



MULTISTATE TAX COMMISSION

MEMORANDUM

To: New Project Selection Project Work Group
From: Helen Hecht – MTC General Counsel
Subject: The MTC Public Participation Policy
Date: March 31, 2020

BACKGROUND

The work group had its first call March 25, 2020. It decided to begin by looking at how other, similar organizations, particularly the Uniform Law Commission (ULC), select new projects. The group also discussed the MTC's public participation policy. I agreed to provide further background information on that policy—which is what this memo does. (A separate memo discusses the ULC's project selection process.)

THE UNIFORMITY PROCESS AND THE COMMISSION'S PUBLIC PARTICIPATION POLICY (PPP)

The uniformity process is governed by a framework of rules. The best way to understand how the PPP applies to the uniformity process is to view it in the context of that framework—summarized here. This summary may also be useful to the work group generally.

State Laws

The commission a creature of state law. It is an interstate governmental body created by a specific state statute—the Multistate Tax Compact (the "Compact").¹ The commission consists entirely of governmental officials—the heads of the tax agencies of the member states.² It derives its funding entirely from state government appropriations for dues and program fees.³ Commission activities may be directly governed by laws of member or participating states. For example, the commission is subject to laws restricting the disclosure of confidential taxpayer information. And state laws (or regulations, policies, etc.) may also indirectly affect the commission, by governing the actions of state personnel when they deal with the commission.

¹ Compact Art. VI. See the Compact, available here: <http://www.mtc.gov/getattachment/The-Commission/Multistate-Tax-Compact/Original-Model-Multistate-Tax-Compact.pdf.aspx>.

²That is, the states that have enacted Compact Art. VI.1.(a)

³ See Compact Art. VI.4. (Finances).



Compact

Promoting “uniformity or compatibility in significant components of tax systems” is one of the Compact’s four purposes.⁴ The Compact provides authority to the commission to study state tax systems, develop and recommend proposals to increase uniformity or compatibility of state laws, and compile and publish information to assist the states and taxpayers.⁵ The only requirement the Compact imposes on the uniformity process is that a public hearing be held before any recommendation is approved.⁶

Bylaws

The commission’s bylaws govern committee processes generally.⁷ They establish the uniformity committee (a committee to support the “uniformity mission”).⁸ Committees, in turn, can establish “ad hoc groups” (i.e. work groups).⁹ Bylaw 7 provides specific rules for conducting public hearings on uniformity measures. It also creates something we refer to as the Bylaw 7 survey—to determine whether member states are willing to consider adoption of the uniform model. The bylaws also allow Sovereignty, Project, and Associate member states to participate in, vote on, and serve in leadership roles on uniformity matters.¹⁰

Committee Charter

The uniformity committee charter,¹¹ is designed to foster maximum participation of the states.¹² State personnel who want to participate in meetings are welcome to do so—although only one person from each state can vote.¹³ The committee often does its work through project work groups whose procedures are generally informal and aimed at creating consensus, when possible.

PPP – ORIGINS, REQUIREMENTS, AND EFFECTS

Origins of the MTC’s Public Participation Policy

Today, virtually all state executive branch agencies, and similar state bodies and commissions, are subject to some type of open meetings requirements. The commis-

⁴ Compact Art. I.

⁵ Compact Art. VI.3.

⁶ Compact Art. VII.

⁷ The Commission Bylaws (Bylaws) are available here: <http://www.mtc.gov/The-Commission/Bylaws>.

⁸ Bylaw 6(b).

⁹ Bylaw 6(c).

¹⁰ Bylaw 13.

¹¹ See the Uniformity Committee Charter (Charter), available here:

<http://www.mtc.gov/Uniformity/Uniformity-Charter>.

¹² Charter, Sec. I.

¹³ Charter, Sec. III.



sion adopted its public participation policy in 1996 modeled on California's open meetings act. (See a copy of the policy, as amended, attached to this memo.)

