
SUBSTITUTE SENATE BILL 5847

State of Washington

65th Legislature

2018 Regular Session

By Senate Ways & Means (originally sponsored by Senators Carlyle, Hasegawa, and Hunt)

READ FIRST TIME 02/06/18.

1 AN ACT Relating to the review process of the citizen commission
2 for performance measurement of tax preferences; amending RCW
3 43.136.011, 43.136.045, 43.136.055, 82.32.808, and 43.06.400; adding
4 a new section to chapter 84.55 RCW; and adding a new section to
5 chapter 82.32 RCW.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 **Sec. 1.** RCW 43.136.011 and 2011 c 335 s 1 are each amended to
8 read as follows:

9 The legislature recognizes that tax preferences are enacted to
10 meet objectives which are determined to be in the public interest.
11 However, some tax preferences may not be efficient or equitable tools
12 for the achievement of current public policy objectives. Given the
13 changing nature of the economy and tax structures of other states,
14 the legislature finds that periodic performance audits of tax
15 preferences are needed to determine if their continued existence will
16 serve the public interest. The legislature further finds that tax
17 preferences that are enacted for economic development purposes must
18 demonstrate growth in personal income and full-time family-wage jobs
19 with health and retirement benefits. Given that an opportunity cost
20 exists with each economic choice, it is the intent of the legislature
21 (~~that the overall impact of~~) to understand how economic

1 development-focused tax preferences benefit the state's economy, both
2 statewide and regions within the state.

3 **Sec. 2.** RCW 43.136.045 and 2011 c 335 s 2 are each amended to
4 read as follows:

5 (1) The citizen commission for performance measurement of tax
6 preferences must develop a schedule to accomplish an orderly review
7 of tax preferences at least once every ten years. In determining the
8 schedule, the commission must consider the order the tax preferences
9 were enacted into law, in addition to other factors including but not
10 limited to grouping preferences for review by type of industry,
11 economic sector, or policy area. The commission may elect to include,
12 anywhere in the schedule, a tax preference that has a statutory
13 expiration date. The commission must omit from the schedule tax
14 preferences that are required by constitutional law, sales and use
15 tax exemptions for machinery and equipment for manufacturing,
16 research and development, or testing, the small business credit for
17 the business and occupation tax, sales and use tax exemptions for
18 food and prescription drugs, (~~property tax relief for retired~~
19 ~~persons,~~) and property tax valuations based on current use, and may
20 omit any tax preference that the commission determines is a critical
21 part of the structure of the tax system. As an alternative to the
22 process under RCW 43.136.055, the commission may recommend to the
23 joint legislative audit and review committee an expedited review
24 process for any tax preference.

25 (2) The commission must revise the schedule as needed each year,
26 taking into account newly enacted or terminated tax preferences. The
27 commission must deliver the schedule to the joint legislative audit
28 and review committee by September 1st of each year.

29 (3) The commission must provide a process for effective citizen
30 input during its deliberations.

31 **Sec. 3.** RCW 43.136.055 and 2011 c 335 s 3 are each amended to
32 read as follows:

33 (1) The joint legislative audit and review committee must review
34 tax preferences according to the schedule developed under RCW
35 43.136.045. The committee must consider, but not be limited to, the
36 following factors in the review as relevant to each particular tax
37 preference:

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

4 (b) The overall effective tax rate for the industry groups
5 benefiting from the tax preference. "Effective tax rate" has the same
6 meaning as provided in RCW 43.06.400;

7 (c) Public policy objectives that might provide a justification
8 for the tax preference, including but not limited to the legislative
9 history, any legislative intent, or the extent to which the tax
10 preference encourages business growth or relocation into this state,
11 promotes growth or retention of high wage jobs, or helps stabilize
12 communities;

13 ~~((e))~~ (d) Evidence that the existence of the tax preference has
14 contributed to the achievement of any of the public policy
15 objectives;

16 ~~((d))~~ (e) The extent to which continuation of the tax
17 preference might contribute to any of the public policy objectives;

18 ~~((e))~~ (f) The extent to which the tax preference may provide
19 unintended benefits to an individual, organization, or industry other
20 than those the legislature intended;

