SENATE BILL REPORT
ESB 5843

As Amended by House, 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: Ways & Means: 2/27/13, 3/01/13 [DP, w/oRec].
Passed Senate: 3/07/13, 47-0.
Passed House: 4/26/13, 67-29.

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.
Signed by Senators Hill, Chair; Baumgartner, Vice Chair; Honeyford, Capital Budget Chair; Hargrove, Ranking Member; Nelson, Assistant Ranking Member; Bailey, Becker, Braun, Conway, Dammeier, Fraser, Hasegawa, Hatfield, Hewitt, Keiser, Kohl-Welles, Murray, Parlette, Ranker, Rivers and Tom.

Minority Report: That it be referred without recommendation.
Signed by Senator Padden.

Staff: Juliana Roe (786-7438)

Background: Washington State derives most of its revenue from various excise taxes and the state 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 services 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 responsibility for conducting the reviews is 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 ten 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: the public policy objectives of the exemption; whether terminating the tax preference may have negative effects on the category of taxpayers that currently benefit from the tax preference; the extent to which resulting higher taxes may have negative effects on employment and the economy; and 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 its recommendations as to whether the tax preferences review that year should be continued without modification, modified, or terminated. The fiscal committees of the Legislature must jointly hold a public hearing to consider the final report.

Summary of Engrossed 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, related metrics that provide context or data for the tax preference review process by JLARC, as well as 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.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill takes effect on July 1, 2013.

Staff Summary of Public Testimony: PRO: This bill will provide more state accountability and transparency. It will provide a consistent message regarding taxes and tax preferences. So many of the JLARC reports provide that because no intent section was included in the legislation, it cannot determine whether the bill is meeting the Legislature's objectives. This bill will help provide better reports and require that more tax preferences get reviewed. Tax breaks amount to state spending. The state should prove that the tax breaks work.

OTHER: This is a good bill that could benefit from some clarification. The intent sections in many bills are vetoed by the Governor's office. That is an issue to consider. There are other improvements that can be made, including but not limited to setting forth what type of information should be included in an intent section such as its purpose, measurement, and reporting requirements.

Persons Testifying: PRO: Senator Tom, prime sponsor; Andy Nicholas, WA Budget & Policy Center; Jennifer Estroff, Children's Alliance; Nick Federici, Our Economic Future Coalition; Mark Johnson, WA Retail Assn.

OTHER: Amber Carter, Assn. of WA Business.

House Amendment(s): The amendments provides a ten-year expiration date for new tax preferences that do not separately specify an expiration date. In addition, all new tax preferences must 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 DOR. 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. Taxpayers may request DOR to maintain the confidentiality of the amount of tax preference claimed for any calendar year, if the taxpayer did not benefit by more than $10,000 from the tax preference during the calendar year. 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.