On the work group's March 25th call, it was suggested that the commission adopted the PPP in response to a single Compact state. It is true that in 1996, California, a Compact member at the time, passed a budget provision conditioning the state's payment of commission dues on the commission's adoption of public participation requirements. It is also true that this followed closely on the heels of the controversial National Nexus Bulletin 95-1 (instate repair services), which some California business interests opposed. Those interests argued, to the California Board of Equalization and others, that the bulletin should not have been adopted without input from affected taxpayers. Some business interests made little secret of the fact they hoped to persuade California to withdraw from the Compact altogether.¹⁴

California's insistence that the commission adopt the PPP was certainly the catalyst for that action (and a highly effective one). But it would be incorrect for anyone to suggest it was the only reason, or even the most important reason, the commission adopted the PPP and retains it to this day.¹⁵ Having such a policy is consistent with the nature of the commission as a governmental body and its role in recommending uniform tax laws and regulations to the states.

Requirements of the PPP - Generally

The PPP (attached to this memo), like any document, speaks for itself. But, the essential provisions, for our purposes, can be summarized briefly. The PPP imposes requirements and then, in various ways, makes exceptions. In general, the requirements include:

- Notice (generally 10 days) of the subject (agenda) of a "meeting" of a "commission body";
- Conduct of the meeting in a form that allows the public to observe; and
- Opportunity for the public to comment on the meeting and the subjects of the meeting.

¹⁴ For one description of these events, see: Amy Hamilton, "An Eye Stateside: The Untold National Tax Policy Story," State Tax Notes, Jan. 12, 1997.

¹⁵ Id. As the article notes: "One upshot of so many significant interstate taxation developments taking place in one year has been a growing public dialogue on the relations between state tax officials and industry. State officials, for example, suggested at the MTC's annual Business- Government Dialogue Day this year that adoption by the commission of a formal open-meetings policy could signal the culmination of a long process of change in the relationship between the MTC and the business community. They suggested that pressure from industry on the MTC to clarify its public participation policy signals the end -- rather than the beginning -- of an era of hostility between the MTC and the business community, because industry now not only wants but demands to be more involved in MTC uniformity procedures, whereas two decades ago it wanted little or nothing to do with the commission."



A “commission body” includes the uniformity committee and its work groups. “Meeting” includes any congregation (in person or by phone) of a majority of the members of the commission body at the same time to hear, discuss, deliberate, or act upon an item. “Actions taken” is defined as a “collective decision,” or “a collective commitment or promise” by members to “make a positive or negative decision,” or an actual vote by the members of the commission body. The term “deliberative discussions” (or “deliberation”) is not defined, but is often construed broadly in the context of open meetings acts to mean any substantive discussion of decisions facing the group.

As noted, there are numerous exceptions to the PPP’s requirements, expressed in various ways. One of the most important, for purposes of the uniformity process, is that the term “meeting” does not include participation in a training or informational session sponsored by the commission at which there are no actions or deliberative discussions undertaken.

Failure to follow the requirements of the PPP in a particular instance may render any action taken in that instance null and void. The commission body, however, may effectively ratify the action by properly raising it and deciding to take the action in a meeting that follows the requirements.

Effects of the PPP

The most obvious effect of the PPP is that uniformity project meetings and calls are held in public. They are also covered by the press. It is sometimes difficult to accurately capture a work group discussion and individuals have sometimes felt their comments, or those of others, were misconstrued. In any case, this public attention, and publicity, holds the potential for both positive and negative effects.

On the negative side, deliberation necessarily involves asking questions, thinking out loud, playing devil’s advocate, etc. Uniformity work also involves long, sometimes very detailed, discussions of technical issues. And, where the topic is controversial, it often involves airing differences, not just between the states and taxpayers, but among the states themselves. Public meetings, at times, may inhibit participants and make these interactions more difficult—and not just for state participants. Members of the public, business groups, practitioners, etc., have often commented to me and others that they would like to participate in the discussions but feel like they cannot do so publicly.

On the other hand, public deliberations can foster a number of positive effects. By bringing attention to an issue, the participants may discover individuals who should be involved and information that should be considered that would not otherwise come to light. Access to deliberations puts some responsibility on those affected by those deliberations to participate. And, a public process should, ultimately, create a public



record of what information was considered, and why decisions were reached, giving the committee's decisions more legitimacy, including in the eyes of the commission when it comes time for the commission to act on the committee's recommendations.

Since adoption of the PPP almost 25 years ago, complaints that it was not properly followed have been raised on only a couple occasions. And despite the spotlight cast on the issue in 1996, public attendance at many (but certainly not all) uniformity work group meetings is fairly sparse. (Indeed, COST staff often joke that they monitor our uniformity projects, so their members don't have to.) One reason for this may be that members of the public understand that they generally have multiple opportunities to raise concerns, including engaging later in the process, at public hearings, or when a recommendation is pending before the executive committee.

