



MULTISTATE TAX COMMISSION

MEMORANDUM

To: John Ficara, Chair, Strategic Planning Committee
From: Nancy Prosser, General Counsel
Subject: Project to Update the MTC Public Participation Policy – Status Report
Date: November 16, 2023

Background

At its meeting in Austin, Texas on July 27, 2023, this committee approved a project to update the Public Participation Policy (Policy), which is one of the Commission's governing documents along with the Multistate Tax Compact (Compact) and Bylaws.

As explained by staff during that meeting, the Policy was originally adopted in the 1990s and was last updated in 2014. MTC staff relies heavily on the Policy, yet finds it challenging to use because its organization is unwieldy and many of its provisions are outdated or poorly worded.

At the meeting, staff provided examples of ways the Policy might be revised to make information easier to find and to make sure it accurately reflects how the Commission conducts its business today.

Current Status

We have developed a working draft that will be ready to share with committee members and the public in the near future. It maintains much of the current policy in terms of the topics. However, instead of consisting of 28 sections as per the current Policy, we propose a new structure based on seven sections titled as follows that reflect current Policy sections or as otherwise noted (figure 1, following, shows this reorganization graphically):

A. Definitions – Based on current sections:

2. "Multistate Tax Commission"; "Commission"; "Commission member"; "Commission body"; "Member State"; and "day"
4. "Action taken"
- 5(c) (concerning the definition of "meeting")

B. General Provisions – Based on current sections:

1. Statement of Policy; Open proceedings; Citation of policy
3. Providing copy of policy to members of the Commission or Commission bodies
19. Commission bodies subject to policy
23. Fees
25. Prohibition against use of certain facilities
27. Maintenance of mailing lists
28. Maintenance of description of Commission committees and other groups

C. Meetings – Based on current sections:

5. Required open and public meetings
8. Notice of meeting
12. Conditions for taking action on items not appearing on posted agenda
13. Emergency meetings
14. Opportunity for public to address the Commission
21. Continuance or recontinuance of hearing
22. Annual meetings for comments on Commission and multistate tax issues

D. Closed Sessions – Based on current sections:

11. Public report of action taken regarding public employee
15. Permitted closed sessions; Lawyer-client privilege
16. Minute book of closed session
17. Statement of reasons and authority for closed session
20. When closed sessions held
26. Prohibition against closed sessions except as expressly authorized

E. Public Participation Guidelines – Based on current sections:

- 6. Prohibited conditions of attendance
- 7. Recording proceedings
- 9. Agenda and other “writing” as public record; Inspection
- 10. Public participation in regulations and uniformity proposals
- 18. Clearing room where meeting willfully interrupted

