

Meeting Minutes  
Finance and Taxation Committee  
Taxation and Budget Reform Commission  
301 Senate Office Building  
Tallahassee, Florida  
Friday, November 30, 2007  
12:00 p.m. – 3:30 p.m.

**Committee Members:** *Susan Story, Chair; Barney Barnett, Martha Barnett, Julia Johnson, Bruce Kyle, Patricia Levesque, John McKay, Randy Miller, James Scott, Kenneth Wilkinson, Brian Yablonski*

**Members Present:**

Susan Story, Chair  
Barney Barnett (by phone)  
Martha Barnett  
John McKay  
Randy Miller  
James Scott  
Ken Wilkinson

**Members Absent:**

Julia Johnson  
Bruce Kyle  
Patricia Levesque  
Brian Yablonski

Chair Susan Story called the meeting to order at 12:10 p.m. Staff called the roll and announced the presence of a quorum.

Chair Story reviewed the upcoming schedule of meetings and issues to be discussed, including the December 6 conference call (3 – 5 pm ET) and the December 14 meeting in Tallahassee (12:00 pm – 3:30 pm ET).

She reminded members that Commissioner Wilkinson will be discussing the concept of replacing Required Local Effort property taxes with other tax sources, and the committee will hear CP0004 and SR0005 by Commissioner Margolis, related to functional exemption from assessment of improvements to mitigate against storm damage and for energy efficiency. (It was later learned that proposals CP0004 and SR0005 were temporarily postponed in the Governmental Procedures and Structure Committee.)

For the December 14 meeting, the committee will hear a presentation on spending caps, and one on land conservation tax issues, by Commissioner Yablonski. In addition, Commissioner Scott indicated that he was working on a proposal to place a further limitation on the legislature's use of non-recurring funds to replace shortfalls in recurring budget funding and would like to be able to discuss that issue at an upcoming meeting.

Commissioner Martha Barnett made a presentation on the issue of sales tax exclusions, and sales tax on services. She noted that this issue is a very tough one and one that has been “in the mix” for over twenty years. She reminded members that she and Commissioner Randy Miller had served on the 1985 – 86 Study Commission that resulted in the short-lived sales tax on services passed in 1986 and implemented for only six months before being repealed by the legislature (tax was collected from July 1, 1987 until its repeal in December 1987.) Commissioner Martha Barnett indicated that the concept of a services tax is still a viable consideration after twenty years, but that there were many lessons learned in 1987 that should be closely considered if the TBRC decides to move ahead with a proposal to expand the sales tax base to include additional services.

Commissioner Martha Barnett reminded members that the current sales tax on consumption of commodities, as opposed to a tax on wealth or property, now accounts for the majority of taxes collected for funding of state government. At approximately \$23 billion, it is the largest single source of state revenue except for ad valorem tax, which accounts for approximately \$24 billion, but is dedicated to local government as a source of revenue. The current state sales tax rate is 6%. Local governments have some discretionary ability to raise sales taxes for specific periods of time to fund specific programs and projects.

The commissioner spoke to the fact that the 1987 sales tax on services proved to be both a political and an administrative nightmare. She noted that the committee would need to carefully consider how to define “service.” (Some states use the NAICS codes for this purpose.) She further noted that many services are already taxed in Florida, including communications, security services, and pest control for commercial accounts. The question of what constitutes a transaction, and where the transaction occurs in a global, internet market will be difficult, but must be addressed. The issue of situsing, or a business’s nexus to the state, will be important to consider and define. A full discussion of what services would be covered, and what would be exempt will include consideration of whether political and economic factors (newspapers, construction, etc.) of implementation of a tax should be considered. In addition, she noted that the committee should first ask itself if there was interest in pursuing a review of the expansion, and if so, would the committee recommend a dedicated use for new revenues, or would the funds be used to replace current revenues and possibly roll back tax rates on other taxes. Also, the committee should consider whether it would take a super-majority vote of the legislature to put an exemption into place in the future.

Commissioner Martha Barnett indicated that it was her belief that the state tried to take on too many changes, too fast without enough answers to the above types of questions in 1987, and that any further attempts to expand the sales tax on services should be done carefully and deliberately, if pursued.

As a starting point for discussion by the committee, Commissioner Martha Barnett put forth staff – drafted proposal FT-F. The draft document is a constitutional amendment, but the commissioner noted that there may be alternatives to putting a constitutionally

mandated review on the ballot. She told the committee that there have been several reviews over time, including legislation to form a commission to review such concepts. She recommended that if the committee decided to move ahead to review the issue, it should consider both a constitutional and a statutory recommendation.

Chair Story then asked the committee if there was interest in putting forward a committee proposal to review exclusions from the state sales tax. Commissioner Randy Miller asked if the issue for consideration was whether the committee would send forth a constitutional proposal. Chair Story indicated that the question was if the committee wanted to put forth a constitutional proposal for discussion. Commissioner Miller stated that he did not think there was any reason to do so, as the legislature can, and has, put such a proposal forward. He noted that after six months, the voters so strongly disapproved of the concept that the legislature repealed the new tax. He noted that the tax placed the state at an economic disadvantage and it was a failed experiment. Commissioner Miller went on to state that even with the hard work of all involved, the Emergency Rules put together to administer the 1987 attempt were not complete and did not cover all eventualities or problems with implementation. With changes to the marketplace and the way the world conducts business today, any attempt to institute a services tax could be even more difficult and such a concept should not be placed in the constitution.

