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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 3885

02/27/2020 Authored by Gomez, Marquart, Schultz and Carlson, A., The bill was read for the first time and referred to the Committee on Government Operations

1.1 A bill for an act
1.2 relating to taxation; modifying provisions related to state government; requiring
1.3 proposed tax expenditures to expire; establishing a legislative Tax Expenditure
1.4 Review Commission; providing appointments; requiring the governor's budget to
1.5 include performance data and recommendations on tax expenditures; modifying
1.6 the Department of Revenue tax expenditure report requirements; amending
1.7 Minnesota Statutes 2018, sections 3.192; 3.8853, subdivision 2; 16A.10, subdivision
1.8 1b; 16A.11, subdivision 3; 270C.11, subdivisions 2, 4, 6; 270C.13, subdivision 1;
1.9 proposing coding for new law in Minnesota Statutes, chapter 3.

1.10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.11 Section 1. Minnesota Statutes 2018, section 3.192, is amended to read:

1.12 3.192 REQUIREMENTS FOR NEW OR RENEWED TAX EXPENDITURES.

1.13 (a) Any bill that creates, renews, or continues a tax expenditure must include a statement
1.14 of intent that clearly provides the purpose of the tax expenditure and a standard or goal
1.15 against which its effectiveness may be measured.

1.16 (b) For purposes of this section, "tax expenditure" has the meaning given in section
1.17 270C.11, subdivision 6.

1.18 (c) Any bill that creates, renews, or continues a tax expenditure must include an expiration
1.19 date for the tax expenditure that is no more than eight years from the day the provision takes
1.20 effect.

1.21 EFFECTIVE DATE. This section is effective beginning with the 2021 legislative
1.22 session.

2.1 Sec. 2. Minnesota Statutes 2018, section 3.8853, subdivision 2, is amended to read:

2.2 Subd. 2. **Director; staff.** (a) The Legislative Budget Office Oversight Commission must
2.3 appoint a director and establish the director's duties. The director may hire staff necessary
2.4 to do the work of the office. The director serves in the unclassified service for a term of six
2.5 years and may not be removed during a term except for cause after a public hearing.

2.6 (b) The director and staff hired under this section must provide professional and technical
2.7 assistance to the Tax Expenditure Review Commission under section 3.8855.

2.8 Sec. 3. **[3.8855] TAX EXPENDITURE REVIEW COMMISSION.**

2.9 Subdivision 1. **Establishment.** The Tax Expenditure Review Commission is created to
2.10 review Minnesota's tax expenditures and evaluate their effectiveness and fiscal impact.

2.11 Subd. 2. **Definitions.** For the purposes of this section, "significant tax expenditure,"
2.12 "tax," and "tax expenditure" have the meanings given in section 270C.11, subdivision 6.

2.13 Subd. 3. **Membership.** (a) The commission consists of:

2.14 (1) two senators appointed by the senate majority leader;

2.15 (2) two senators appointed by the senate minority leader;

2.16 (3) two representatives appointed by the speaker of the house; and

2.17 (4) two representatives appointed by the minority leader of the house of representatives.

2.18 (b) Each appointing authority must make appointments by January 31 of the regular
2.19 legislative session in the odd-numbered year.

2.20 (c) The commissioner of revenue or a designee is an ex officio, nonvoting member of
2.21 the commission. If the chair of the house or senate committee with primary jurisdiction over
2.22 taxes is not an appointed member, the chair is an ex officio, nonvoting member of the
2.23 commission.

2.24 Subd. 4. **Duties.** (a) The commission must review and evaluate Minnesota's tax
2.25 expenditures on a regular, rotating basis. The commission must establish a review schedule
2.26 that ensures each tax will be reviewed by the commission at least once every eight years.
2.27 The commission may review expenditures affecting similar constituencies or policy areas
2.28 in the same year, but the commission must review a subset of the tax expenditures within
2.29 each tax type each year. To the extent possible, the commission must review a similar
2.30 number of tax expenditures within each tax type each year. The commission may decide
2.31 not to review a tax expenditure that is adopted by reference to federal law.