F. Complaints – Based on section 24. Complaints regarding public participation policy

G. Annual Review and Amendments – New section.

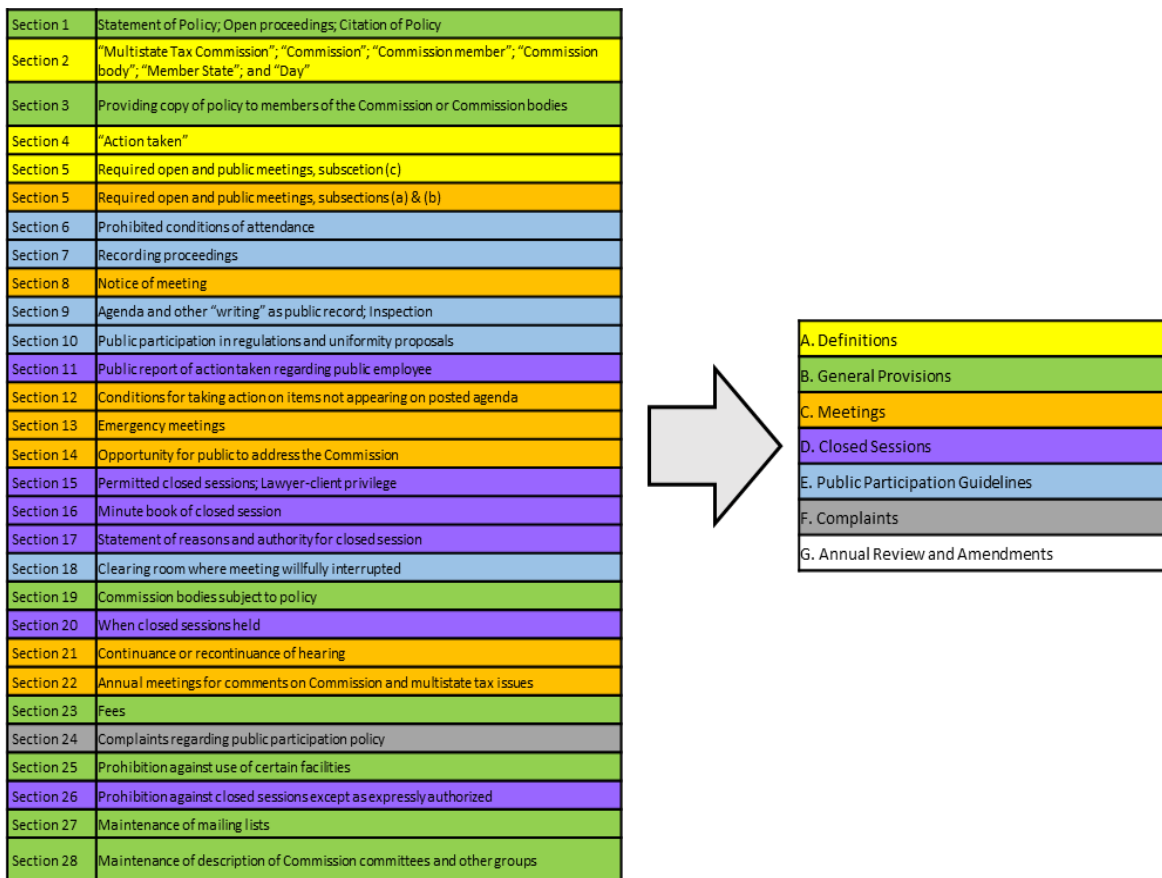


Figure 1 – Mapping the Policy’s Reorganization

We are editing existing provisions to be more precise, concise, and consistent with terms as used in the Compact and Bylaws. For example, the term “Commission body” is currently defined multiple ways. We propose making that term consistent with the

references to committees and other similar bodies as described in the Compact and Bylaws.

We are trying to include all needed definitions and use them consistently throughout the Policy. For example, currently there are multiple terms used to describe participation at MTC meetings other than in person. We will suggest one term with a clear definition.

We will be suggesting some new provisions to reflect the way the Commission conducts its business. For example, the current policy contains no provision for future amendments, so we will be suggesting a new section to address that topic.

We will also recommend some current language be deleted. For example, current Section 27 is titled “Maintenance of mailing lists.” It directs 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

We will continue to edit and refine the updated working draft in the coming weeks.

We suggest that this committee hold meetings in January, February, and, if needed, March 2024 to review the updated draft and provide us with feedback. We would expect each meeting to last 1 hour. The public would also be invited to provide comments at these meetings.

We will circulate the working draft in advance of the January meeting so everyone has a chance to review it.

In addition, we suggest that this committee request that the Executive Committee approve holding a public hearing in April of 2024 to ensure there is nothing that staff or the committee is missing in the updated Policy draft. The report from that hearing, along with any proposed changes to the draft by the hearing officer, would then be presented to this committee and the Executive committee at their in-person meetings in Kansas City, MO on May 2, 2024. Assuming approvals of a final draft by both committees in Kansas City, the updated Policy could then be noticed for a full vote of the Commission at its meeting July 31, 2024 in Denver, CO.

Additionally, technical corrections to the Bylaws will be required by vote of the Commission. For example, Bylaw 7(d) refers to Section 24 the Policy, which will need updating.