

STATE OF WASHINGTON

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**TASK FORCE ON TAX PREFERENCE  
REFORM**

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Marty Brown  
Office of Financial Management

Amber Carter  
Association of Washington Business

Jeff Chapman  
Washington Budget and Policy Center

Paul Guppy  
Washington Policy Center

Ross Hunter  
State Representative

Troy Kelley, State Representative  
Chair, Joint Legislative Audit and Review  
Committee

Bill Longbrake  
Governor's Council of Economic Advisors

James L. McIntire, *Chair*  
State Treasurer

Ed Orcutt  
State Representative

Phil Rockefeller  
State Senator

Joseph Zarelli, *Vice Chair*  
State Senator

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## AGENDA

August 18, 2010  
9:00 a.m. – 12:30 p.m.  
John A. Cherberg Building  
Senate Hearing Room 3  
Olympia, Washington

1. \*Approval of July 22, 2010 Meeting Minutes  
\*Adoption of Meeting Schedule
2. Observations on Tax Preference Review Process (EHB 1069 Reviews)
3. Presentation by the House Office of Program Research (OPR), Office of Financial Management (OFM) and the Department of Revenue (DOR) on the Fiscal Note Process Focused on Tax Preferences
4. Public Comment Period

\* Action Item

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July 22, 2010  
Meeting Minutes

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## TASK FORCE ON TAX PREFERENCE REFORM

### Members Present:

James McIntire, State Treasurer, *Chair*  
Representative Troy Kelley, Chair of JLARC  
Marty Brown, Director, OFM  
Representative Ross Hunter  
Representative Ed Orcutt  
Senator Phil Rockefeller  
Senator Joseph Zarelli, *Vice Chair*  
Amber Carter, Association of Washington Business  
Jeff Chapman, Washington Budget & Policy Center  
Paul Guppy, Washington Policy Center

### Members Absent:

Bill Longbrake, Governor's Council of Economic Advisors

### Staff:

Ruta Fanning, Legislative Auditor  
Keenan Konopaski, Audit Coordinator  
Cindy Evans, Assistant Attorney General  
Peter Heineccius, Research Analyst  
Dana Lynn, Research Analyst  
Mary Welsh, Research Analyst

### Welcome

Ruta Fanning opened the meeting at 10:10 a.m. and presided until election of the Chair.

### Election of Chair and Vice Chair

MOTION: Senator Rockefeller nominated James McIntire to serve as Chair. The nomination was seconded and approved by the Task Force.

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MOTION: Representative Orcutt nominated Senator Zarelli for Vice Chair. The nomination was seconded and approved.

## Introductions

Chair McIntire asked that members introduce themselves, and called for any amendments to the agenda. Amber Carter asked that an opportunity for public comment be added at the end of each agenda.

## Roles and Requirements of Task Force

Keenan Konopaski presented the roles and requirements of the Task Force set out in the enabling statute (ESSB 6444 § 103(10)).

Cindy Evans, Assistant Attorney General, presented an overview of ethics requirements and open public meetings.

Ruta Fanning presented proposed Task Force Rules of Procedure. Representative Orcutt asked that the Task Force attempt to reach sufficient consensus rather than vote whenever possible.

MOTION: Representative Hunter made a motion to adopt the draft rules of procedure. The motion was seconded and adopted.

## Planning for Future Meetings

### **Discussion**

Chair McIntire opened the meeting for members to discuss future meeting topics. The Chair summarized the discussion into the following categories:

- Experience of the Citizen's Tax Preference Commission;
- Fiscal notes on proposed tax preferences;
- Legislative intent;
- Process for development, review, termination and administration of tax preferences; and
- Tax preferences and budget development.

### **Public Comment**

Public comment was provided by omm'A Givens, Washington Public Employees Association; Chris Brown, tax attorney; and Ron Bueing, tax attorney.

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## **Schedule of Future Meetings**

The Task Force discussed the proposed meeting schedule of monthly meetings through November. Members decided on holding longer meetings, such as four hours long. The Chair asked staff to poll the members on availability and to schedule monthly meetings with possibly two August meetings.

Chair McIntire asked staff to provide time for public comment at the end of each meeting agenda.

The meeting was adjourned at 10:30 p.m.