21 ~~((f))~~ (g) The extent to which terminating the tax preference
22 may have negative effects on the category of taxpayers that currently
23 benefit from the tax preference, and the extent to which resulting
24 higher taxes may have negative effects on employment and the economy;

25 ~~((g))~~ (h) The feasibility of modifying the tax preference to
26 provide for adjustment or recapture of the tax benefits of the tax
27 preference if the objectives are not fulfilled;

28 ~~((h))~~ (i) Fiscal impacts of the tax preference, including past
29 impacts and expected future impacts if it is continued. For the
30 purposes of this subsection, "fiscal impact" includes an analysis of
31 the general effects of the tax preference on the overall state
32 economy(~~(, including, but not limited to, the effects of the tax~~
33 ~~preference on the consumption and expenditures of persons and~~
34 ~~businesses within the state;~~

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

37 ~~(j) The economic impact of the tax preference compared to the~~
38 ~~economic impact of government activities funded by the tax for which~~
39 ~~the tax preference is taken at the same level of expenditure as the~~
40 ~~tax preference. For purposes of this subsection the economic impact~~

1 ~~shall be determined using the Washington input-output model as~~
2 ~~published by the office of financial management)) and regions within~~
3 ~~the state including, but not limited to, the effects of the tax~~
4 ~~preference on the consumption and expenditures of persons and~~
5 ~~businesses within the state, employment, and personal income;~~

6 (j) The extent to which termination of the tax preference would
7 affect the distribution of liability for payment of state taxes;

8 (k) Using economic modeling techniques, evaluate potential
9 economic impacts of the tax preference compared to the economic
10 impact of government activities funded at the same level as the
11 preference;

12 ~~((k))~~ (l) Consideration of similar tax preferences adopted in
13 other states, and potential public policy benefits that might be
14 gained by incorporating corresponding provisions in Washington.

15 (2) For each tax preference, the committee must provide a
16 recommendation as to whether the tax preference should be continued
17 without modification, modified, scheduled for sunset review at a
18 future date, or terminated immediately. The committee may recommend
19 accountability standards for the future review of a tax preference.

20 **Sec. 4.** RCW 82.32.808 and 2017 c 135 s 8 are each amended to
21 read as follows:

22 (1) As provided in this section, every bill enacting a new tax
23 preference must include a tax preference performance statement,
24 unless the legislation enacting the new tax preference contains an
25 explicit exemption from the requirements of this section.

26 (2) A tax preference performance statement must state the
27 legislative purpose for the new tax preference. The tax preference
28 performance statement must indicate one or more of the following
29 general categories, by reference to the applicable category specified
30 in this subsection, as the legislative purpose of the new tax
31 preference:

32 (a) Tax preferences intended to induce certain designated
33 behavior by taxpayers;

34 (b) Tax preferences intended to improve industry competitiveness;

35 (c) Tax preferences intended to increase or maintain personal
36 income, or to create or retain jobs;

37 (d) Tax preferences intended to reduce structural inefficiencies
38 in the tax structure;

1 (e) Tax preferences intended to provide tax relief for certain
2 businesses or individuals; or

3 (f) A general purpose not identified in (a) through (e) of this
4 subsection.

5 (3) In addition to identifying the general legislative purpose of
6 the tax preference under subsection (2) of this section, the tax
7 preference performance statement must provide additional detailed
8 information regarding the legislative purpose of the new tax
9 preference.

10 (4) A new tax preference performance statement must specify
11 clear, relevant, and ascertainable metrics and data requirements that
12 allow the joint legislative audit and review committee and the
13 legislature to measure the effectiveness of the new tax preference in
14 achieving the purpose designated under subsection (2) of this
15 section.

16 (5) If the tax preference performance statement for a new tax
17 preference indicates a legislative purpose described in subsection
18 (2)(b) or (c) of this section, any taxpayer claiming the new tax
19 preference must file an annual tax performance report in accordance
20 with RCW 82.32.534.