To the extent that the PPP may sometimes inhibit deliberation, there mayways to address that issue. For example, work groups have begun to use surveys and take written comments and questions, often by email—so that participants can have time to consider their input. The commission has also created project pages on its website to keep an archive of work group drafts, analysis, technical information, written comments, etc., so that those "joining late" can get up to speed when they seek to participate. It should also be noted that members of the public are not required to identify themselves or who they represent. While this may inevitably affect the weight given to their input, it may also allow that input where it would otherwise not be possible.



MULTISTATE TAX COMMISSION

PUBLIC PARTICIPATION POLICY

As amended July 30, 2014

- Section 1. Statement of Policy; Open proceedings; Citation of policy
- Section 2. “Multistate Tax Commission”; “Commission”; “Commission member”; “Commission body”; “Member State”; and “day”
- Section 3. Providing copy of policy to members of the Commission or Commission bodies
- Section 4. “Action taken”
- Section 5. Required open and public meetings
- Section 6. Prohibited conditions of attendance
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- Section 8. Notice of meeting
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- Section 19. Commission bodies subject to policy
- Section 20. When closed sessions held
- Section 21. Continuance or recontinuance of hearing
- Section 22. Annual meetings for comments on Commission and multistate tax issues
- Section 23. Fees
- Section 24. Complaints regarding public participation policy
- Section 25. Prohibition against use of certain facilities
- Section 26. Prohibition against closed sessions except as expressly authorized
- Section 27. Maintenance of mailing lists
- Section 28. Maintenance of description of Commission committees and other groups

Section 1. Statement of Policy; Open proceedings; Citation of policy

The Multistate Tax Commission exists to aid in the conduct of the people's business. To this end the Commission declares that its proceedings be conducted openly so that the public may remain informed.

In adopting this policy the Multistate Tax Commission finds and declares that it is the intent of this policy that actions of the Multistate Tax Commission be taken openly and that its deliberations be conducted openly. As a matter of State law and the Multistate Tax Compact, the Commission is required to protect confidential taxpayer information obtained by any tax agency in the administration of its laws from public disclosure. Improper disclosure violates the rights of individual taxpayers, erodes voluntary compliance and frustrates proper tax enforcement. In maximizing public participation, the Commission will safeguard taxpayer information protected by the laws of its members and the federal government both to protect the rights of individual taxpayers and the public interest in ensuring proper compliance with state and federal laws and to recognize that it is a crime to disclose such information in most States.

This policy shall be known and may be cited as the Multistate Tax Commission Public Participation Policy.

Section 2. "Multistate Tax Commission"; "Commission"; "Commission member"; "Commission body"; "Member State"; and "day"

(a) As used in this policy, "Multistate Tax Commission" or "Commission" means the Commission or its Executive Committee established by Article VI. of the Multistate Tax Compact.

(b) As used in this policy, "Commission member" means a member of the Commission as described in Article VI. 1.(a) of the Multistate Tax Compact or an alternate designated pursuant to Article VI. 1. (a) to represent a member when such person so designated is serving in that capacity.

(c) As used in this policy, "Commission body" means every committee, advisory committee, subcommittee or similar multimember body of the Commission which is required by the Multistate Compact or the By-Laws of the Commission to conduct official meetings and every committee created by the Commission or its Executive Committee.

(d) As used in this policy, "Commission body" also means any board, commission, committee, or similar multimember body which exercises any authority of the Commission delegated to it by the Commission;

(e) As used in this policy, "Commission body" also means any advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body of the Commission, if created by formal action of the Commission or of any member of the

Commission when acting in their official capacity as a member of the Commission, and if the advisory body so created consists of three or more persons.

(f) As used in this policy, “Member State” means a party State of the Multistate Tax Compact, an associate or sovereignty member State of the Commission or any State participating in a Commission program. “State” means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any Territory or Possession of the United States or a subdivision of a State.

(g) As used in this policy, “day” means a calendar day.

Section 3. Providing copy of policy to members of the Commission or Commission bodies

The Commission shall provide a copy of this policy to each member of the Commission or Commission body upon his or her appointment to membership or assumption of office.

