commissioner Pieper said hearing that makes things tough and he's not saying what not to do or what the TRC should do, but we've come this far and needs to be realistic.

DISCUSSION AND ACTION ON INTERIM REPORT TO THE 2017 LEGISLATURE:

Discussion and action for the Interim Report to the legislature deferred.

NEXT MEETING:

The next meeting is scheduled for Monday, December 13, 2016 at 1:00 PM.

ADJOURNMENT:

The meeting was adjourned at 2:28 PM.