



MULTISTATE TAX COMMISSION

MEMORANDUM

To: John Ficara, Chair, Strategic Planning Committee
Greg Matson, Executive Director

From: Nancy Prosser, MTC General Counsel

Subject: Proposed Project to Update the MTC Public Participation Policy

Date: July 12, 2023

Background

One of the three governing documents of the Multistate Tax Commission is the Public Participation Policy (PPP), in which the MTC “declares . . . that actions of the Multistate Tax Commission be taken openly and that its deliberations be conducted openly.” Section 1. Statement of Policy; Open proceedings; Citation of policy. The PPP also acknowledges that the Commission must protect confidential taxpayer information and comply with applicable state and federal laws. *Id.*

Since its original adoption in the 1990s, the Commission has made changes to the PPP (primarily to address advancements in technology) with the last amendment in 2014. MTC staff regularly consults and refers to the PPP in conjunction with staffing MTC committees and other work of the Commission. Based on the information presented in this memo, we suggest that the PPP is due for an extensive revision to improve the clarity and organization of the document and to ensure it reflects how the MTC conducts its business today. Therefore, the staff requests that the Strategic Planning Committee (SPC) consider chartering a project to that end.

Examples of Suggested Updates

Here are three examples of the challenges presented when working with the current version of the PPP that explain why an update would be helpful:

1. My first example concerns the organization of the PPP. In the spring of 2023, the executive director asked me to research a question relating to “closed sessions” of the MTC. His request required me a close review of the entire PPP because the term “closed session” is mentioned throughout the policy and specifically in these sections:

Section 15. Permitted closed sessions; Lawyer-client privilege

Section 16. Minute book of closed session

Section 17. Statement of reasons and authority for closed session

Section 20. When closed sessions held

Section 26. Prohibition against closed sessions except as expressly authorized

It is inefficient to scour the entire PPP to ensure nothing is missed when it comes to something as important as following the rules for “closed sessions.” Moreover, the spirit of the guidance in sections 20 and 26 is essentially the same yet the guidance appears in separate sections of the PPP:

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 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.

2. My second example concerns definitions. Section 2 of the PPP is not titled definitions, but that is essentially its purpose. One of the defined terms in Section 2 is “Commission member.” Upon searching the rest of the document for that term, however, one does not find it. Instead, there are multiple places where you find references to the term “member of the Commission.”

Another defined term in Section 2 is “Commission body.” It is defined to mean three different things in three separate subsections, which makes it challenging to understand how to interpret the term as it is used throughout the document.

I also note that defined terms appear elsewhere in the PPP, such as in Section 4. “Action taken,” and terms that should be defined, such as “special meeting,” appear in the PPP but are not defined.

It would be helpful to have one section of the PPP that contains all defined terms, including all terms that need definitions, and to consolidate various meanings of the term “commission body” into one definition.

3. My final example concerns dated provisions in the PPP that are not relevant to the way the Commission conducts its work in this electronic age or otherwise.

Section 27 is titled “Maintenance of mailing lists.” It requires the MTC to update its mailing list for materials sent for free to people at least once a year by following a procedure of sending post cards or letters to determine who wants to remain on the mailing lists. MTC staff does not follow this procedure because it is no longer necessary given our use of email to correspond with the public and MTC members.

Recommended Next Steps

If the SPC agrees to charter this project, I recommend that it request MTC staff to prepare a revised version of the PPP with detailed explanations of the proposed changes for review at the SPC’s November 2023 meeting. The SPC could also suggest staff notify MTC members and the public about this project and allow them to submit suggested changes for consideration.

The SPC could then determine the appropriate next steps in terms of review and comment. The goal would be to have an updated PPP ready for a vote at the Commission’s 2024 annual meeting.

Additionally, technical corrections to the MTC bylaws would likely be required if the PPP is revised (for example, Bylaw 7(d) refers to Section 24 the PPP, and could need updated).