3.1 (b) Before December 1 of the year a tax expenditure is included in a commission report,
3.2 the commission must hold a public hearing on the expenditure, including but not limited to
3.3 a presentation of the review components in subdivision 5.

3.4 Subd. 5. **Components of review.** When reviewing a tax expenditure, the commission
3.5 must at a minimum:

3.6 (1) provide an estimate of the annual revenue lost as a result of the expenditure;

3.7 (2) identify the purpose of the tax expenditure if none was identified in the enacting
3.8 legislation in accordance with section 3.192;

3.9 (3) estimate the measurable impacts and efficiency of the tax expenditure in
3.10 accomplishing the purpose of the expenditure;

3.11 (4) compare the effectiveness of the tax expenditure and a direct expenditure with the
3.12 same purpose;

3.13 (5) propose potential modifications to a tax expenditure to increase its efficiency or
3.14 effectiveness;

3.15 (6) estimate the amount by which the tax rate for the relevant tax could be reduced if
3.16 the revenue lost due to the tax expenditure were applied to a rate reduction;

3.17 (7) if the tax expenditure is a significant tax expenditure, estimate the incidence of the
3.18 tax expenditure and the effect of the expenditure on the incidence of the state's tax system;
3.19 and

3.20 (8) consider the cumulative fiscal impacts of other state and federal taxes providing
3.21 benefits to taxpayers for similar activities.

3.22 Subd. 6. **Report to legislature.** (a) By December 15 of each year, the commission must
3.23 submit a written report to the legislative committees with jurisdiction over tax policy. The
3.24 report must detail the results of the commission's review of tax expenditures in the previous
3.25 calendar year, including the review components detailed in subdivision 5.

3.26 (b) The report may include any additional information the commission deems relevant
3.27 to the review of an expenditure.

3.28 (c) The legislative committees with jurisdiction over tax policy must hold a public hearing
3.29 on the report during the regular legislative session in the year following the year in which
3.30 the report was submitted.

3.31 Subd. 7. **Terms; vacancies.** (a) Members of the commission serve a term beginning
3.32 upon appointment and ending at the beginning of the regular legislative session in the next

4.1 odd-numbered year. The appropriate appointing authority must fill a vacancy for a seat of
4.2 a current legislator for the remainder of the unexpired term. Members may be removed or
4.3 replaced at the pleasure of the appointing authority.

4.4 (b) If a commission member ceases to be a member of the legislative body from which
4.5 the member was appointed, the member vacates membership on the commission.

4.6 Subd. 8. **Officers.** The commission shall elect a chair and vice-chair as presiding officers.
4.7 The chair and vice-chair must alternate every two years between members of the house of
4.8 representatives and senate. The chair and vice-chair may not be from the same legislative
4.9 chamber.

4.10 Subd. 9. **Staff.** Legislative Budget Office staff hired under section 3.8853, subdivision
4.11 2, must provide professional and technical assistance to the commission as the commission
4.12 deems necessary, including assistance with the report under subdivision 6.

4.13 Subd. 10. **Expenses.** The members of the commission and its staff shall be reimbursed
4.14 for all expenses actually and necessarily incurred in the performance of their duties.
4.15 Reimbursement for expenses incurred shall be made in accordance with policies adopted
4.16 by the Legislative Coordinating Commission.

4.17 **EFFECTIVE DATE; SPECIAL PROVISIONS.** (a) This section is effective the day
4.18 following final enactment.

4.19 (b) Appointing authorities for the commission must make initial appointments by January
4.20 15, 2021. The speaker of the house must designate one member of the commission to convene
4.21 the first meeting of the commission by July 1, 2021. The first report of the commission
4.22 under Minnesota Statutes, section 3.8855, subdivision 6 is due on December 15, 2021.