21 (6)(a) Taxpayers claiming a new tax preference must report the
22 amount of the tax preference claimed by the taxpayer to the
23 department as otherwise required by statute or determined by the
24 department as part of the taxpayer's regular tax reporting
25 responsibilities. A taxpayer required to report the amount of a new
26 tax preference as part of the taxpayer's regular tax reporting
27 responsibilities who fails to do so may not claim the tax preference
28 beginning in the following calendar year after it is discovered that
29 the taxpayer erroneously failed to report unless the taxpayer files
30 an amended return. For new tax preferences allowing certain types of
31 gross income of the business to be excluded from business and
32 occupation or public utility taxation, the tax return must explicitly
33 report the amount of the exclusion, regardless of whether it is
34 structured as an exemption or deduction, if the taxpayer is otherwise
35 required to report taxes to the department on a monthly or quarterly
36 basis. For a new sales and use tax exemption, the total purchase
37 price or value of the exempt product or service subject to the
38 exemption claimed by the buyer must be reported on an addendum to the
39 buyer's tax return if the buyer is otherwise required to report taxes
40 to the department on a monthly or quarterly basis and the buyer is

1 required to submit an exemption certificate, or similar document, to
2 the seller.

3 (b) This subsection does not apply to:

4 (i) Property tax exemptions;

5 (ii) Tax preferences required by constitutional law;

6 (iii) Tax preferences for which the tax benefit to the taxpayer
7 is less than one thousand dollars per calendar year; or

8 (iv) Taxpayers who are annual filers.

9 (c) The department may waive the filing requirements of this
10 subsection for taxpayers who are not required to file electronically
11 any return or report under this chapter.

12 (7)(a) Except as otherwise provided in this subsection, the
13 amount claimed by a taxpayer for any new tax preference is subject to
14 public disclosure and is not considered confidential tax information
15 under RCW 82.32.330, if the reporting periods subject to disclosure
16 ended at least twenty-four months prior to the date of disclosure and
17 the taxpayer is required to report the amount of the tax preference
18 claimed by the taxpayer to the department under subsection (6) of
19 this section.

20 (b)(i) The department may waive the public disclosure requirement
21 under (a) of this subsection (7) for good cause. Good cause may be
22 demonstrated by a reasonable showing of economic harm to a taxpayer
23 if the information specified under this subsection is disclosed. The
24 waiver under this subsection (7)(b)(i) only applies to the new tax
25 preferences provided in chapter 13, Laws of 2013 2nd sp. sess.

26 (ii) The amount of the tax preference claimed by a taxpayer
27 during a calendar year is confidential under RCW 82.32.330 and may
28 not be disclosed under this subsection if the amount for the calendar
29 year is less than ten thousand dollars.

30 (c) In lieu of the disclosure and waiver requirements under this
31 subsection, the requirements under RCW 82.32.534 apply to any tax
32 preference that requires a tax performance report.

33 (8) If a new tax preference does not include the information
34 required under subsections (2) through (4) of this section, the joint
35 legislative audit and review committee is not required to perform a
36 tax preference review under chapter 43.136 RCW, and it is
37 legislatively presumed that it is the intent of the legislature to
38 allow the new tax preference to expire upon its scheduled expiration
39 date.

1 (9) For the purposes of this section, "tax preference" and "new
2 tax preference" have the same meaning as provided in RCW 82.32.805.

3 **Sec. 5.** RCW 43.06.400 and 2013 c 225 s 605 are each amended to
4 read as follows:

5 (1) Except as otherwise provided in this section, beginning in
6 January ((1984)) 2020, and in January of every ((fourth)) second year
7 thereafter, the department of revenue must submit to the legislature
8 prior to the regular session a listing of the amount of reduction for
9 the current and next biennium in the revenues of the state or the
10 revenues of local government collected by the state as a result of
11 tax exemptions. The listing must include an estimate of the revenue
12 lost from the tax exemption, the purpose of the tax exemption, the
13 persons, organizations, or parts of the population which benefit from
14 the tax exemption, and whether or not the tax exemption conflicts
15 with another state program. The listing must include but not be
16 limited to the following revenue sources:

17 (a) Real and personal property tax exemptions, deferrals, and
18 special valuation programs under Title 84 RCW;

19 (b) Business and occupation tax exemptions, deductions, and
20 credits under chapter 82.04 RCW;

21 (c) Retail sales and use tax exemptions under chapters 82.08,
22 82.12, and 82.14 RCW;

23 (d) Public utility tax exemptions and deductions under chapter
24 82.16 RCW;

25 (e) Food fish and shellfish tax exemptions under chapter 82.27
26 RCW;

27 (f) Leasehold excise tax exemptions under chapter 82.29A RCW;

28 (g) Motor vehicle and special fuel tax exemptions and refunds
29 under chapter 82.38 RCW;

30 (h) Aircraft fuel tax exemptions under chapter 82.42 RCW;

31 (i) Motor vehicle excise tax exclusions under chapter 82.44 RCW;
32 and

33 (j) Insurance premiums tax exemptions under chapter 48.14 RCW.

