State of Oregon

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Work Group Report

Report # 5-16

December 2016

HB 4146

Transient Lodging Tax

Work Group Report

Key Work Group Findings

The following key findings are based on a consensus of work group members:

- The current distribution structure as modified by HB 4146 provides an adequate framework for allocating tourism related dollars. No additional statutory changes are recommended at this time. The additional revenue generated by the rate increase will allow for additional staff and programing at the regional level to effectively manage and promote tourism activity through the state. Work group members emphasized the need to maintain flexibility in spending at the regional level in recognition of the diverse tourism assets around the state. The work group also acknowledged that the changes spelled out in HB 4146 were still in the process of drawing guidelines before the implementation phase. The workgroup encourages more communication and consultation between the different entities.

- The work group identified the 2014 Oregon Supreme Court decision (*Bagley v. Mount Bachelor*) regarding recreational activity liability releases as a significant risk to the recreational tourism industry. The decision raises the possibility of significant insurance premium and litigation cost increases for the industry. The work group is concerned about the consequences of the court decision and recommends that the Legislature consider legislation that addresses the issue in the 2017 session.

- The work group recognized that structural changes within the lodging industry, such as the involvement of intermediaries and vacation/home rentals, can complicate the ability of state and local governments to ensure compliance with the transient lodging tax laws. To improve the information available to both state and local governments, the work group recommends that the Department of Revenue be granted statutory authority to enter into information sharing agreements with local governments concerning transient lodging taxpayers.

- The work group is supportive of the Tourism Commission's efforts to provide a predictable distribution system for state transient lodging tax revenue. The two payment process based on prior year collections adopted by the commission ensures accuracy and predictability for regional recipients. The work group was also supportive of regular reporting by the Tourism Commission to legislative committees.

Overview

HB 4146 directed the Legislative Revenue Office to lead an interim work group to study a series of specific travel industry issues. HB 4146 marked the first major change in Oregon's statewide transient lodging tax law since it was created in 2003 with the passage of HB 2267. The major provisions of the bill are:

- An increase in the tax rate from 1% to 1.8% for the period July 1, 2016 to July 1, 2020. On July 1, 2020 the rate goes to 1.5%. The new higher rate is expected to generate an additional $12.7 million in the 2015-17 biennium and $27.4 million in the 2017-19 biennium after allowance for collection costs.
- A requirement that 20% of revenue collected from the transient lodging tax be spent implementing the regional cooperative tourism program and 10% be allocated to a competitive grant program to fund tourism-related facilities and events. The bill directs the Tourism Commission to base grant awards on demonstrated return on investment, geographic equity and community support.
- A requirement that the Tourism Commission submit an annual report to the Legislative Fiscal Office that identifies funds received by the commission and awards and commitments authorized by the commission.
- Directs Legislative Revenue Office to lead a work group to examine a series of issues that arose during the 2016 Legislative session. These specific issues are identified in this report along with specific responses to each based on work group deliberations. The work group is directed to submit a report to the Legislature no later than December 9, 2016.

Work Group Process

The Senate President appointed Senators Hansell and Monroe to the work group. The Speaker appointed Representatives Nathanson and Davis. The work group was augmented by 10 additional members representing different sectors and regions of the tourism industry. These members were:

• Danielle Cowan, Executive Director, Clackamas County Tourism & Cultural Affairs

- Carolyn McCormick, Washington County Visitor Association
- Mary Pat Parker, Visit Corvallis
- Jon Rahl, Seaside Visitors Bureau
- Alice Trindle, Eastern Oregon Visitors Association
- Alana Hughson, CEO, Central Oregon Visitors Association
- Scott Youngblood, Embassy Suites Tigard; Member, Oregon Tourism Commission
- Bob Hackett, Oregon Shakespeare Festival – Ashland, OR
- Jeff Kohnstamm, Timberline Lodge - Mt. Hood
- Jeff Miller, Travel Portland

In addition to the Legislative Revenue Office, the work group received staff support and expert testimony from Travel Oregon, the Department of Revenue, the Housing and Community Services Department, Department of Human Services, and the Office of Economic Analysis.

All the deliberations of the workgroup, meeting details and documents presented during the last few months are included as appendices in volume II of this report.