Section 4. “Action taken”

As used in this policy, “action taken” means a collective decision made by the members of the Commission or of a Commission body, a collective commitment or promise by the members of the Commission or of a Commission body to make a positive or negative decision or an actual vote by the members of the Commission or of a Commission body when sitting as a body or entity upon a motion, proposal, resolution, order or similar action.

Section 5. Required open and public meetings

(a) All meetings of the Commission or a Commission body shall be open and public and all persons shall be permitted to attend any meeting of the Commission or a Commission body except as otherwise provided in this policy.

(b) Nothing in this policy shall be construed to prohibit the Commission or a Commission body from holding an open or closed meeting using telecommunication, subject to all of the following:

(1) Whether the meeting is conducted entirely by telecommunication or by telecommunication in connection with an in-person meeting —

(A) The meeting must comply with all requirements of this policy applicable to other meetings.

(B) The member of the Commission or Commission body or Commission staff who is conducting the meeting may use telecommunication features and controls to ensure the orderly conduct of the meeting.

(2) If the meeting is being conducted by telecommunications in connection with an in-person meeting —

(A) The portion of the in-person meeting that is required to be open to the public will be audible to those joining by telecommunication.

(B) The public will be provided with telecommunication access information in addition to location information in the notice of the meeting.

(C) At least one member of the Commission or Commission body or an employee of the Commission or a member State will be physically present at a location specified in the notice of the meeting.

(3) If the meeting is being conducted entirely by telecommunications —

(A) The public will be provided with telecommunication access information for the portion of the meeting that is required to be open to the public in the notice of the meeting.

(B) All votes taken during the meeting shall be by roll call.

(c) “Meeting” includes any congregation, whether in person or by electronic means, of a majority of the members of the Commission or Commission body at the same time to hear, discuss, deliberate or act upon any item that is within their subject matter jurisdiction except:

(1) social or ceremonial occasions whether sponsored in whole or in part by the Commission or a Commission body;

(2) at a conference or similar gathering sponsored by an entity other than the Commission or a Commission body that involves discussion of issues of general interest provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business that is within the jurisdiction of the Commission or the Commission body; or

(3) training or informational sessions sponsored by the Commission or a Commission body at which there are no actions or deliberative discussions undertaken.

Section 6. Prohibited conditions of attendance

No person shall be required, as a condition of attendance at a meeting of the Commission or a Commission body, to register his or her name, to provide other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his or her attendance.

If an attendance list, register, questionnaire, or other similar document is posted at or near the entrance to the room where the meeting is to be held, or is circulated to persons present during the meeting, it shall state clearly that the signing, registering, or completion of the document is voluntary, and that all persons may attend the meeting regardless of whether a person signs, registers, or completes the document.

Section 7. Recording proceedings

Any person attending an open and public meeting of the Commission or a Commission body shall have the right to record the proceedings on a tape recorder in the absence of a

reasonable finding of the Commission or the Commission body that such recording constitutes, or would constitute, a disruption of the proceedings.

Section 8. Notice of meeting

(a) The Commission shall provide notice of a meeting of the Commission or a Commission body to any person who requests such notice in writing. Notice shall be given at least 10 days in advance of the meeting, and shall include the name, address, and telephone number of any person who can provide further information prior to the meeting, but need not include a list of witnesses expected to appear at the meeting. In counting the 10-day notice period, the day after the day that the notice is issued is day one. The notice requirement shall not preclude the acceptance of testimony at meetings, other than emergency meetings, from members of the public, provided, however, that no action is taken by the Commission or the Commission body at the same meeting on matters brought before the Commission or the Commission body by members of the public.

(b) The notice of a meeting of the Commission or a Commission body as defined in Section 2(c) and (d) shall include a specific agenda for the meeting, which shall include the items of business to be transacted or discussed, and no item shall be added to the agenda subsequent to the provision of this notice.

(c) The notice of a meeting of an advisory body of the Commission as defined in Section 2(e) shall include a brief, general description of the business to be transacted or discussed, and no item shall be added subsequent to the provision of the notice.

(d) Notice of a meeting of the Commission or a Commission body as defined in Section 2(c) and (d) which complies with this section shall also constitute notice of a meeting of an advisory body of the Commission as defined in Section 2(e), provided that the business to be discussed by the advisory body is covered by the notice of the meeting of the Commission or the Commission body, provided that the specific time and place of the advisory body's meeting is announced during the open and public meeting of the Commission or the Commission body, and provided that the advisory body's meeting is conducted within a reasonable time of, and nearby, the meeting of the Commission or the Commission body.

