

TAX FOUNDATION OF HAWAII

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Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: MISCELLANEOUS, Disclosure of Department of Taxation Revenue Estimates

BILL NUMBER: SB 2257; HB 1817 (Identical)

INTRODUCED BY: SB by KEITH-AGARAN, DELA CRUZ, K. RHOADS, English, Gabbard, Kim; HB by BROWER, CREAGAN, EVANS, JOHANSON, KOBAYASHI, KONG, LOPRESTI, MIZUNO, MORIKAWA, NISHIMOTO, OHNO, QUINLAN, TODD, Nakamura, San Buenaventura, Takayama, Takumi

EXECUTIVE SUMMARY: Requires every revenue estimate provided to the legislature or to an executive or administrative office to have a description of the methodology and assumptions, and requires that it be available to the public. It's a welcome step toward government transparency, and some tweaks may be needed to make sure it works as intended.

SYNOPSIS: Adds a new section to HRS chapter 231 to require that every revenue estimate provided by the department to the legislature or to any executive or administrative office shall be accompanied by a description of the methodology used and assumptions made in providing the estimate. The revenue estimate and description shall be open to public disclosure, inspection, and copying, notwithstanding sections 235-116, 237-34, and 237D-13, or any other law restricting disclosure of tax return or tax return information to the contrary.

EFFECTIVE DATE: Upon approval.

STAFF COMMENTS: At present, the availability of estimated revenue impact information on bills wending their way through the legislature is spotty at best. Even when the Department of Taxation testifies on tax bills, some testifiers share revenue impact information with the legislature; others don't; others share information with the legislative committees and leave the public in the dark; and still others share information with the committees and the public only in response to questions asked at a hearing. Having the information would be a great step toward openness and transparency in important legislative decisions.

To make the measure robust, we suggest that the bill needs to clarify *when* during the process the statement will be available to the public. If this is not done, overzealous people within the government can, and if past practice is followed will, argue that this information is part of a governmental deliberative process and, as such, needs to be kept from the public's prying eyes. The result, usually, is that the information will be withheld from disclosure until it is no longer useful or relevant. For an example of how this game of cat-and-mouse takes place, we offer the following article, which the Foundation published on Oct. 2, 2017. Although the article involves a slightly different issue, the information there is still relevant.

Fritz v. Department of Taxation, and Why You Should Care

Over the past several months, there has been a court fight brewing that could have changed how the Department of Taxation lobbies for legislation.

That's right. Not only special interest groups and activists lobby for legislation. The Department does too. Every year, it introduces and strongly supports "Administration Bills." Many of these propose to make the Department's job easier, but at the expense of taxpayer rights. So it's important for taxpayers to keep tabs on how the Department is pushing these bills.

One example of the above kind of bill was HB 2396 / SB 2925 in last year's legislative session. If a taxpayer files an amended federal income tax return or is adjusted by the IRS, current law allows an extra year for the Department to assess additional tax or for the taxpayer to claim a refund. The bill provided that only the Department, and not the taxpayer, could take advantage of this "bonus time," which is usually needed because tax audits take a while to conclude. The Foundation was concerned that this legislation created a "one-way street," or procedural trap, that could allow the State to retain money to which it was not entitled under law.

Peter Fritz, an attorney who used to work for the Department, tried to get the Department to disclose the letters, texts, and emails sent to legislators in 2009. "Can't do," the Department said. "Work product paid for by taxpayers normally needs to be made public, but policy deliberations can be withheld, and these communications are in that category." Fritz didn't agree, and asked the State Office of Information Practices (OIP) to rule on the matter. OIP ruled in Fritz's favor in 2011, ordering the Department to cough up the documents. The Department complied. But by the time it did so, it was years after the legislative session ended.

In the 2016 legislative session, Fritz tried again. The Department refused to provide documents relating to Administration Bills that it was then sponsoring, again relying upon the "deliberative process privilege" that the OIP had ruled in 2011 to be inapplicable. "Gotta do a case by case determination," the Department said. Fritz filed suit. In January 2017, well after the ending of the 2016 session, the Department "voluntarily disclosed" the documents, although explicitly saying that it "reserved any and all rights to withhold any other documents from disclosure on any and all grounds."

Those documents could have made a difference during session. When SB 2925, described above, was heard by the Senate Ways and Means Committee, then-Chair Jill Tokuda and Majority Leader J. Kalani English were particularly interested in whether the bill was a solution in search of a problem. When they pointedly asked the Department about it at the hearing, the Department representatives professed ignorance. The records later turned over, however, clearly showed that the Department was reacting to a case involving *only one* taxpayer. The legislation, by the way, ultimately died.

In the lawsuit, Fritz asked the court to take positive steps so that the Department can't again play cat-and-mouse. The State, of course, maintained that once they turned over the documents, the suit can no longer exist because courts are there to decide actual controversies, not purely academic issues. The circuit court judge agreed with the State, and the lawsuit will soon be dismissed.