Summary of Workgroup Meetings

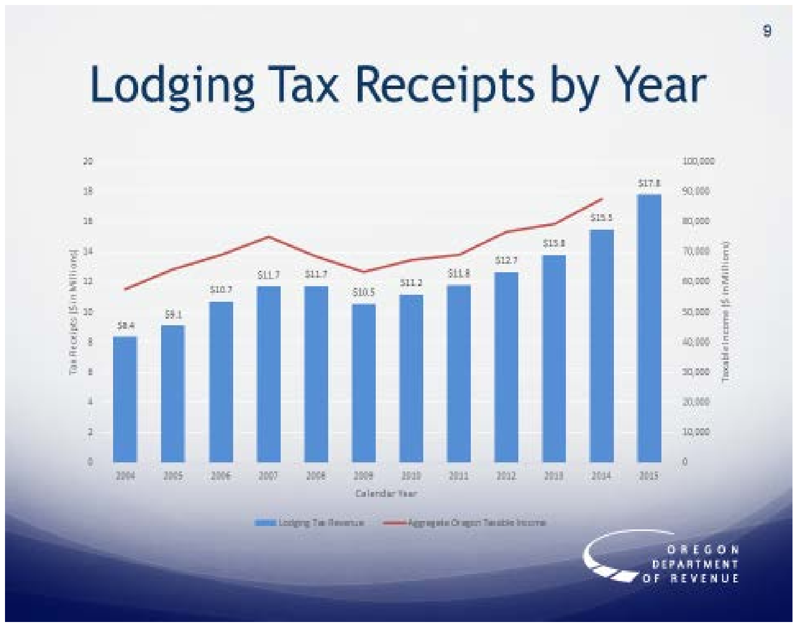
The work group met five times between June and October, the 6th meeting is scheduled for November 15th where a draft of the final report will be discussed. The first two meetings were informational and laid the foundations for a general understanding of the industry, tax and revenue, and organizations that collect or use the revenue. Responses to specific issues identified in HB 4146 section 7, were taken up in three meetings (meetings 3, 4 and 5) and discussed separately. It was decided earlier (in meeting 1 and 2) that no other issues will be considered before the completion of the explicitly tabulated items in subsections 1-a to 1-f. Afterwards, other issues might be introduced as specified in subsection 1-g.

Although work groups are not subject to open meetings law, interested parties were informed and many attended the work group meetings. All the agendas, materials, and the information presented at the work group meetings were shared at the Legislative Revenue Office web page.

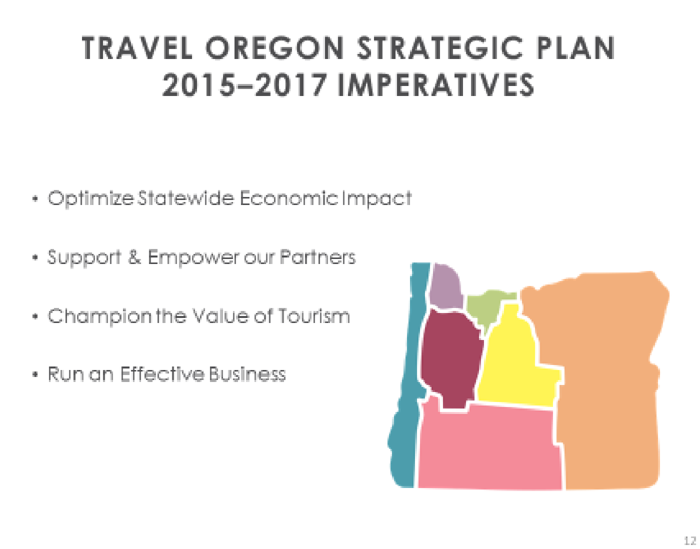
However, for the purpose of this report, all materials are compiled and included as Volume II of the final report.

<u>The First meeting </u>was on June 30th. The Department of Revenue (DOR) and Travel Oregon gave informational presentations.

DOR gave historical information and general background about the transient lodging tax. DOR also described the tax collection process and administration as well as revenue by region, type of accommodation, and share by region. The whole presentation is included in (Volume II, Appendix 1)



Travel Oregon's presentation emphasized the strategic plan and investment in tourism that comes with revenue from the transient lodging tax. The presentation also brought into focus the different layers of organizations (Local Destination Marketing Organizations (DMO), and Regional Destination Marketing Organizations (RDMO)), in addition to Organizations at the state level that deal with and focus on tourism. The presentation also expanded on the structure of



Travel Oregon, the different projects, promotions, and product development campaigns that the organization manages and coordinates. The whole presentation is included in (Volume II, Appendix 1).

