SENATE
STATE OF MINNESOTA
NINETY-SECOND SESSION

S.F. No. 1102

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DATE	D-PG	OFFICIAL STATUS
02/17/2021	431	Introduction and first reading Referred to Taxes
04/12/2021	1692	Comm report: To pass and re-referred to State Government Finance and Policy and Elections See First Special Session 2021, HF9

A bill for an act

relating to taxation; modifying provisions related to state government; requiring proposed tax expenditures to expire; establishing a legislative Tax Expenditure Review Commission; providing appointments; modifying the Department of Revenue tax expenditure report requirements; amending Minnesota Statutes 2020, sections 3.192; 3.8853, subdivision 2; 270C.11, subdivisions 2, 4, 6; 270C.13, subdivision 1; proposing coding for new law in Minnesota Statutes, chapter 3.

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

Section 1. Minnesota Statutes 2020, section 3.192, is amended to read:

3.192 REQUIREMENTS FOR NEW OR RENEWED TAX EXPENDITURES.

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

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

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

EFFECTIVE DATE. This section is effective beginning with the 2022 legislative session.

Sec. 2. Minnesota Statutes 2020, section 3.8853, subdivision 2, is amended to read:

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

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

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

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

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

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

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

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

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

(4) two representatives appointed by the minority leader of the house of representatives; and

(5) the commissioner of revenue or the commissioner's designee.

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

(c) If the chair of the house or senate committee with primary jurisdiction over taxes is not an appointed member, the chair is an ex officio, nonvoting member of the commission.

Subd. 4. **Duties.** (a) In the first three years after the commission is established, the commission must complete an initial review of the state's tax expenditures. The initial review must identify the purpose of each of the state's tax expenditures, if none was identified in the enacting legislation in accordance with section 3.192. The commission may also identify metrics for evaluating the effectiveness of an expenditure.

(b) In each year following the initial review under paragraph (a), the commission must review and evaluate Minnesota's tax expenditures on a regular, rotating basis. The commission must establish a review schedule that ensures each tax will be reviewed by the commission at least once every ten years. The commission may review expenditures affecting similar constituencies or policy areas in the same year, but the commission must review a subset of the tax expenditures within each tax type each year. To the extent possible, the commission must review a similar number of tax expenditures within each tax type each year. The commission may decide not to review a tax expenditure that is adopted by reference to federal law.

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

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

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

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

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

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

(5) identify potential modifications to the tax expenditure to increase its efficiency or effectiveness;

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

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

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

(9) recommend whether the expenditure be continued, repealed, or modified.

(b) The commission may omit a component in paragraph (a) if the commission determines it is not feasible due to the lack of available data, third-party research, staff resources, or lack of a majority support for a recommendation.

Subd. 6. **Department of Revenue; research support.** (a) The research division of the Department of Revenue must provide the commission with the data required to complete the review components in subdivision 5, paragraph (a), clauses (1), (6), (7), and (8).

(b) At the request of the commission, the research division of the Department of Revenue must provide the commission with summary data on a tax expenditure in support of a review. Data shared under this section must comply with the rules governing statistical studies under section 270B.04.

Subd. 7. **Report to legislature.** (a) By December 15 of each year, the commission must submit a written report to the legislative committees with jurisdiction over tax policy. The report must detail the results of the commission's review of tax expenditures in the previous calendar year, including the review components detailed in subdivision 5.

(b) Notwithstanding paragraph (a), during the period of initial review under subdivision 4, the report may be limited to the purpose statements and metrics for evaluating the effectiveness of expenditures, as identified by the commission. The report may also include relevant publicly available data on an expenditure.

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

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

Subd. 8. **Terms; vacancies.** (a) Members of the commission serve a term beginning upon appointment and ending at the beginning of the regular legislative session in the next odd-numbered year. The appropriate appointing authority must fill a vacancy for a seat of a current legislator for the remainder of the unexpired term. Members may be removed or replaced at the pleasure of the appointing authority.

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

Subd. 9. **Officers.** The commission shall elect a chair and vice-chair as presiding officers. The chair and vice-chair must alternate every two years between members of the house of representatives and senate. The chair and vice-chair may not be from the same legislative chamber.

Subd. 10. **Staff.** Legislative Budget Office staff hired under section 3.8853, subdivision 2, must provide professional and technical assistance to the commission as the commission deems necessary, including assistance with the report under subdivision 7.

Subd. 11. **Expenses.** The members of the commission and its staff shall be reimbursed for all expenses actually and necessarily incurred in the performance of their duties. Reimbursement for expenses incurred shall be made in accordance with policies adopted by the Legislative Coordinating Commission.

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

(b) Appointing authorities for the commission must make initial appointments by January 15, 2022. The speaker of the house must designate one member of the commission to convene the first meeting of the commission by July 1, 2022. The first report of the commission under Minnesota Statutes, section 3.8855, subdivision 7, is due on December 15, 2022.

Sec. 4. Minnesota Statutes 2020, section 270C.11, subdivision 2, is amended to read:

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

EFFECTIVE DATE. This section is effective for tax expenditure budgets due on or after November 1, 2023.

Sec. 5. Minnesota Statutes 2020, section 270C.11, subdivision 4, is amended to read:

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

(1) the amount of tax revenue forgone~~,~~;

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

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

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

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

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

(b) The report may contain additional information which the commissioner considers relevant to the legislature's consideration and review of individual tax expenditure items. This may include~~,~~ but is not limited to~~, statements of the intended purpose of the tax expenditure,~~ analysis of whether the expenditure is achieving that objective~~,~~ and the effect of the expenditure ~~device~~ on the ~~distribution of the tax burden and~~ administration of the tax system.

EFFECTIVE DATE. This section is effective for tax expenditure budgets due on or after November 1, 2023.

Sec. 6. Minnesota Statutes 2020, section 270C.11, subdivision 6, is amended to read:

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

(1) "business tax credit" means:

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

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

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

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

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

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

(iii) is a business tax credit;

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

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

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

EFFECTIVE DATE. This section is effective for tax expenditure budgets due on or after November 1, 2023.

Sec. 7. Minnesota Statutes 2020, section 270C.13, subdivision 1, is amended to read:

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

(b) The commissioner must submit the report:

(1) by March 1, 2021; and

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

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

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