(e) A person may request, and shall be provided, notice pursuant to subdivision (a) for all meetings of the Commission or Commission bodies or for a specific meeting or meetings. In addition, at the Commission's discretion, a person may request, and may be provided, notice of only those meetings of the Commission or Commission body at which a particular subject or subjects specified in the request will be discussed.

(f) A request for notice of more than one meeting of the Commission or a Commission body shall be subject to the provisions of Section 27.

(g) In the event of a failure to provide notice of a meeting of the Commission or a Commission body pursuant to subdivision (a), and provided that a complaint has been made by

any person pursuant to Section 24 within 10 days of the improperly noticed meeting, any action taken by the Commission or Commission body at the improperly noticed meeting is null and void. In the event the meeting is rescheduled and properly noticed following the complaint, any materials submitted by any person at the improperly noticed meeting may be relied on by the Commission or Commission body at the rescheduled meeting. Any person may respond to those materials and have the person's response considered by the Commission or Commission body prior to its vote or decision at the rescheduled meeting. Any person appearing at the improperly noticed meeting may appear at the rescheduled meeting, or may request that the person's previously submitted material be considered at the rescheduled meeting. Nothing in this section prohibits any person from supplementing, at the rescheduled meeting, material previously submitted at the improperly noticed meeting.

Section 9. Agenda and other "writing" as public record; Inspection

(a) Agendas of public meetings and other writings, when distributed to all, or a majority of all, of the members of the Commission or a Commission body by a member, officer, employee, or agent of the Commission for discussion or consideration at a public meeting of the Commission or the Commission body, are public records as soon as distributed, and shall be made available. However, this section shall not include any writing which is

(1) a preliminary draft, note or memoranda which are not retained by the Commission in the ordinary course of business, provided that the public interest in withholding those records clearly outweighs the public interest in disclosure;

(2) records pertaining to pending litigation to which the Commission or member state is a party until the pending litigation has been finally adjudicated or otherwise settled; and

(3) personnel, medical or similar files the disclosure of which would constitute an unwarranted invasion of personal privacy.

(b) Writings which are public records under subdivision (a) and which are distributed prior to commencement of a public meeting shall be made available for public inspection upon request prior to commencement of such meeting.

(c) Writings which are public records under subdivision (a) and which are distributed during a public meeting and prior to commencement of their discussion at such meeting shall be made available for public inspection prior to commencement of, and during, their discussion at such meeting.

(d) Writings which are public records under subdivision (a) and which are distributed during their discussion at a public meeting shall be made available for public inspection immediately or as soon thereafter as is practicable.

(e) Nothing in this section shall be construed to prevent the Commission from charging a fee or deposit for a copy of a public record to cover the direct costs of duplication. This section shall not be construed to be applicable to any writings solely because they are properly discussed in a closed session of the Commission or a Commission body. Nothing in this policy shall be

construed to require the Commission to place any paid advertisement or any other paid notice in any publication.

(f) "Writing" for purposes of this section means handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any form or communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums and other documents.

Section 10. Public participation in regulations and uniformity proposals

The Multistate Tax Compact requires that public hearings be conducted upon each proposal for a uniform tax regulation. Public notice of such hearings is required and will be submitted for publication to publications dealing with State and local taxation and by the posting of such information on a Commission web site when it is established. Within available resources, the Commission will conduct two or more public hearings at geographically diverse sites on such proposals. Provision will be made, whenever possible, for participation in hearings through telephonic means.

In developing uniform tax regulation proposals, the Commission may solicit participants for public participation working groups to provide advice on the drafting of such proposals. Solicitation for public participation working groups will be sought from States and, if applicable, local governments and will be directed to potential participants from academia, affected industry or taxpayer groups, and groups representing the public that are interested in the State and local tax issues being addressed.

Section 11. Public report of action taken regarding public employee

The Commission or a Commission body shall report publicly at a subsequent public meeting any action taken, and any rollcall vote thereon, to appoint, employ, or dismiss a public employee arising out of any closed session of the Commission or the Commission body.