<u>The Second meeting</u> was on July 11th where the Office of Economic Analysis (OEA) and local governments gave presentations.

Tax Comparisons
(property taxes and lodging taxes)

City	Revenue from Permanent Rate	Permanent Rate	Revenue from Bonds & Local Option	Revenue from Lodging Taxes
Gearhart	$474,546	$1.01	$644,529 ($1.37)	$167,000
Lincoln City	$6 million	$4.10	$1.3 million	$5 million
Ashland	$9.9 million	$4.20	$516,000	$2.1 million
Bend	$26 million	$2.80	$3.9 million	$4.7 million
Hood River	$2 million	$2.81	$527,000	$1.2 million
Eugene	$91.2 million	$7.01	$14.4 million	$4 million
Astoria	$5.5 million	$8.17	$0	$1.3 million

Revenue resources and expenses vary by community. One size doesn't fit all.

25 years years years years years years and older

Sources: Oregon Office of Economic Analysis, BLS

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OEA economists gave a general outlook on the tourism industry in Oregon. They were able to trace trends, geographical distribution, shares of personal income and expenditures, wages, and employment in the industry. The age cohorts seem to suggest that the baby boomers are the age group that is responsible for half the expenditure on lodging. Although the industry generates a large number of jobs that are geographically dispersed around the state, the wages are relatively low in that industry. The lodging tax seem to be less regressive than other sale taxes, but it also seems to be more volatile. The whole presentation is included in (Volume II, Appendix 2).

The panel for the local governments went over the issues and the tensions around the statewide tax verses the local taxes that are a source of revenue for the locals in matters other than tourism. The panel also explored the issues with collection of state and local taxes from different intermediaries, as well as the moratorium on lodging taxes as seen from the perspective of local government. The whole presentation is included in (Volume II, Appendix 2).

The third panel spoke from different segments of the industry. On-line Travel Companies (OTC) such as Expedia, and the new internet lodging models represented by Airbnb spoke about their industry and how they deal with payment s and tax collections, etc. Other representatives of the industry spoke of the general facets of the lodging and tourism industry in Oregon.

<u>The Third meeting was on August 31st.</u> Three issues were discussed. These issues were seen as the ones that might garner the least amount of work and would be quickly concluded. Those issues were:

1. The feasibility of exempting homeless individuals from liability for the state transient lodging tax. (item (d) of section seven (1))

The workgroup received information from Representative Parrish, DHS (Department of Human Services), OHCS (Oregon Housing and Community Services), and members of the workgroup familiar with the industry and with the technical and logistical details of these issues. After the discussions of the different needs and the ways to satisfy the diverse needs of the homeless population, the workgroup unanimously decided that it will be technically prohibitive to administer and implement such an exemption.

A possible alternative can perhaps be sought by Community Action Agencies (organizations) to explore the feasibility of a voucher system or program to offset the cost for the affected population. This voucher system will work as a coupon of some sort that is distributed by Community Action organizations and can achieve the benefit without being built into the Transient Lodging Tax system itself.

For more detail please refer to August 31st meeting minutes (Volume II, Appendix 3)

2. Whether and under what conditions the Department of Revenue (DOR) may share with local government's data that reflect payment of the state transient lodging tax in order to assist the local governments with enforcement of local transient lodging taxes. (item (e) of section seven (1))

DOR gave a presentation on the process of collection and the information that is requested from the businesses collecting the tax. DOR feels that disclosure laws do not currently allow it to share much information with local governments. In addition, the information requested from the hotels, motels, vacation homes, and online travel companies does not go far enough at this time to allow for exact location of the property being rented and taxed. Currently local governments collect more specific data on location of properties than does DOR, and need similarly detailed information from the Department of Revenue. Local Governments and the workgroup members examined different facets and scenarios where the information can be requested and shared with local governments to help facilitate better enforcement and collection of local taxes.

The solution for this issue and the recommendation of the work group is to introduce clear language in law that allows DOR to have a clear legislative authority to request the information needed by local governments and share that information through protocols and agreements. This legislative concept will be introduced and advanced to the 2017 legislative session.

For more detail please refer to August 31st meeting minutes (Volume II, Appendix 3). Also, the letter from DOR in this regard is included in the exhibits of the October 13th meeting.

