FINAL BILL REPORT
EHB 1069

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Synopsis as Enacted

Brief Description: Requiring performance audits for tax preferences.

Sponsors: By Representatives McIntire, Conway, Priest, Upthegrove, Kilmer, Moeller, Dickerson, Williams, Schual-Berke, Nixon, Springer, Sells, P. Sullivan, Green, Lovick, Kenney, Haigh, Wallace, Kagi, Simpson, Linville, Morris, Wood, Hunter, Lantz, Hudgins, Ericks, Darneille, Clibborn, Sommers, Morrell, Takko, O'Brien, Appleton, Hunt, Santos, Ormsby, Murray and Chase.

House Committee on Finance
Senate Committee on Ways & Means

Background:

Tax exemptions, exclusions, deductions, credits, deferrals, and preferential rates are known as tax preferences. The Department of Revenue (Department) publishes a report on tax preferences every four years. The report covers more than 400 tax preferences and describes each preference, the year of enactment, the purpose of the preference (or the Department's best estimate of the purpose), an indication of primary beneficiaries, and estimated fiscal impact.

The Washington Sunset Act of 1977 establishes a procedure for reviewing and terminating state agencies or programs. If the Legislature sets a termination date for an agency or program, the Joint Legislative Audit and Review Committee (JLARC) conducts a review of the agency or program and makes recommendations to the Legislature. The Legislature may allow the agency or program to terminate as scheduled, may allow the agency or program to continue with another review scheduled for a later date, or may allow the agency or program to continue without scheduling further review. The Sunset Act does not apply to tax preferences.

In 1982 the Legislature enacted legislation that began a similar sunset procedure for tax preferences. The legislation directed the Joint Select Committee on Sunset Review to draft a bill that would provide a schedule for terminating all tax preferences. This legislation also created a process for reviewing each tax preference before its scheduled termination. The review was to be performed by the Legislative Budget Committee, a predecessor of the JLARC. The Joint Select Committee on Sunset Review drafted the bill creating a termination schedule for tax preferences. This bill was introduced during the 1983 session, but was not enacted. The process created in 1982 for sunset review of tax preferences remains in statute. But in the absence of a statutory termination schedule, the process has not been implemented.

Summary:

The Legislature recognizes that tax preferences are intended to be in the public interest. The Legislature finds that periodic review of tax preferences is needed to determine if their continued existence will serve the public interest.

The Citizen Commission for Performance Measurement of Tax Preferences (Commission) is created, with two nonvoting members and five voting members. The state auditor and the chair of the Joint Legislative Audit and Review Committee are nonvoting members. The chair of each of the two largest caucuses of the Senate and the two largest caucuses of the House of Representatives must each appoint a voting member. None of these appointees may be members of the Legislature. The Governor must select the seventh member.

The Commission must develop a schedule for review of tax preferences at least once every 10 years. The Commission is to schedule all tax preferences for review, except those required by constitutional law, those the Commission determines are a critical part of the structure of the tax system, the small business and occupation tax credit, sales and use exemptions for food and prescription drugs, property tax relief for retired persons, property tax valuations based on current use, and tax exemptions for machinery and equipment for manufacturing, research and development, or testing. An expedited review may be provided for tax preferences with an estimated biennial fiscal impact of $10 million or less. The Commission must provide a process for effective citizen input during its deliberations.

The JLARC must review tax preferences according to the10-year schedule developed by the Commission. The JLARC must consider, but is not limited to, the following factors in the review:

(a) the classes of individuals, types of organizations, or types of industries whose state tax liabilities are directly affected by the tax preference;

(b) public policy objectives that might provide a justification for the tax preference, including the extent to which the preference encourages business growth or relocation into this state, promotes growth or retention of high wage jobs, or helps stabilize communities;

(c) evidence that the existence of the tax preference has contributed to the achievement of any of the public policy objectives;

(d) the extent to which continuation of the tax preference might contribute to any of the public policy objectives;

(e) the extent to which terminating the tax preference may have negative effects on beneficiaries of the tax preference, and the extent to which resulting higher taxes may have negative effects on employment and the economy;

(f) the extent to which the tax preference may provide unintended benefits to an individual, organization, or industry;

(g) the feasibility of modifying the preference to provide for adjustment or recapture of the tax benefits of the preference if the objectives are not fulfilled;

(h) fiscal impacts of the tax preference, including past impacts and expected future impacts if it is continued;

(i) the extent to which termination of the tax preference would affect the distribution of liability for payment of state taxes; and

(j) consideration of similar tax preferences adopted in other states, and potential public policy benefits that might be gained by incorporating corresponding provisions in Washington.

For each tax preference, the JLARC must provide a recommendation as to whether the tax preference should be continued without modification, modified, scheduled for sunset review at a future date, or terminated immediately. The JLARC may recommend accountability standards for the future review of a tax preference.

The JLARC must submit a report to the Commission by August 30 of each year. The Commission may review and comment on the JLARC report. The JLARC must prepare a final report that includes any comments of the Commission and submit the report to the House Finance and Senate Ways & Means Committees by December 30. The legislative committees are to hold a joint hearing on the report.

The first report of the JLARC is due by August 30, 2006. The first report of the Commission to the Legislature is due by December 30, 2006. A special report on a shorter time line is required for tax preferences that expire before January 1, 2007. The JLARC must submit this special report to the Legislature by January 12, 2006.

Staff support to the Commission is provided by the JLARC, and the Department of Revenue and Employment Security Department are directed to provide information needed by the Commission or the JLARC.

Statutes relating to the unimplemented 1982 tax preference review are repealed.

Votes on Final Passage:

House	63	32
House	61	34
Senate	33	15

Effective: June 7, 2006