Section 12. Conditions for taking action on items not appearing on posted agenda

(a) Notwithstanding Section 8, the Commission or a Commission body may take action on items of business not appearing on the posted agenda under any of the conditions stated below:

(1) Upon a determination by a majority vote of the Commission or a Commission body that an emergency situation exists, as defined in Section 13.

(2) Upon a determination by a two-thirds vote of the Commission or a Commission body, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there exists a need to take immediate action and that

the need for action came to the attention of the Commission or the Commission body subsequent to the agenda being posted as specified in Section 8.

(b) Except when notice is provided under the provisions of Section 13, notice of the additional item to be considered shall be provided to each member of the Commission or the Commission body and to all parties that have requested notice of its meetings as soon as is practicable after a determination of the need to consider the item is made, but shall be delivered in a manner that allows it to be received by the members at least 48 hours before the time of the meeting specified in the notice. Notice shall be made available to national publications which specifically address tax matters. Notice shall be provided to the general public by placing it on appropriate electronic bulletin boards or other appropriate mechanisms, whenever the Commission has the electronic capability necessary to do so.

Section 13. Emergency meetings

(a) In the case of an emergency situation involving matters upon which prompt action is necessary due to an actual or proposed disruption of the operation of State laws, threat to the fiscal integrity of the Commission or the imminent loss of an opportunity by a taxpayer to resolve a dispute with the Commission or a State, the Commission or a Commission body may hold an emergency meeting without complying with the 10 day notice requirement of Section 8.

(b) For purposes of this section, "emergency situation" means any of the following, as determined by a majority of the members of the Commission or a Commission body during a meeting prior to an emergency meeting, or at the beginning of an emergency meeting: (1) an actual or pending action by Congress or one of its committees or subcommittees, by an agency of the federal government, or by a court of the United States that would preempt or disrupt the operation of a law of a member State or States or that would adversely affect taxpayers of a member State or States; (2) administrative disciplinary matters, including, but not limited to, consideration of proposed decisions and stipulations, and pending litigation, which require immediate attention; (3) consideration of actions by the Commission necessary to meet statutory deadlines for the administration of tax laws in a member State where a decision must be made in less than 10 days, and (4) actions necessary to ensure the availability to a taxpayer of Commission procedures to resolve a tax dispute with the Commission or a State or States where a decision must be made in less than 10 days.

(c) Publications which have requested notice of meetings pursuant to Section 8 shall be notified by the Commission at least one hour prior to the emergency meeting by telephone. If telephone services are not functioning, the notice requirements of this section shall be deemed waived, and the Commission shall notify those publications of the fact of the holding of the emergency meeting, the purpose of the meeting, and any action taken at the meeting as soon after the meeting as possible.

(d) The minutes of a meeting called pursuant to this section, a list of persons that the Commission notified or attempted to notify, a copy of the rollcall vote, and any action taken at

the meeting shall be provided to all persons requesting notice of meetings of the Commission or Commission bodies as soon after the meeting as possible.

Section 14. Opportunity for public to address the Commission

(a) Except as otherwise provided in this section, the Commission or a Commission body shall provide an opportunity for members of the public to address directly the Commission or a Commission body on each agenda item before or during the discussion or consideration of the item. This section is not applicable if the agenda item has already been considered by a committee composed exclusively of members of the Commission or the Commission body at a public meeting where interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the Commission or the Commission body.

(b) The Commission may adopt reasonable policies and procedures to ensure that the intent of subdivision (a) is carried out, including, but not limited to, policies and procedures limiting the total amount of time allocated for public comment on particular issues and for each individual speaker.

(c) This section is not applicable to closed sessions held pursuant to Section 15.

Section 15. Permitted closed sessions; Lawyer-client privilege

(a) Nothing in this policy shall be construed to prevent the Commission or a Commission body from holding closed sessions during a regular or special meeting to consider the appointment, employment, or dismissal of an employee of the Commission. The Commission or Commission body may deliberate on the decision to be reached on the appointment, employment or dismissal of the employee in a closed session.

(b) Nothing in this policy shall be construed to prevent the Commission or a Commission body from holding closed sessions with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the Commission or the Commission body to give instructions to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease. However, prior to the closed session, the Commission or Commission body shall hold an open and public session in which it identifies the real property or real properties which the negotiations may concern and the person or persons with whom its negotiator may negotiate.

For purposes of this subdivision, the negotiator may be a member of the Commission or a Commission body.