3. Regular reporting by the Oregon Tourism Commission to committees of the Legislative Assembly on demonstrated return on investment, geographic equity and community support with respect to awards of moneys and grants by the commission. (item (f) of section seven (1))

Travel Oregon presented a number of reports that are currently issued for different purposes and occasions. Travel Oregon also outlined the Oregon Travel Commission strategic plan and budget. Although the return on investment, geographic equity, and community support are scattered in different parts of the current reports, the requirements by HB 4146 will be explicitly included in the new report that was mandated by the legislation and will be going to the LFO (Legislative Fiscal Office) on October 1st of every year.

The following reports are a list of the current reports that are issued by Travel Oregon and /or The Oregon Tourism Commission:

A) Comprehensive Annual Financial Report (CAFR)

The objective of the CAFR financial audit is to determine whether the state's financial statements are presented in accordance with generally accepted accounting principles. Statewide Accounting and Reporting Services (SARS) is responsible for overseeing the year end closing process on a statewide basis. SARS prepares a statewide financial report for the State in accordance with generally accepted accounting principles (GAAP). This statewide financial report is published in the form of a CAFR and provided to the Oregon Department of Administrative Services annually.

B) Audit/Financial Review

Performance audits or financial reviews for all state agencies are conducted annually. These audits/reviews are performed by financial entities that have been qualified by the Secretary of State. The performance audits/reviews focus on identifying improvements an agency or program can make to better achieve its objectives and mission. The performance audits/reviews are provided to the Oregon Department of Administrative Services biennially.

C) Strategic Plan & Budget

The Travel Oregon staff develops and implements a biennial strategic plan which includes advertising and marketing, publication development, cooperative promotions, consumer fulfillment, public relations, international marketing, tourism product development, State Welcome Centers, research, and industry relations. Travel Oregon cooperates extensively with local communities, industry associations, government agencies, and private businesses in the development and implementation of its strategic plan. The Oregon Tourism Commission, a nine-member board appointed by the Governor, governs the Travel Oregon staff and programs and has the authority to adopt the biennial plan and budget. The agency is funded by a 1.8% statewide transient lodging tax. Prior to taking formal action on the plan and budget, the Oregon Tourism Commission provides the biennial plan and budget to the Governor, legislature, and tourism industry trade associations for their review and recommendation. Further, public notice is given of a public hearing on the plan and budget at least 15 days prior to the hearing and subsequent action to adopt the plan and budget. The strategic plan and budget are provided to the Oregon Governor, Legislature, Industry Associations, and general public biennially.

D) Budget Modification

As required by statute, budget modifications are reported to Oregon Legislative Fiscal Office. Prior to taking formal action on a budget modification, public notice is given of a public hearing on the proposed budget modification at least 15 days prior to the hearing and subsequent action to modify the budget. Budget modifications are provided to the Oregon Legislative Fiscal Office as needed.

E) New Report Identified by HB 4146 – first report due October 2017

Beginning on October 1, 2017, the Oregon Tourism Commission shall submit an annual report to the Legislative Fiscal Officer that identifies funds received by the commission during the prior fiscal year, awards and commitments approved by the commission of these funds and of funds received in prior fiscal years, and information requested by the Legislative Fiscal Officer regarding these funds.

The Legislative Fiscal Officer may request additional information with respect to any grants of $2 million or more made by the commission from funds appropriated to the Oregon Tourism Commission. The Annual Report is provided to the Oregon Legislative Fiscal Office annually.

F) Oregon Tourism Commission Staff Reports

Oregon Tourism Commission Staff Reports are timely summaries provided to the Oregon Tourism Commission updating it on the staff's progress toward the implementation of its strategic plan. The Oregon Tourism Commission meets five times annually. Meetings are open to the public and a copy of the agenda is posted online at least 14 days in advance of each meeting. Agendas, supporting documents (including the staff reports), and meeting minutes are available online at http://industry.traveloregon.com/organization/commissioners/oregon-tourism-commission-meetings/. Oregon Tourism Commission Staff Reports are provided to the Oregon Tourism Commission five times per year and made available to the public.

For more detail and a full account of the reports introduced and presented, please refer to August 31st meeting minutes (Volume II, Appendix 3).

<u>The Fourth Meeting</u> was on September 20th and had two issues for discussion. The two issues discussed during the meeting were:

1. The optimal frequency for distribution of state transient lodging tax revenue and whether a mandatory distribution schedule should be adopted. (item (c) of section seven (1))

Frequency of Distributions: The first level was the distribution from the DOR to Travel Oregon. DOR gave an overview of how money is collected on monthly and quarterly periods, and distributed to the organization on monthly basis. The workgroup did not see a need for change or to set a mandatory schedule.

