



# Citizen Commission for Performance Measurement of Tax Preferences

**William A. Longbrake, Chair**  
Board of Directors, BECU  
**Lily Kahng, Vice Chair**  
Seattle University Law School  
**Ronald Bueing**  
Pivotal Law Group, PLLC

**Dr. Grant D. Forsyth**  
Avista Corp  
**Stephen B. Miller**  
Washington Education Association

**NON-VOTING MEMBERS:**  
**Senator John Braun**  
Chair, Joint Legislative Audit & Review Committee  
**Troy Kelley**  
State Auditor

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## Citizen Commission for Performance Measurement of Tax Preferences

Meeting Minutes  
October 16, 2015  
John L. O'Brian Building  
House Hearing Room E  
Olympia, WA

### Members Present:

William A. Longbrake	Ron Bueing
Lily Kahng	Grant Forsyth (appearing by telephone)
Stephen Miller	

### Members Absent:

Senator John Braun	State Auditor Troy Kelley
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### Staff:

Keenan Konopaski	
John Woolley	Rachel Murata
Dana Lynn	Eric Whitaker
Marilyn Richter	Ashley Elliott
Pete van Moorsel	
Stacia Hollar, AGO	

### CALL TO ORDER AND WELCOME

Commission Chair William Longbrake welcomed those in attendance and called the meeting to order at 10:00 a.m.

#### 1. Action item: Approval of 9/18/15 meeting minutes

**MOTION:** A motion was made to approve the September 18, 2015 meeting minutes.

The motion was seconded and carried.

(See recording at [00:15](#))

The Chair reminded Commissioners about the additional Commission meetings in 2016.

(See recording at [00:45](#))

The Chair invited Commissioners to the November 20<sup>th</sup> House Finance Committee Hearing to discuss the Commission's planning process.

(See recording at [01:30](#))

## 2. Action item: Discussion/Adoption of Commission Comments on 2015 Tax Preference Reviews

The Chair outlined the process by which the Commission will discuss and adopt comments on the 2015 Tax Preference Reviews. Prior to the meeting, the Commission had grouped preferences by the Legislative Auditor recommendation and whether any Commissioner had submitted a proposed comment.

### *Group A*

The Chair asked whether any Commissioners had any proposed comments on the preferences in Group A. The preferences in Group A had received a recommendation of "**Continue**" by the Legislative Auditor, and no Commissioner had proposed any comments prior to the meeting. No Commissioners had any additional comments on these preferences.

**MOTION:** A motion was made to endorse the recommendation of the 2015 JLARC Tax Preference Reviews of **Family Business Property (Estate Tax)** and **Horticultural Services (Sales and Use Tax)** without comment.

The motion was seconded and carried unanimously. (See recording at [08:45](#))

### *Group B*

Group B was reserved for any preference that had received a recommendation of "Continue" and where the Commission had a proposed comment. There were no preferences in Group B. (See recording at [0:10:00](#))

### *Group C*

The Chair asked whether any Commissioners had any proposed comments on the preferences in Group C. The preference in Group C had received a recommendation of "**Review and Clarify**" by the Legislative Auditor, and no Commissioner had proposed any comments prior to the meeting. No Commissioners had any additional comments on this preference.

**MOTION:** A motion was made to endorse the recommendation of the the 2015 JLARC Tax Preference Reviews of **Commercially Grown Fish and Shellfish (Enhanced Food Fish Tax); Family Farm Property (Estate Tax); Fuel Used to Heat Chicken Houses; Chicken Bedding Materials (Sales and Use Tax); Grain and Unprocessed Milk Wholesaling (B&O Tax); Motion Picture Program Contributions (B&O Tax); Public Facilities Districts (Leasehold Excise Tax);** and **Warehouse and Grain Elevator Remittance (Sales and Use Tax)** without comment.

The motion was seconded and carried unanimously. (See recording at [0:10:30](#))

### *Group D*

The Commission discussed the preferences in Group D. The preferences in Group D had received a recommendation of "Review and Clarify" by the Legislative Auditor, and Commissioners had provided proposed comments.

**MOTION:** A motion was made to endorse the 2015 JLARC Tax Preference Review of **Farm Machinery Replacement Parts (Sales and Use Tax)** with the following additional comment.

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Comment: The Legislature is encouraged to clearly state the public policy of the preference and make sure it is designed effectively to achieve that purpose.

Washington State agricultural producers compete with their counterparts in other states who are subject to different tax regimes. Research by JLARC staff shows other major agricultural states also provide tax exceptions for machinery parts. This was also confirmed by testimony from agricultural producers. This implies that the existing preference may be necessary to enable Washington State agricultural producers to compete effectively. However, as currently designed, this preference may be more than sufficient or inadequate to assure competitive equity.

The motion was seconded and carried unanimously. (See recording at [0:13:00](#))

**MOTION:** A motion was made to endorse the 2015 JLARC Tax Preference Review of **Fuel Used on Farms (Sales and Use Tax)** with the following additional comment.

Comment: The Legislature is encouraged to clearly state the public policy of the preference and make sure it is designed effectively to achieve that purpose.