Commissioner John McKay remarked that there are many services, such as courier services, that businesses use every day that could easily be taxed without any hardship on the user. He noted that the TBRC has neither the time nor the staff to go through and pick and choose which services should be taxed and which ones should not, but he believes that the legislature can and should do that task. He stated that he was not advocating repeal of all exclusions, but that such a repeal could generate as much as \$21 billion and cut the current sales tax rate in half. While the state may not want to repeal all of the exclusions, it may want to at least consider some of them. Commissioner McKay opined that the change should be constitutional since the legislature has had numerous opportunities to address these issues and has not yet done anything in that regard.

Commissioner Barney Barnett then asked if there were any specific services that the committee could review for possible repeal. He noted that if there were some that should be reviewed, he believed that it would be appropriate for the committee to take a look at them.

Commissioner James Scott then stated that the real issue before the committee was whether it was going to hear the conversation. He noted that the Governmental Services Committee has been looking at the ongoing costs for things like education, transportation, and other other large budget drivers and that based on those findings, the need may be there for broadening the tax base. He indicated that he knew it would be controversial, but that it may be best to go ahead and have some draft proposals available for discussion purposes.

Commissioner Miller then stated that “services” are very wide ranging. Of the amount being discussed, he noted that \$3.5 billion is for health services and that he did not think anyone intends to tax such services. He noted that there are things on the list that should never be considered. There may be some services that make sense for consideration, but he strongly stressed that the legislature has the authority to do so now.

Commissioner Martha Barnett noted that we should be sure to understand that we are discussing categories of exclusions, and that the real discussion here is on the tax structure, not individual services for consideration. She said that there would be many services that for many reasons would not be taxed. She then stated that she is in favor of a review and that the commission may already have a constitutional directive to perform such a review. She noted that sometimes a validation of current practice through review is just as important as putting forth a constitutional amendment or statutory recommendation.

Commissioner Ken Wilkinson agreed with Commissioner M. Barnett that the commission has a responsibility to review the tax structure. He stated that the state needs tax reform and that elimination of the required local effort on property taxes would be true reform. He continued that he thought the commission should look at property taxes, and the internet issues and if changes are made that any additional revenues could be earmarked for specific dedicated funding such as education.

Commissioner McKay made a motion to introduce staff-drafted proposal FT-F as a Committee Proposal. Additionally, the motion was for staff to prepare a companion statutory recommendation as a Committee Proposal. The motion was seconded by Commissioner Martha Barnett. On a roll call vote, the motion was passed, 6- 1.

The committee briefly discussed staff-drafted proposal FT-D, to provide assistance to first time homebuyers, but through lack of a motion to introduce, the committee took no action on the proposal.

Commissioner Barney Barnett led a discussion of issues related to “highest and best use” considerations by property appraisers in determining assessments for properties. He asked staff to review staff-drafted proposal FT-E. Staff deferred to Ms. Vicki Weber, an attorney for the Florida Chamber, who has broad knowledge of the assessment issues and who had assisted staff in drafting the proposal. After a brief explanation by Ms. Weber, Commissioner Martha Barnett asked about the use of the phrase “in exchange” on page one, line 23 of the draft. Ms. Weber responded that the language did not directly address the issue of highest and best use, but was in reference to the standards used by appraisers in performing appraisals. She noted that Florida is a “willing buyer, willing seller” state and this language simply clarified that concept. Upon questioning, Ms. Weber confirmed that the language in the draft specifically directed at the highest and best use appraisal practice is found in lines 33 – 35 of the draft. Commissioner Wilkinson noted that he was pleased to have the conversation with the Chamber and agreed that Florida is considered a “willing buyer, willing seller” state and the language in the draft would help to direct appraisers in that regard. Commissioner Randy Miller noted that this area of law is the

guiding statute for property appraisers and that this proposal is important because it provides a higher level of direction to property appraisers.

Commissioner McKay then asked how the highest and best use proposal differed from the working waterfront proposals put forth by Commissioner Wilkinson (CP0006) and Commissioner Scott (CP0008). Commissioner Wilkinson indicated that he believes the language is the same, only applied across a broader scale, but that he would like more time to review before making a definitive statement on the scope of the documents.

Chair Story then asked Commissioner Wilkinson to give a brief review of his proposal (CP0006), followed by Commissioner Scott with a brief review of CP0008.

Commissioner Wilkinson noted that CP0008 defines property used for water dependent, commercial fishing businesses that are on or adjacent to navigable water and then allows the property appraiser to look at actual use as opposed to highest and best use when appraising such property.