As the second level of distribution from Travel Oregon to the regionals, Travel Oregon gave overview of distribution criteria. Regional budgets are due in June. Travel Oregon distributes the money to regions by projections from their forecast. They use calendar collections instead of forecasting, for everyone to build their budgets. There is a six month's lag from collections until distribution. All agreed that the current method of distribution is working and no changes or mandatory schedule are needed.

2. Policies related to the distribution of revenue for the regional cooperative tourism program under ORS 284.131 (4)(c), including but not limited to the establishment of regional tourism boundaries and the distribution of state transient lodging tax revenue within each tourism region according to the proportion of total revenue collected in the counties within the region[1]. (item (a) of section seven (1))

Regional tourism boundaries were not seen as an issue that offers new solutions, however, individual regions would like to have more autonomy in how they spend their funds. The regions don't want to follow every specific detail of the model chosen by Travel Oregon. The Tourism Commission suggested that Travel Oregon will work toward the flexibility that every region needs. Other issues were discussed, such as subdividing some regions, Eastern Oregon region, for example, could be subdivided into at least four regions, as the distances are huge.

The transient lodging tax may generate $30 million a year and new guidelines are being drawn and considered. These new protocols might have the right balance and answers to the regional needs for more inclusion and partnerships.

The group agreed that no statutory change is needed for this section concerning boundaries or distributions.

For more detail refer to September 20th meeting minutes and exhibits (Volume II, Appendix 4)

<u>The Fifth meeting</u> was held on October 13th and it was the only meeting the workgroup held in Portland. There was only one remaining issue that was discussed by the workgroup:

1. Barriers to expansion and maintenance of recreational tourism in each tourism region. (item (b) of section seven (1))

[1] ORS 284.131 (4)(c): [As much as 15] Twenty percent must be used to implement a regional cooperative tourism [marketing] program that:
(A) Requires fund allocations to focus on creating new business from out-of-state and international markets;
(B) Utilizes a regional allocation formula that distributes revenue to regions, the boundaries of which are established by the commission, in proportion to the amount of transient lodging tax revenues collected in each region;
(C) Distributes revenue to recipients that are selected by the commission as organizations able to conduct tourism-related marketing for each region;
(D) Requires advertising, publications, CD-ROMs, websites, videos and other tourism promotion materials funded through the regional cooperative tourism [marketing] program to carry the Oregon Tourism Commission logo and marketing tag line; and
(E) Encourages funding recipients to incorporate design elements from commission advertising and promotional campaigns, such as fonts, images and other design elements.

The work group identified a recent Oregon Supreme Court decision relating to the use of pre-activity recreational releases as a major barrier to expansion and maintenance of recreational tourism in the state. As a matter of common law, the recreation industry has used pre-activity releases as a way to limit potential liability, primarily because recreational activities by their very nature involve risk. These releases inform the participant of potential risks associated with the activity and make it clear that the participant is assuming those risks. In exchange for participating in the activity, the participant releases the provider from ordinary negligence by signing the release. The provider is still liable for claims of gross negligence or intentional misconduct.

In 2014, the Oregon Supreme Court ruled (*Bagley v. Mt. Bachelor*) that a pre-activity release in a ski season pass agreement was “unconscionable and therefore unenforceable”. This decision renders the use of pre-activity releases ineffective as a tool for managing the potential liability of recreational providers. The work group expressed concern that this would significantly increase insurance and litigation costs for major segments of the industry. The work group identified a wide range of activities that could be affected. These include, but not limited to, ski areas, rafting, biking, running, mountain climbing, team sports, and motor racing.

The workgroup was of the collective opinion that this issue needs to be dealt with through legislation.

For more detail refer to October 13th meeting minutes and exhibits (Volume II, appendix 5)

<u>The Sixth meeting</u> was held on November 15th and it was dedicated to discussing the draft report to be issued by the workgroup. There was general agreement on the points of the report, however, there was an extended discussion on item (a) of section 7 of HB 4146. The main outcome of the discussion emphasized the need for more communications and consultation between the different entities involved in the state and regional tourism functions. It was also reiterated that each region should have only one official regional tourism organization.

For more detail refer to November 15th meeting minutes and exhibits (Volume II, appendix 6)

Responses to Specific Issues Identified in HB 4146

Section 7 of HB 4146 directed the work group to address 6 specific issues:

(a) Policies related to the distribution of revenue for the regional tourism program under ORS 284.131 (4)(c), including but not limited to the establishment of regional tourism boundaries and the distribution of state transient lodging tax revenue according to the proportion of total revenue collected in the counties within the region.