Washington State agricultural producers compete with their counterparts in other states who are subject to different tax regimes. Research by JLARC staff shows other major agricultural states also provide tax exceptions for farm fuel. This was also confirmed by testimony from agricultural producers. This implies that the existing preference may be necessary to enable Washington State agricultural producers to compete effectively.

Nevertheless, the preference was passed to alleviate the impact of rising diesel costs in 2006 without an explicit review clause. For tax preferences that are enacted to deal with potentially transitory market shocks, the legislature should consider a clause that triggers an automatic review should market conditions return to pre-shock levels. In addition, as currently designed and given the drop in fuel costs, this preference may be more than sufficient or inadequate to assure competitive equity.

The motion was seconded and carried unanimously. (See recording at [0:40:00](#))

**MOTION:** A motion was made to endorse the 2015 JLARC Tax Preference Reviews of **Livestock Medicine (Sales and Use Tax)** without comment.

The motion was seconded and carried unanimously. (See recording at [0:46:20](#))

**MOTION:** A motion was made to endorse the 2015 JLARC Tax Preference Reviews of **Aluminum Manufacturing (B&O Tax); Aluminum Smelter Property Taxes (B&O Tax); Aluminum Smelter Use of Natural Gas (Use Tax);** and **Aluminum Smelter Purchases (Sales and Use Tax)** with the following additional comment.

Comment: In reviewing these preferences, the Legislature should consider industry testimony suggesting that the aluminum market is facing a significant downturn due to weak global demand and over production from Chinese producers.

The motion was seconded and carried unanimously. (See recording at [0:48:25](#))

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**MOTION:** A motion was made to endorse the 2015 JLARC Tax Preference Review of **Aluminum Smelter Electricity or Natural Gas Purchases (Sales and Use Tax)** and **Aluminum Smelter Purchases (Public Utility Tax)** without comment.

The motion was seconded and carried unanimously. (See recording at [1:12:45](#))

**MOTION:** A motion was made not to endorse the 2015 JLARC Tax Preference Review of **Interest on Real Estate Loans (B&O Tax)** and adopt the following additional comment.

Comment: The Commission does not endorse the Legislative Auditor's recommendation and recommends that the Legislature should maintain the 2012 legislation defining which lenders qualify for the preference.

Washington State financial institutions that portfolio mortgage loans compete with their counterparts in other states who are subject to different tax regimes. The industry's testimony made the reasonable argument that the current tax preference helps mitigate the competitive disadvantage created by recent federal regulatory changes. In this new environment, smaller financial institutions are struggling to absorb the increase in regulatory costs associated with lending. Although offsetting regulatory costs was not the preference's original stated intent, the preference appears to enable smaller financial firms to compete with (1) large nationally-based financial firms whose size enables them to absorb these additional costs and (2) credit unions, which have special tax status. Indicative of increased cost pressures facing smaller community banks, the number of community banks nationally has fallen from about 7,000 in 2008 to 5,400 recently (a 23% decline). Over this same time period, the number of commercial banks headquartered in Washington State has declined from 81 to 45 (a 44% decline). While there are many factors driving shrinkage in the number of community banks, limiting the current preference in same fashion could aggravate that trend.

Furthermore, the inferred public policy objectives do not capture the legislative debate and compromise that surrounded the compromise reached to determine the class and type of banks that would continue to qualify for the exemption. Specifically, the current testimony and debate at the time of the 2012 legislation indicated the restructuring of the exemption was to provide a benefit to a certain population of smaller, local lending institutions without violating commerce clause restrictions imposed by the courts. The community bank definitions considered by JLARC staff were not adopted during legislative debate of these provisions because they would not have encompassed the full population of banks the Legislature determined should be covered.

The motion was seconded and carried unanimously. (See recording at [1:13:50](#))

## *Group E*

The Commission discussed the preferences in Group E. The preferences in Group E had received an expedited review, which means that the Legislative Auditor did not provide analysis or

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recommendations, rather information is supplied by the Department of Revenue for these preferences. Commissioners had provided proposed comments.

**MOTION:** A motion was made to append the 2015 Expedited Tax Preference Report of **Natural Gas Purchased by DSI Customers (Use Tax); Natural Gas Purchases by DSI Industry (B&O Tax);** and **Electricity Purchased by DSI Industry (Public Utility Tax)** and adopt the following additional comment.

Comment: The commission notes that these three preferences have not been utilized and recommends that the Legislature consider whether they should be continued. (See TVW recording at [1:35:45](#))

The Commission requested a briefing paper by JLARC staff on the impact of disclosure rules on tax preference reviews.

(See TVW recording at [1:35:45](#))

**4. Process for adopting Commission comments in October on the 2015 tax preference performance reviews**

John Woolley of the JLARC staff reminded Commissioners of the process for submitting and adopting Commission comments on the 2015 preference reviews.

(See TVW recording at [00:08:45](#))

**5. Public Testimony on 2015 Tax Preference Performance Reviews**

The Commission heard public testimony on the 2015 tax preference performance reviews.

(See TVW recording at [0:28:00](#))

**6. Public Testimony on Future Tax Preference Performance Audit Process**

The Commission heard public testimony on the future tax preference performance audit process.

(See TVW recording at [2:27:36](#))