For purposes of this subdivision, "lease" includes renewal or renegotiation of a lease.

(c) Nothing in this policy shall be construed to prevent the Commission or a Commission body from holding closed sessions for the purpose of discussion of confidential tax returns or data or any other matter the public disclosure of which is prohibited by law of a member State or pursuant to federal law, or from considering matters pertaining to the appointment or removal of the Executive Director of the Commission.

(d) Nothing in this policy shall be construed to prevent the Commission or a Commission body if it invests retirement, pension, or endowment funds from holding closed sessions when considering investment decisions. For purposes of consideration of shareholder voting on corporate stocks held by the Commission, closed sessions for the purposes of voting may be held only with respect to election of corporate directors, election of independent auditors, and other financial issues that could have a material effect on the net income of the corporation. For the purpose of real property investment decisions that may be considered in a closed session pursuant to this subdivision, the Commission or a Commission body shall also be exempt from the provision of subdivision (b) relating to the identification of real properties prior to the closed session.

(e) Nothing in this policy shall be construed to prevent the Commission or a Commission body from holding closed sessions with its representatives in discharging its responsibilities that relate to salaries, salary schedules, or compensation paid in the form of fringe benefits. For the purposes enumerated in the preceding sentence, a Commission body may also meet with a conciliator who has intervened in the proceedings.

(f) Nothing in this policy shall be construed to prevent the Commission or a Commission body, based on the advice of its legal counsel, from holding a closed session to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the Commission or a member State in the litigation.

For purposes of this subdivision, litigation shall be considered pending when any of the following circumstances exist:

(1) An adjudicatory proceeding before a court, an administrative body exercising its adjudicatory authority, a hearing officer, or an arbitrator, to which the Commission or a member State is a party, has been initiated formally.

(2) (A) A point has been reached where, in the opinion of the Commission or a Commission body on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the Commission or a member State; or

(B) Based on existing facts and circumstances, the Commission or a Commission body is meeting only to decide whether a closed session is authorized pursuant to subparagraph (A).

(3) Based on existing facts and circumstances, the Commission or a Commission body or a member State has decided to initiate or is deciding whether to initiate litigation.

The legal counsel of the Commission shall prepare and submit to it a memorandum stating the specific reasons and legal authority for the closed session. If the closed session is

pursuant to paragraph (1), the memorandum shall include the title of the litigation. If the closed session is pursuant to paragraph (2) or (3), the memorandum shall include the existing facts and circumstances on which it is based. The legal counsel shall submit the memorandum to the Commission or the Commission body prior to the closed session, if feasible, and in any case no later than one week after the closed session. The memorandum shall be exempt from disclosure.

For purposes of this subdivision, “litigation” includes any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator. Disclosure of a memorandum required under this subdivision shall not be deemed as a waiver of the lawyer-client privilege.

Section 16. Minute book of closed session

The Commission, a Commission body or the Commission’s Executive Director shall designate a clerk or other officer or employee of the Commission, who shall then attend each closed session of the Commission or a Commission body and keep and enter in a minute book a record of topics discussed and decisions made at the meeting. The minute book made pursuant to this section is not a public record and shall be kept confidential. The minute book shall be available to members of the Commission or the Commission body. Such minute book may, but need not, consist of a recording of the closed session.

Section 17. Statement of reasons and authority for closed session

(a) Prior to holding any closed session, the Commission or a Commission body shall state the general reason or reasons for the closed session, and cite the specific authority, including the particular section, subdivision, and paragraph under which the session is being held. If the session is closed pursuant to paragraph (1) of subdivision (f) of Section 15, the Commission or the Commission body shall state the title of, or otherwise specifically identify, the litigation to be discussed unless the Commission or the Commission body states that to do so would jeopardize the Commission’s or a member State’s ability to effectuate service of process upon one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.

(b) In the closed session, the Commission or the Commission body may consider only those matters covered in its statement.

(c) The statement shall be made as part of the notice provided for the meeting pursuant to Section 8 and of any order or notice required by Section 21.

(d) If, after the closed session agenda has been published in compliance with this section, any additional pending litigation (under subdivision (f) of Section 15) matters arise, the postponement of which will prevent the Commission or the Commission body from complying with any statutory, court-ordered, or other legally imposed deadline, the Commission or Commission body may proceed to discuss those matters in closed session and shall publicly announce in the meeting the title of, or otherwise specifically identify, the litigation to be

discussed. Such an announcement shall be deemed to comply fully with the requirements of this section.