The work group discussed regional distribution at length. Individual members emphasized the importance of flexibility and the advantages of decentralized allocation decisions where feasible. Although distribution concerns have surfaced in the past, the work group concluded that the new revenue and additional flexibility contained in HB 4146 provides an opportunity to address these issues. Members of the work group emphasized that detailed discussions are concurrently underway to implement the distribution system outlined in HB 4146.

The workgroup also clarified that Legislative intent is to insure 20% to regions and that a single organization represents each of the seven regions. The workgroup encourages communication between all entities, and to make sure that all are fully aware of changes and new proposals.

While HB 4146 is still in the implementation phase, the work group does not recommend any additional Legislative action regarding the regional distribution of revenue or regional boundaries.

(b) Barriers to expansion and maintenance of recreational tourism in each tourism region.

The work group identified a recent Oregon Supreme Court decision relating to the use of pre-activity recreational releases as a major barrier to expansion and maintenance of recreational tourism in the state. In 2014, the Oregon Supreme Court ruled (*Bagley v. Mt. Bachelor*) that a pre-activity release in a ski season pass agreement was "unconscionable and therefore unenforceable". This decision renders the use of pre-activity releases ineffective as a tool for managing the potential liability of recreational providers. The work group expressed concern that this would significantly increase insurance and litigation costs for major segments of the industry. The work group identified a wide range of activities that could be affected. These include, but not limited to, ski areas, rafting, biking, running, mountain climbing, team sports, and motor racing.

A potential way to address the issue is passage of a statute relating to liability and pre-activity releases. Given the potential risk to the recreational industry, the work group recommends that the Legislature consider legislation that would address this issue and provide some certainty for recreation industry providers.

(c) The optimal frequency for distribution of state transient lodging tax revenue and whether a mandatory distribution schedule should be adopted.

Travel Oregon briefed the work group on the current two-step process of collection and allocation. The first step is the distribution from the collection agency (Department of Revenue) to Travel Oregon. This revenue is distributed on a monthly basis. Travel Oregon then distributes revenue to the regional cooperative tourisms units annually. The amount allocated is based on the previous year's collections. There is a 6-month lag between collection and distribution. This reduces uncertainty by negating the need to forecast future revenue.

The work group agreed that the current system works well for local budgeting purposes and no further changes are needed.

(d) The feasibility of exempting homeless individuals from liability for the state transient lodging tax.

The work group received testimony from the Department of Human Services and the Department of Housing and Community Development on the extent of homelessness in Oregon and policies designed to help homeless individuals and families. The work group recognized the importance of addressing the needs of homeless citizens, but concluded that providing tax relief through the transient lodging tax was not administratively feasible. The work group recommends that no action be taken on this issue.

(e) Whether and under what conditions the Department of Revenue may share with local governments data that reflect payment of the state transient lodging tax in order to assist the local governments with enforcement of local transient lodging taxes.

The Department of Revenue, along with the League of Oregon Cities discussed the interaction of the state and local transient lodging taxes currently imposed. The Department of Revenue informed the work group that they have received legal advice from the Attorney General that they do not currently have the authority to share taxpayer information with local taxing entities.

The work group acknowledged the compliance issues associated with the structural changes that the transient lodging industry is undergoing and agreed that information sharing among tax collection entities would help ensure compliance and uniform treatment of taxpayers. Therefore, the work group recommends that the Legislature modify the current statute to allow for information sharing between the Department of Revenue and local transient lodging taxing authorities.

(f) Regular reporting by the Oregon Tourism Commission to committees of the Legislative Assembly on demonstrated return on investment, geographic equity, and community support with respect to awards of moneys and grants by the Tourism Commission.

Travel Oregon reviewed the various reports that the Tourism Commission prepares on a regular basis with the work group. These reports include an annual financial report, performance audits, and the Tourism Commission's strategic plan and budget, as well as any modifications to the budget.

HB 4146 directs the Tourism Commission to submit a new annual report to the Legislative Fiscal Officer that identifies sources and uses of funds. The report will include metrics on return on investment, geographic equity, and community support. Travel Oregon staff informed the work group that they were prepared to develop this report and saw no problem in issuing the first such report on or before the statutory deadline of October 1, 2017.

The work group agrees that the new report will provide valuable information to policy makers. No further legislative actions are recommended at this time.