When the Department of Taxation states a position in a communication to the Legislature, the public is entitled to know what that position is. This is especially important with a complicated

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subject like taxation, where the public relies heavily on guidance and interpretations put out by the Department. (Other legislators do too.) And it is critical to have a fully informed debate when the Department tries to coax legislators to change the law in a way that would make its job easier at the expense of taxpayer rights and protections.

Digested 2/5/2018



Email: communications@ulupono.com

SENATE COMMITTEE ON WAYS & MEANS
Wednesday, February 21, 2018 — 10:10 a.m. — Room 211

Ulupono Initiative Strongly Supports SB 2257, Relating to Taxation

Dear Chair Dela Cruz, Vice Chair Keith-Agaran, and Members of the Committee:

My name is Murray Clay, and I am Managing Partner of Ulupono Initiative, a Hawai'i-based impact investment firm that strives to improve the quality of life for the people of Hawai'i by working toward solutions that create more locally produced food; increase affordable, clean, renewable energy; and better management of waste and fresh water. Ulupono believes that self-sufficiency is essential to our future prosperity and will help shape a future where economic progress and mission-focused impact can work hand in hand.

Ulupono strongly supports SB 2257, which requires that revenue estimates provided by the Department of Taxation (DOTAX) to the Legislature be accompanied by a description of the methodology used and assumptions made in providing the estimate, because it helps to understand the department's conclusions and whether DOTAX is using the most updated information. It also supports our value of transparency in policymaking.

Decisions made by the Legislature have a lasting effect on the people of Hawai'i. As a result, it is in the best interest for policymakers to have more open, transparent information, especially from experts in the field. Furthermore, it is critical that DOTAX shares how it came to such conclusions since the Legislature relies heavily on this analysis and many legislators cite it as the most accurate and impartial source.

Because advocates and experts typically do not see the conclusions of the DOTAX analysis until a hearing begins, they are forced to wonder how DOTAX arrived at its figures. For example, DOTAX's analysis on an energy storage tax credit a few years ago projected far more tax credits being claimed than could be supported by either the needs of the grid or sound economic analysis. In short, the estimated "cost" to the State was over exaggerated. Meanwhile, legislators will often side with DOTAX over advocates since it has the perception of neutrality even if DOTAX is often the least familiar stakeholder on the subject matter in question. Especially during the hectic legislative session, it is also extremely difficult to schedule meetings with DOTAX to understand the methodology. While we are not claiming that DOTAX does this purposefully, there is no doubt that there is a great incentive to avoid explaining its methodology in great detail. DOTAX would be able to avoid

Investing in a Sustainable Hawai'i

meeting with stakeholders long enough before a bill must meet its next legislative deadline.

Financial analysis requires data/estimates of the assumptions that are filtered thru a financial model/framework/program to come up with the final numerical results. Therefore, if DOTAX provides an analysis of a bill's financial impact in its testimony, then logically it should also have its assumptions readily available. In our experience, however, it chooses not to disclose its assumptions and methods in its testimony.

While the Department of Taxation is likely to have additional initial scrutiny from stakeholders if it releases its methodology, over the long run, this should force more interaction between DOTAX and knowledgeable subject matter experts. As DOTAX engages with expert individuals and organizations, it will learn more about the sectors it analyzes and create more realistic and accurate projections in the long run, which will benefit lawmakers' decision-making.

Our concern is that the cost of poorly thought-out State policies could be significantly higher than the cost of any additional DOTAX staff needed to comply with this bill.

As environmental issues become ever more complex and challenging, we appreciate this committee's efforts to look at policies that improve the quality of life for the people of Hawai'i through open and transparent decision-making.

Thank you for this opportunity to testify.

Respectfully,

Murray Clay
Managing Partner



Senate Committee on Ways and Means
Chair Donovan Dela Cruz, Vice Chair Gilbert Keith-Agaran

02/21/2018 10:10 AM Room 211
SB2257– Relating to Taxation

TESTIMONY / SUPPORT
Corie Tanida, Executive Director, Common Cause Hawaii

Dear Chair Dela Cruz, Vice Chair Keith-Agaran, and members of the committee:

Common Cause Hawaii supports SB2257 which would require DOTAX to provide revenue estimates along with a description of the methodology and assumptions used when arriving at the estimate. It requires the estimates and descriptions to be open to public disclosure, inspection and copying.

The issue of taxes and revenue impact affects everyone. As such, the public should have access not only to revenue estimates provided by DOTAX but also the methodology and assumptions used to arrive at the estimate. By increasing transparency and access, this bill would allow the public to better understand and weigh in on bills that impact state revenue.

Thank you for the opportunity to offer testimony **supporting SB2257**.