(e) Nothing in this section shall require or authorize the giving of names or other information which would constitute an invasion of privacy or otherwise unnecessarily divulge the particular facts concerning the closed session.

Section 18. Clearing room where meeting willfully interrupted

In the event that any meeting is willfully interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are willfully interrupting the meeting the Commission or a Commission body may order the meeting room cleared and continue in session. Nothing in this section shall prohibit the Commission or a Commission body from establishing a procedure for readmitting an individual or individuals not responsible for willfully disturbing the orderly conduct of the meeting. Notwithstanding any other provision of law, only matters appearing on the agenda may be considered in such a session. Representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section.

Section 19. Commission bodies subject to policy

Each provision of this policy shall apply to every Commission body unless the body is specifically excepted from this policy.

Section 20. When closed sessions held

Each closed session of the Commission or a Commission body shall be held only during a regular or special meeting of the Commission or a Commission body.

Section 21. Continuance or recontinuance of hearing

Any hearing being held, or noticed or ordered to be held by the Commission or a Commission body at any meeting may by order or notice of continuance be continued or recontinued to any subsequent meeting of the Commission or the Commission body which is noticed pursuant to Section 8. A copy of the order or notice of continuance shall be conspicuously posted on or near the door of the place where the hearing was held within 24 hours after the time of the continuance; provided, that if the hearing is continued to a time less than 24 hours after the time specified in the order or notice of hearing, a copy of the order or notice of continuance of hearing shall be posted immediately following the meeting at which the order or declaration of continuance was adopted or made. If a hearing is held in a hotel or other facility not under the control of the Commission or a member State, the posting requirement is

waived, and the Commission or the Commission body shall accomplish the purpose of this section through a reasonable alternative means.

Section 22. Annual meetings for comments on Commission and multistate tax issues

The Commission shall hold, at least annually, a forum to solicit information and ideas relative to multistate tax issues of broad interest to the public. The Commission shall also conduct annually a meeting at which any member of the public may provide comments on the activities and operations of the Commission and any topic related to the purposes of the Multistate Tax Compact.

Section 23. Fees

No fees may be charged by the Commission for providing a notice required by Section 8 or for carrying out any provision of this policy, except as specifically authorized pursuant to this policy.

Section 24. Complaints regarding public participation policy

Complaints involving alleged failures of the Commission or a Commission body to adhere to the policies expressed herein shall be directed to the Executive Director of the Commission.

Upon receipt of any complaint, the Executive Director shall immediately forward a copy of the Complaint to each member of the Commission. Thereafter, the Executive Director, or the General Counsel, of the Commission shall conduct an investigation of the complaint and prepare a report of findings and recommendations for any remedial steps which may be necessary to implement the letter and spirit of this policy. A copy of this report shall be forwarded to each member of the Commission within 45 days of receipt of the complaint and the matter shall be scheduled for discussion and possible action at the next meeting of the Commission or the Executive Committee, whichever occurs first.

Section 25. Prohibition against use of certain facilities

The Commission or a Commission body shall not conduct any meeting, conference, or other function in any facility that prohibits the admittance of any person, or persons, on the basis of race, religious creed, color, national origin, ancestry, or sex. As used in this section, "Commission" means and includes every Commission, office, officer, department, division, bureau, board, council, or similar person or body.

Section 26. Prohibition against closed sessions except as expressly authorized

Except as expressly authorized by this policy, no closed session may be held by the Commission or a Commission body.

Section 27. Maintenance of mailing lists

Whenever the Commission maintains a mailing list of public officials or other persons to whom publications or other printed matter is sent without charge, the Commission shall correct its mailing list and verify its accuracy at least once a year. This shall be done by addressing an appropriate post card or letter to each person on the mailing list. The name of any person who does not respond to such letter or post card, or who indicates that he or she does not desire to receive such publications or printed matter shall be removed from the mailing lists. The response for those desiring to be on the mailing list shall be retained by these agencies for one year.

Section 28. Maintenance of description of Commission committees and other groups

The Commission conducts its business through a variety of committees and other bodies. Without limitation as to the applicability of the Multistate Tax Commission Public Participation Policy, the Commission will maintain and make available to the public a description of those committees and groups.