Commissioner Martha Barnett asked if this proposal would provide preferential tax treatment for high-end hotels. Commissioner Wilkinson indicated that those facilities are already being taxed at the highest and best use value, and thus would receive no benefit. Commissioner Wilkinson then asked Mr. John Sprague, one of the persons who assisted in drafting the language in the proposal to address the committee. Mr. Sprague noted that the areas in most danger are marinas, boatyards, and boat ramps that are directly on the water and rely on the water as a part of their operations.

Commissioner Scott then noted that his proposal (CP0008) is very similar to Commissioner Wilkinson's but extends to industrial operations on or adjacent to the water. It was noted that neither proposal would affect the "Mom-and-Pop motel" businesses that the committee heard from at public hearings around the state since water is not a necessary component of hotel operations.

TBRC General Counsel Tom Cibula noted that while both proposals require that businesses be dependent on water related activity, CP0006 does not have language outlining implementation. CP0008 would reach more properties, dependent on what the legislature provides for in implementation language. Commissioners Wilkinson and Scott noted that they thought they would be able to work with staff to work out the differences in the two drafts.

Chair Story then indicated that she still did not believe the committee had addressed the issues of equity and fairness in the overall property tax area. She said that she had hoped to address equity across the board, including out-of-state, in-state, and first time property owners. Commissioner Martha Barnett then asked if there was a reason why the committee should single out the working waterfront industries for constitutional preference when the real problem came out of a valuation question.

Chair Story then recognized Commissioner Carlos Lacasa to make brief remarks. Commissioner Lacasa told the committee that he is filing a proposal that will reach the

issue of “across the board” fairness. Chair Story thanked Commissioner Lacasa for attending and told him that the committee would look forward to reviewing his proposal when it was referred to the committee.

In continuation of Chair Story’s discussion on equity and fairness, Commissioner Barney Barnett told the Chair that he understood her concern about a broad approach, but that he did not know how you could address the overall issue without first addressing the individual components such as the first time homebuyer issue. He noted that without scrapping the current tax structure he did not know how to get to the equity issue as a whole for property taxes.

Commissioner Wilkinson added that he agreed that there is a whole lot of inequity in the tax structure. He agreed that the only way to get to an equitable system is to throw everything out and start over. After more discussion, Chair Story asked the group if there was sentiment to address the equity and fairness issues as a committee proposal, or should the committee just address member proposals as they came along for consideration. Commissioner Scott indicated that perhaps the committee should just wait to see what came, but Commissioner Miller indicated that he thought there needed to be a constitutional proposal for working waterfront, and highest and best use. Commissioner Scott noted that there were already two member proposals on working waterfront issues. Commissioner Miller then stated that there should be a separate constitutional proposal to address highest and best use issues. Commissioner Story asked if there was a motion in that regard.

Commissioner Randy Miller made a motion to introduce staff-drafted proposal FT – E as a statutory recommendation on highest and best use issues. The motion was seconded by Commissioner James Scott. The motion passed 6 – 0.

Commissioner Randy Miller then made a motion to put forth a committee proposal for a constitutional amendment to address working waterfront issues. The motion was seconded by Commissioner Ken Wilkinson. The motion passed 6 – 0.

Commissioner James Scott then made a motion to put forward a committee proposal addressing across the board fairness and equity for property tax relief. The motion was seconded by Commissioner John McKay. The motion passed 6 – 0.

Chair Story asked Commissioner Scott to work with staff in drafting such a proposal.

Commissioner McKay then made a brief presentation on the issue of portability and discussed a staff-drafted proposal, CP0000. (This draft has been renamed as draft FT-G)

Commissioner McKay noted that the language in the proposal was substantially the same as that included in SJR 2-D which is the ballot language for consideration on January 29, with one difference. The staff-drafted proposal had the threshold amount as \$400,000 and the current ballot proposal has that amount at \$500,000. Staff explained that the

number reflected in the draft was from an earlier draft and that the number was easily adjusted depending on the wishes of the committee.

Commissioner John McKay made a motion to amend the staff-drafted proposal (now named as FT-G) to reflect \$500,000, and to ensure that the language in the staff draft is identical to the ballot language from SJR 2-D. Upon making those adjustments, the committee would then introduce FT-G, as amended, as a committee proposal.

Commissioner Ken Wilkinson seconded the motion. The motion passed by a vote of 5 – 1.

Chair Story then reminded members that the conference call meeting on December 6 would be to address the replacement for RLE issue and to take up CP0004 and SR0005 by Commissioner Margolis. She asked staff to add the equity issue discussion by Commissioner Scott to the agenda for the December 14 meeting.

Chair Story reiterated to those watching that votes to move an issue forward in the process do not necessarily portend members' final positions on proposals or represent final actions by the committee.

Commissioner Wilkinson mentioned that he wants to be sure that the Tangible Personal Property issue is addressed, even if the January 29 ballot issue does not pass. Likewise, Commissioner Miller indicated an interest in addressing the cap on non-homestead property and noted that he would like to look at a 5% cap. Chair Story asked that the members address those issues as individual member proposals.

There being no further business, the committee adjourned at 2:15 p.m.