34 (2) The department of revenue must prepare the listing required
35 by this section with the assistance of any other agencies or
36 departments as may be required.

37 (3) The department of revenue must present the listing to the
38 ways and means committees of each house in public hearings.

1 (4) Beginning in January (~~(1984)~~) 2020, and every (~~(four)~~) two
2 years thereafter the governor is requested to review the report from
3 the department of revenue and may submit recommendations to the
4 legislature with respect to the repeal or modification of any tax
5 exemption. The ways and means committees of each house and the
6 appropriate standing committee of each house must hold public
7 hearings and take appropriate action on the recommendations submitted
8 by the governor.

9 (~~(As used in this section, "tax exemption" means an~~
10 ~~exemption, exclusion, or deduction from the base of a tax; a credit~~
11 ~~against a tax; a deferral of a tax; or a preferential tax rate.~~

12 (~~(6) For purposes of the listing due in January 2012, the~~
13 ~~department of revenue does not have to prepare or update the listing~~
14 ~~with respect to any tax exemption that would not be likely to~~
15 ~~increase state revenue if the exemption was repealed or otherwise~~
16 ~~eliminated.)) The January 2020 listing and every subsequent listing
17 must include the following additional sections:~~

18 (a) A section with the estimated effective tax rate for each
19 industry. In addition, an estimate for each industry of employment
20 levels, major taxes paid per employee within each industry, and the
21 industry's average wage;

22 (b) A section that shows historical and projected state general
23 fund collections as a percentage of state gross domestic product and
24 state personal income;

25 (c) A section that provides a summary of the transparency and
26 accountability requirements under RCW 82.32.805 and 82.32.808; and

27 (d) The joint legislative audit and review committee's
28 recommendation for the tax preference, along with the citizen's
29 commission recommendation, for the most recent analysis of the tax
30 preference, if a review has been completed.

31 (6) The January 2020 listing and every subsequent listing must
32 include a section that provides the present value fiscal impact of
33 selected business tax preferences by decade of enactment.

34 (7) The definitions in this subsection apply throughout this
35 section unless the context clearly requires otherwise.

36 (a) "Effective tax rate" means the sum of Washington's major
37 taxes paid within each industry divided by the reported taxable
38 income for each industry.

39 (b) "Industry" means the North American industry classification
40 system code identified at the three-digit level.

1 (c) "Major taxes" means the following state taxes: Business and
2 occupation taxes, property taxes, estimated sales taxes, public
3 utility taxes, unemployment insurance contributions, and workers'
4 compensation premiums.

5 (d)(i) "Selected business tax incentive" means any of the tax
6 preferences specified in (d)(ii) of this subsection, if the
7 department determines that all or a majority of the taxpayers
8 entitled or likely to claim the tax preference are businesses.

9 (ii) Selected business tax incentives are limited to the
10 following tax preferences meeting the requirements in (d) of this
11 subsection:

12 (A) Deductions and credits under chapters 82.04 and 82.16 RCW;

13 (B) Sales and use tax exemptions and credits. This subsection
14 (7)(d)(ii)(B) does not include exclusions from the definition of
15 retail sale, selling price, or other definitional exclusions; and

16 (C) Preferential business and occupation tax rates.

17 (iii) "Selected business tax incentive" does not include any tax
18 preference:

19 (A) Enacted as part of the revenue act of 1935 (chapter 180, Laws
20 of 1935);

21 (B) Enacted for the purposes of ensuring compliance with the
22 state Constitution or the Constitution or laws of the United States;

23 (C) Enacted for the purpose of eliminating multiple taxation of
24 the same activity, transaction, or income; or

25 (D) That is obsolete or redundant.

