

# HOUSE BILL REPORT

## ESB 5843

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### As Passed House - Amended:

April 26, 2013

**Title:** An act relating to strengthening the review of the legislature's goals for tax preferences by requiring that every new tax preference provide a statement of legislative intent and include an expiration date where applicable.

**Brief Description:** Strengthening the review of the legislature's goals for tax preferences by requiring that every new tax preference provide a statement of legislative intent and include an expiration date where applicable.

**Sponsors:** Senators Tom, Billig, Hill, Hobbs, Murray, Darneille, Kohl-Welles, Conway and Frockt.

### Brief History:

#### Committee Activity:

Finance: 4/19/13, 4/23/13 [DPA].

#### Floor Activity:

Passed House - Amended: 4/26/13, 67-29.

### Brief Summary of Engrossed Bill (As Amended by House)

- Requires that any new tax preference legislation include legislative intent language, metrics, and data to facilitate the review of the preference.
- Creates a 10-year expiration date for new tax preferences that do not separately specify an expiration date.
- Requires taxpayers to report the amount of tax incentive utilized to the Department of Revenue (DOR), regardless of the type of tax preference.
- Requires taxpayers designating creating jobs or increasing industry competitiveness as the new tax preference general purpose, to file an annual survey with the DOR.
- Allows data collected by the DOR to be disclosed, unless the taxpayer can show economic hardship by disclosure of the data or the tax benefit to the taxpayer is \$10,000 or less for the calendar year.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

- Requires the Joint Legislative Audit and Review Committee to provide recommendations, by January 1, 2015, regarding specific criteria to include in a tax performance statement to ensure useful data collection for tax performance reviews.

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## HOUSE COMMITTEE ON FINANCE

**Majority Report:** Do pass as amended. Signed by 8 members: Representatives Carlyle, Chair; Tharinger, Vice Chair; Fitzgibbon, Hansen, Lytton, Pollet, Reykdal and Springer.

**Minority Report:** Do not pass. Signed by 5 members: Representatives Nealey, Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Condotta, Vick and Wilcox.

**Staff:** Dominique Meyers (786-7150).

### **Background:**

Washington derives most of its revenue from various excise taxes and property tax. The major excise taxes are the state sales and use tax and the business and occupation (B&O) tax. Washington law also provides numerous reductions in these various taxes through tax exemptions, deductions, credits, deferrals, and preferential tax rates. Collectively, these tax reductions are referred to as tax preferences.

State law requires a periodic review of most excise and property tax preferences to determine if their continued existence or modification serves the public interest. The enabling legislation assigns specific roles in the review process to two different entities. The job of scheduling the review of tax preferences, holding public hearings, and commenting on the reviews is assigned to the Citizen Commission for Performance Measurement of Tax Preferences (Commission). The analysis and reviews are assigned to the staff of the Joint Legislative Audit and Review Committee (JLARC).

The Commission develops a schedule to accomplish a review of tax preferences at least once every 10 years. The Commission is authorized to omit certain tax preferences from the schedule, such as: those required by constitutional law; the sales and use tax exemptions for machinery, equipment, and food; the small business credit for the B&O tax; the property tax relief program for retired persons; and tax preferences that the Commission determines are a critical part of the tax structure.

Tax preferences that have a statutory expiration date are scheduled for review before the preference expires. When reviewing tax preferences, JLARC considers a number of factors including the following: (1) the public policy objectives of the exemption; (2) whether terminating the tax preference may have negative effects on the category of taxpayers that currently benefit from the tax preference; (3) the extent to which resulting higher taxes may have negative effects on employment and the economy; and (4) the economic impact of the tax preference compared to the economic impact of government activities funded at the same level of expenditure as the tax preference.

Each year JLARC prepares a final report containing analysis of the tax preference and recommendations for the Legislature to consider regarding the continuation of the preference. In general, the JLARC recommendation categories are as follows: continue without modification; clarify or modify; and terminate. The Commission then reviews the JLARC recommendations and includes final comments in the report and can either endorse, endorse with additional comments, or not endorse the JLARC recommendation. The fiscal committees of the Legislature must jointly hold a public hearing to consider the final report.

**Summary of Amended Bill:**

New or expanded tax preferences are subject to a 10-year expiration date unless the legislation enacting the new or expanded tax preference provides an alternate date.

For any bill enacting a new tax preference, or expanding or extending an existing tax preference, the enacted bill must include legislative intent provisions that establish policy goals and related metrics that provide context or data for the tax preference review process by JLARC. If the new or expanded tax preference legislation does not include the requisite intent language, JLARC is not required to review the tax preference and there is a presumption that the Legislature intended for the tax preference to expire on its scheduled expiration date. Generally, the amount of tax preference claimed by a taxpayer is subject to disclosure. However, the Department of Revenue may waive the disclosure if: (1) the taxpayer can make a reasonable showing of economic harm from the disclosure; or (2) the tax preference benefit is \$10,000 or less to the taxpayer for the calendar year and the taxpayer requests nondisclosure.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) The bill is a step toward ensuring there is robust data, which is needed to facilitate proper tax preference reviews, allowing the Legislature to make informed decisions regarding continuance of tax preferences. This is good public policy that will provide transparency. Tax preferences are needed for businesses and make good economic sense, but transparency is an important component for good tax policy. This bill puts clarity into the tax exemption process but it would be best to do this to all tax preferences not just new tax preferences in future legislation. This legislation should include all tax breaks, not just future ones.

(In support with concerns) The concept of providing tax incentive categories is good policy. The Legislature should also go back and evaluate tax preferences that do not have intent language. The five-year automatic expiration date for future tax preferences would not be beneficial for some businesses. The removal of the confidentiality provisions for taxpayers

receiving tax preferences is bad policy and could harm those businesses that have their information disclosed. The current reports and surveys are problematic for businesses. To expand the reporting requirements to more businesses needs to be taken out of the bill.

(Opposed) None.

**Persons Testifying:** (In support) Andy Nicholas, Washington Budget and Policy Center; Nick Federici, Our Economic Future Coalition; Mark Johnson, Washington Retail Association; Kimberli Swenson, Parent Teacher Association; Steve Zemke, TaxSanity.org; and Sean Sullivan, Association of Western Pulp and Paper Workers Union.

(In support with concerns) Lonnie Johns-Brown, League of Women Voters of Washington; and Amber Carter, Association of Washington Business.

**Persons Signed In To Testify But Not Testifying:** None.