

Summary of Citizen Commission Discussion Regarding Staff Issue Papers

At the Commission's April 22, 2016 meeting, commissioners discussed a series of issue papers prepared by JLARC staff. The papers were designed to assist commissioners in setting priorities for their second decade of reviewing tax preferences.

The notes below are JLARC staff summaries of the commissioners' discussion. By design, commissioners focused on an open exchange of ideas. Decisions on specific priorities will be made at subsequent meetings.

Issue: Should preferences receive greater priority in the schedule if they have an expiration date or if the Legislature specifically requests a JLARC review? (#4)

Staff summary of discussion, where commissioners noted:

- Expiration dates and legislative mandates are an important determinant on when to review a preference. A concern is whether they should take preference over other groupings in setting the review schedule, and at what point such preferences might “crowd out” other preference reviews.
- Setting up a ten-year schedule will help to highlight in advance any “pinch points” where there are many expiration dates or reviews by a specific date as required by the Legislature
- A key question would be that when the Legislature specifically notes they want JLARC to review a preference by a certain time, who has the final say on whether that preference should be selected for review, the Citizen Commission or the Legislature? The Legislative Auditor responded that staff would need to complete legislatively mandated studies.
- A consideration might be whether it is less time consuming for staff to review a preference a second time. The Legislative Auditor noted there are some time savings in the legislative history area, but there may be significant changes from the first to second review and the second study may be just as time intensive as an initial one.

Issue: Should the Commission continue to group preferences, such as by industry sector or by similarity of purpose? (#2)

Staff summary of discussion, where commissioners noted:

- Industry groupings are valuable as they provide a “big picture”, with industry groupings providing valuable context.
- Grouping preferences intended to induce behavioral changes or groupings not focused on industries but on a commonality of purpose, such as rural job development, might be a strategy.
- Gaps in needed information has been an issue in the past. Groupings, if done far enough in advance, may provide lead time to work with DOR or the Legislature to identify information needs and any information gaps.

- There may be merit in grouping property tax preferences where staff would look at the effects of shifting tax burdens, but wondered if it is in the Commission’s statutory charge to do so.
- There needs to be a balance between the efficiency of grouping preferences and the time constraints of reviewing before an expiration date.

Issue: Should preferences with a new “performance statement” provision receive greater priority in the schedule? (#5)

Staff summary of discussion, where commissioners noted:

- A performance statement may serve as a “tiebreaker” or as a key factor to determine when to review.
- There could be concerns that review of preferences with performance statements could “crowd-out” review of some of the older, established preferences, noting however this may be more of a theoretical “in-the-future” problem.
- It may be equally important to focus attention on preferences where the policy purpose is not clear, seeking greater legislative clarity on intent.

Are there factors with respect to previously reviewed preferences that should be considered in determining the review process? (#1)

Staff summary of discussion, where commissioners noted:

- Previously reviewed preferences that haven’t changed at all since the review may be a lower priority.
- Previously reviewed preferences with no data or metrics to evaluate should not necessarily be ignored.
- A strategy may be to break previously reviewed preferences into categories, such as:
 - For preferences that both the Legislative Auditor and the Commission recommended continue, staff could do a quick look at whether anything has changed and if they conclude nothing really changed, it would be automatic to not review again.
 - For preferences with a review and clarify recommendation, several had implied objectives and for many of those, the Legislature has taken no action. The Commission may move those towards the end of the schedule and ask the Legislature for additional clarity.
- For previously reviewed preferences, is it possible for staff to anticipate and schedule far enough in the future to determine the information needed for a comprehensive evaluation?
- Advance scheduling may help identify industry-wide studies or analysis available for preferences lacking administrative data.
- Advance scheduling may help staff work with DOR and/or the industry to obtain needed data. A proposal could be made to the Legislature to require collection of the data. The Legislative Auditor noted an example where changes were made to reporting requirements for motion picture incentives following a JLARC performance audit.
- Such an approach could be pursued on a targeted basis for help in eventual evaluation.