26 (iv) "Selected business tax incentive" also includes any tax
27 preference requiring claimants to file an annual tax performance
28 report under RCW 82.32.534 if the tax preference otherwise meets the
29 definition of "selected business tax incentive" in this subsection
30 (7)(d).

31 (v) For purposes of this subsection (7)(d), the following
32 definitions apply unless the context clearly requires otherwise:

33 (A) "Business" means a person engaging in business but does not
34 include:

35 (I) A nonprofit entity;

36 (II) A public entity, including any entity created by one or more
37 governments; or

38 (III) An individual in his or her capacity as an employee.

39 (B) "Deduction" means a tax preference that allows specified
40 amounts to be deducted from the measure of tax, and the statute

1 authorizing the deduction explicitly contains some form of the word
2 "deduct."

3 (C) "Preferential business and occupation tax rate" means a
4 reduced tax rate under chapter 82.04 RCW provided to a specified
5 group of taxpayers otherwise taxable under a nonpreferential rate
6 within an existing tax classification rather than to all taxpayers
7 within the existing tax classification, regardless of whether the
8 reduced tax rate applies to activities that were formerly taxed at a
9 lower rate in addition to activities that were formerly taxed at a
10 higher rate. "Preferential business and occupation tax rate" does not
11 include the general rates for persons engaging in business as an
12 extractor, extractor for hire, manufacturer, or processor for hire;
13 persons making retail sales; persons making wholesale sales; persons
14 engaging in the activities taxed under RCW 82.04.280(1) (b) or (g);
15 or persons engaging in activities taxed under RCW 82.04.290(2)(a).

16 (D) "Taxpayer" means a person who is registered with the
17 department to file returns for any of the taxes imposed in chapter
18 82.04, 82.08, 82.12, or 82.16 RCW. With respect to sales and use tax
19 exemptions, "taxpayer" also includes any person regardless of whether
20 the person is registered with the department for tax purposes.

21 (e) "Taxable income" means the taxable amount reported for
22 business and occupation taxes under chapter 82.04 RCW and public
23 utility taxes under chapter 82.16 RCW. "Taxable income" does not
24 include any amount for which a credit is allowed under RCW 82.04.440.

25 (f) "Tax exemption" means an exemption, exclusion, or deduction
26 from the base of a tax, a credit against a tax, a deferral of a tax,
27 or a preferential tax rate.

28 NEW SECTION. Sec. 6. A new section is added to chapter 84.55
29 RCW to read as follows:

30 The department must publish a report on its web site on the
31 history and impact of the property tax levy limitations in this
32 chapter. The report must include the estimated foregone state
33 property tax revenues attributed to the levy limitations over time
34 going only as far back in time as the department has reliable data.
35 The report is due in September 2019 and must be updated by the end of
36 each subsequent September.

37 NEW SECTION. Sec. 7. A new section is added to chapter 82.32
38 RCW to read as follows:

1 (1)(a) Beginning in 2018 the department must publish a report on
2 its web site of the estimated loss of state and local retail sales
3 taxes from remote sales. The report must include the estimated
4 revenue increases under Engrossed House Bill No. 2163 (chapter 28,
5 Laws of 2017 3rd sp. sess.) and may also include estimates of the net
6 gain of state and local retail sales taxes under any pending federal
7 legislation that would grant states the authority to compel remote
8 sellers to collect retail sales tax on remote sales regardless of the
9 seller's physical location. The local retail sales tax data in the
10 report may be provided on a consolidated basis rather than broken out
11 by separate taxing authority.

12 (b) The department must update the report annually until:

13 (i) This state can legally impose sales tax collection duties on
14 remote sellers under federal law; and

15 (ii) The most recent report includes the estimates required in
16 (a) of this subsection through the last day that remote sellers did
17 not have a legal duty to collect retail sales tax on remote sales.

18 (2) For purposes of this section, the following definitions
19 apply:

20 (a) "Remote sale" means a retail sale into this state by a remote
21 seller;

22 (b) "Remote seller" means a seller that does not have a physical
23 presence in this state; and

24 (c) "Retail sale" has the same meaning as in RCW 82.04.050.

--- END ---