HOUSE BILL REPORT
ESB 5843

As Reported by House Committee On:
Finance

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].

Brief Summary of Engrossed Bill
(As Amended by Committee)

- Requires that any new tax preference legislation include legislative intent language, metrics, and data to facilitate the review of the preference.
- Requires any new tax preference legislation to include an expiration date where applicable.
- 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.
- Requires the Joint Legislative Audit and Review Committee to provide recommendations, by January 1, 2015, regarding specific criteria to include in

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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.

a tax performance statement to ensure useful data collection for tax performance reviews.

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:

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. The bill must also include an expiration date where applicable. An applicable tax preference is any tax preference except for those that clarify an ambiguity or correct a technical inconsistency.

Amended Bill Compared to Engrossed Bill:

The second substitute bill creates a 10-year expiration date for new tax preferences that do not separately specify an expiration date. In addition, the second substitute bill requires all new tax preferences to contain a tax preference performance statement, which requires the following elements: (1) the statement must designate a general purpose of the tax preference, as provided in the statute; (2) the statement must provide additional detailed information about the legislative purpose of the new tax preference; and (3) the statement must provide metrics and data requirements that allow JLARC and the Legislature to evaluate how effectively the tax preference is achieving its intended purpose. Taxpayers claiming a new tax preference with a designated purpose of creating jobs or improving industry competitiveness must file an annual survey with the Department of Revenue (DOR). Taxpayers claiming new tax preferences must report the amount claimed to the DOR. The taxpayer information is subject to public disclosure. The DOR may waive the public disclosure requirement for good cause, which may be demonstrated by a reasonable showing of economic harm if the information is publicly released. By January 1, 2015, JLARC must make recommendations on the types of metrics and data that should be required for the various general designated purposes for tax preferences.

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.