4.23 Sec. 4. Minnesota Statutes 2018, section 16A.10, subdivision 1b, is amended to read:

4.24 Subd. 1b. **Performance data format.** (a) Agencies shall present performance data that
4.25 measures the performance of programs in meeting program goals and objectives. Measures
4.26 reported may include indicators of outputs, efficiency, outcomes, and other measures relevant
4.27 to understanding each program. Agencies shall present as much historical information as
4.28 needed to understand major trends and shall set targets for future performance issues where
4.29 feasible and appropriate. The information shall appropriately highlight agency performance
4.30 issues that would assist legislative review and decision making.

4.31 (b) The commissioner of revenue must present equivalent performance data on tax
4.32 expenditures as is required for programs in paragraph (a). For the purposes of this section,

5.1 "tax expenditure" has the meaning given in section 270C.11, subdivision 6, but is limited
5.2 to tax expenditures in effect in the current or immediately upcoming biennium.

5.3 Sec. 5. Minnesota Statutes 2018, section 16A.11, subdivision 3, is amended to read:

5.4 Subd. 3. **Part two: detailed budget.** (a) Part two of the budget, the detailed budget
5.5 estimates both of expenditures and revenues, must contain any statements on the financial
5.6 plan which the governor believes desirable or which may be required by the legislature.
5.7 The detailed estimates shall include the governor's budget arranged in tabular form.

5.8 (b) Tables listing expenditures for the next biennium must show the appropriation base
5.9 for each year. The appropriation base is the amount appropriated for the second year of the
5.10 current biennium. The tables must separately show any adjustments to the base required by
5.11 current law or policies of the commissioner of management and budget. For forecasted
5.12 programs, the tables must also show the amount of the forecast adjustments, based on the
5.13 most recent forecast prepared by the commissioner of management and budget under section
5.14 16A.103. For all programs, the tables must show the amount of appropriation changes
5.15 recommended by the governor, after adjustments to the base and forecast adjustments, and
5.16 the total recommendation of the governor for that year.

5.17 (c) The detailed estimates must include a separate line listing the total cost of professional
5.18 and technical service contracts for the prior biennium and the projected costs of those
5.19 contracts for the current and upcoming biennium. They must also include a summary of the
5.20 personnel employed by the agency, reflected as full-time equivalent positions.

5.21 (d) The detailed estimates for internal service funds must include the number of full-time
5.22 equivalents by program; detail on any loans from the general fund, including dollar amounts
5.23 by program; proposed investments in technology or equipment of \$100,000 or more; an
5.24 explanation of any operating losses or increases in retained earnings; and a history of the
5.25 rates that have been charged, with an explanation of any rate changes and the impact of the
5.26 rate changes on affected agencies.

5.27 (e) For each tax expenditure in effect in the current or immediately upcoming biennium,
5.28 the governor must recommend in part two of the budget whether the tax expenditure should
5.29 be continued or discontinued. The governor's recommendation must include a description
5.30 of the fiscal and policy effects of continuing or discontinuing the expenditure. For the
5.31 purposes of this paragraph, "significant tax expenditure" has the meaning given in section
5.32 270C.11, subdivision 6.

6.1 Sec. 6. Minnesota Statutes 2018, section 270C.11, subdivision 2, is amended to read:

6.2 Subd. 2. **Preparation; submission.** The commissioner shall prepare a tax expenditure
6.3 budget for the state. The tax expenditure budget report shall be submitted to the legislature
6.4 by ~~February~~ November 1 of each even-numbered year.

6.5 **EFFECTIVE DATE.** This section is effective for the tax expenditure budget due on
6.6 November 1, 2022, and thereafter.