Are there preferences that the Commission should determine as critical to the tax structure, and thus not subject to review? (#3)

Staff summary of discussion, where commissioners noted:

- The Commission has discretion to label preferences as critical to the tax structure, making them not subject to the review process.
- In past reviews, the Legislative Auditor recommended preferences be continued, and labeled them as serving an administrative or structural purpose.
- It may be possible to determine whether preferences recommended to be continued merited another review, or whether they should be removed from the list of preferences to be reviewed.
- The Commission may make specific recommendations for tax preferences to omit from the review schedule at the June meeting. Prior to June, commissioners could generate a list of possible preferences for consideration.
- One possible option is to place preferences that are “critical to the tax structure” on the expedited review list instead of completely omitting them from any review.

Are there questions evaluated by JLARC staff that should be de-emphasized? Are there questions that should be modified or added? (#6)

Staff summary of discussion, where commissioners noted:

- The Commission has discretion in determining which questions to answer for each tax preference.
- A key question is whether tax preference reviews warrant a change in emphasis in the questions asked, and whether additional questions should be stated for each tax preference review.
- The review of like tax preferences in other states can be complicated by Washington’s unique tax structure.
- Comparing the differences between various states’ tax structures can be very challenging, however a comparison with other states does help to inform understanding of the tax preference.
- One approach may be to compare tax structures faced by the same industry in multiple states. This approach could allow analysts to compare systemic tax burdens, rather than comparing only the tax subject to Washington’s tax preference. This may be most useful for preferences that are related to improving industry competitiveness.
- Assessing secondary beneficiaries may not require investigation for every tax preference, but, depending on the individual tax preference, it could be useful in some cases.
- There may be a resource “cost” to JLARC staff to review secondary costs and beneficiaries.

Should there be a more specific question for evaluating a tax preference’s impact on the distribution of the tax liability? (#7a)

Staff summary of discussion, where commissioners noted:

- Any change in taxes may have distributional consequences and tax preferences that benefit one industry could have competitive impacts on another industry.
- The importance of knowing whether a benefit granted to one group of taxpayers contributes to an increase in the tax burden of another group of taxpayers.
- One approach is to attempt to compare the beneficiary savings of a tax preference to the benefit the state receives as a result of the tax preference.
- The benefits of this additional analysis should be weighed against its complexity and the cost of the resources required to perform the analysis.
- An option may be to have staff conduct a high-level analysis of the distributional impacts of the state's tax structure.
- The distributional effects of changes to the tax code is important, but attempting to determine this broader issue about the entire tax structure may go beyond the Commission's specific charge to look at individual tax preferences.

For preferences intended to accomplish using one tax approach over another, should there be an additional evaluation question to identify changes in fiscal impacts over time? (#7b)

Staff summary of discussion, where commissioners noted:

- Fundamental is the question of whether additional analysis in such cases is warranted.
- At some point policymakers decided on the state's tax structure, with specific preferences geared toward avoiding double taxation.
- Additional analysis would entail expanding the historical component of the review to include reasons the policy decision was made, as well as the fiscal impact of the alternative.
- The subset of such tax preferences is likely limited, perhaps the additional analysis would not likely require significant additional staff resources.

Does the overall review effort merit additional JLARC staff resources? (#8)

Staff summary of discussion, where commissioners noted:

- Previously, the Commission advocated for and JLARC received additional staff and consulting resources because the Commission believed this could add more value to the Legislature.
- Resource needs for reviewing tax preferences should be viewed in light of other state funding needs. It's not clear what the appetite is at the Legislature when entering a difficult upcoming budget session.
- Increased efficiencies have resulted from having completed more reviews, however the Legislature may now expect more complex analyses.
- It may be useful to know how much more can be analyzed with each additional staff member. How many more reviews, or what additional questions/issues can be analyzed?