6.7 Sec. 7. Minnesota Statutes 2018, section 270C.11, subdivision 4, is amended to read:

6.8 Subd. 4. **Contents.** (a) The report shall detail for each tax expenditure item:

6.9 (1) the amount of tax revenue forgone;

6.10 (2) a citation of the statutory or other legal authority for the expenditure; ~~and;~~

6.11 (3) the year in which it was enacted or the tax year in which it became effective;

6.12 (4) the purpose of the expenditure, as identified in the enacting legislation in accordance
6.13 with section 3.192 or by the Tax Expenditure Review Commission;

6.14 (5) the incidence of the expenditure, if it is a significant tax expenditure; and

6.15 (6) the revenue-neutral amount by which the relevant tax rate could be reduced if the
6.16 expenditure were repealed.

6.17 (b) The report may contain additional information which the commissioner considers
6.18 relevant to the legislature's consideration and review of individual tax expenditure items.

6.19 This may include, but is not limited to, ~~statements of the intended purpose of the tax~~
6.20 ~~expenditure,~~ analysis of whether the expenditure is achieving that objective, and the effect
6.21 of the expenditure ~~device~~ on the ~~distribution of the tax burden~~ and administration of the tax
6.22 system.

6.23 **EFFECTIVE DATE.** This section is effective for the tax expenditure budgets due on
6.24 or after November 1, 2022.

6.25 Sec. 8. Minnesota Statutes 2018, section 270C.11, subdivision 6, is amended to read:

6.26 Subd. 6. **Definitions.** For purposes of this section, the following terms have the meanings
6.27 given:

6.28 (1) "business tax credit" means:

6.29 (i) a credit against the corporate franchise tax claimed by a C corporation; or

7.1 (ii) a credit against the individual income tax claimed by a pass-through entity that is
 7.2 allocated to its partners, members, or shareholders;

7.3 (2) "pass-through entity" means a partnership, limited liability corporation, or S
 7.4 corporation;

7.5 (3) "significant tax expenditure" means a tax expenditure, but excluding any tax
 7.6 expenditure that:

7.7 (i) is incorporated into state law by reference to a federal definition of income;

7.8 (ii) results in a revenue reduction of less than \$10,000,000 per biennium;

7.9 (iii) is a business tax credit; or

7.10 (iv) is a sales tax expenditure for a good or service that is exclusively used by businesses
 7.11 and not end consumers;

7.12 (4) "tax expenditure" means a tax provision which provides a gross income definition,
 7.13 deduction, exemption, credit, or rate for certain persons, types of income, transactions, or
 7.14 property that results in reduced tax revenue, but excludes provisions used to mitigate tax
 7.15 pyramiding; and

7.16 ~~(2)~~ (5) "tax" means any tax of statewide application or any tax authorized by state law
 7.17 to be levied by local governments generally. It does not include a special local tax levied
 7.18 pursuant to special law or to a special local tax levied pursuant to general authority that is
 7.19 no longer applicable to local governments generally; and

7.20 (6) "tax pyramiding" means imposing sales taxes under chapter 297A on intermediate
 7.21 business to business transactions rather than sales to final consumers.

7.22 **EFFECTIVE DATE.** This section is effective for tax expenditure budgets due on or
 7.23 after November 1, 2022.

7.24 Sec. 9. Minnesota Statutes 2018, section 270C.13, subdivision 1, is amended to read:

7.25 Subdivision 1. **Biennial report.** (a) The commissioner shall report to the legislature ~~by~~
 7.26 ~~March 1 of each odd-numbered year~~ on the overall incidence of the income tax, sales and
 7.27 excise taxes, and property tax.

7.28 (b) The commissioner must submit the report:

7.29 (1) by March 1, 2021; and

7.30 (2) by March 1, 2024, and each even-numbered year thereafter.

8.1 (c) The report shall present information on the distribution of the tax burden as follows:
8.2 (1) for the overall income distribution, using a systemwide incidence measure such as the
8.3 Suits index or other appropriate measures of equality and inequality; (2) by income classes,
8.4 including at a minimum deciles of the income distribution; and (3) by other appropriate
8.5 taxpayer characteristics.

8.6 **EFFECTIVE DATE.** This section is effective for the tax incidence reports due on or
8.7 after March 1, 2021.