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CHAIR

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VICE CHAIR

## Task Force on Tax Preference Reform Proposed Meeting Dates, Agenda Items, and Tasks

Proposed Meeting Date	Proposed Agenda Items/Tasks
August 18, 2010	<ul style="list-style-type: none"> <li>• Observations from Citizen Commission for Performance Measurement of Tax Preference on EHB 1069 Reviews                             <ul style="list-style-type: none"> <li>○ Solicit input from the Citizen Commission for Performance Measurement of Tax Preference and invite them to write comments or attend the August 18 Task Force meeting</li> </ul> </li> <li>• Fiscal Notes (presentations tailored toward tax preferences)                             <ul style="list-style-type: none"> <li>○ Roles of OFM, DOR, and others?</li> <li>○ Principles for developing fiscal notes?</li> <li>○ What analytical tools are used for quality assurance, accuracy, consistency, etc.)?</li> <li>○ What questions are addressed in fiscal notes?</li> <li>○ What other economic impacts are not addressed in fiscal notes?</li> </ul> </li> </ul>

Proposed Meeting Date	Proposed Agenda Items/Tasks
August 31, 2010	Presentations from legislative and agency staff on: <ul style="list-style-type: none"> <li>• Legislative intent</li> <li>• Process for development, review, termination and administration of tax preferences</li> <li>• Tax preferences and budget development</li> </ul>

Proposed Meeting Date	Proposed Agenda Items/Tasks
September 20, 2010	<ul style="list-style-type: none"> <li>• Task Force development of recommendations                             <ul style="list-style-type: none"> <li>○ Members to provide in writing to staff or bring to meeting</li> <li>○ Staff begin drafting report</li> </ul> </li> </ul>

Proposed Meeting Date	Proposed Agenda Items/Tasks
October 27, 2010	<ul style="list-style-type: none"> <li>• Discussion and input on preliminary report                             <ul style="list-style-type: none"> <li>○ Staff to provide draft of preliminary report to Task Force members (by 10/20)</li> </ul> </li> </ul>

Date Proposed Meeting Date	Proposed Agenda Items/Tasks
November 15, 2010	<ul style="list-style-type: none"> <li>• Adoption of final report                             <ul style="list-style-type: none"> <li>○ Staff to provide final report to Task Force members (by 11/8)</li> </ul> </li> </ul>

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## MEETING SCHEDULE FOR TASK FORCE ON TAX PREFERENCE REFORM

Meeting Date	Time	Location
August 18, 2010	9:00 a.m. – 12:30 p.m.	Senate Hearing Room 3 John A. Cherberg Building Olympia
August 31, 2010	9:00 a.m. – 12:30 p.m.	Senate Hearing Room 3 John A. Cherberg Building Olympia
September 20, 2010	9:00 a.m. – 12:30 p.m.	Senate Hearing Room 3 John A. Cherberg Building Olympia
October 27, 2010	9:00 a.m. – 12:30 p.m.	Senate Hearing Room 3 John A. Cherberg Building Olympia
November 15, 2010	9:00 a.m. – 12:30 p.m.	Senate Hearing Room 3 John A. Cherberg Building Olympia



# Overview of Tax Preference Performance Reviews

Presentation to Task Force on Tax  
Preference Reform  
August 18, 2010

*Keenan Konopaski, JLARC Audit Coordinator*



## Tax Preference Reviews

EHB 1069 (2006):

- Mandated performance reviews of Washington's tax preferences – over 10 years
- Outlined specific questions to be answered in reviews
- Created a Citizen Commission for Performance Measurement of Tax Preferences (Tax Preference Commission)

## What is a State Tax Preference?



- Definition includes:
  - Exemptions, exclusions or deductions from the base of a tax
  - Credits against a tax
  - Deferrals of a tax
  - Preferential tax rates
- There are currently almost 590 tax preferences enacted in state law

## Main Provisions of EHB 1069



- Citizen's Commission establishes a schedule of tax preferences to be reviewed over ten years
- Joint Legislative Audit and Review Committee (JLARC) staff independently conduct the reviews
- Reviews are conducted in accordance with generally accepted auditing standards
- Commission adds comments to the JLARC report, but cannot modify it
- Legislature holds hearings, may take action to continue, terminate or modify a preference



## Schedule Requirements



- Review of tax preferences over 10 years
- In the order that the tax preferences were enacted into law, except those with an expiration date may be included earlier
- Certain exemptions (about 50) are omitted from review per statute
- Other “critical” exemptions may be omitted by Citizens Commission
- Exemptions with impact under \$10 million may have an expedited review
- 10 year schedule revised annually

## Highlights of Reviews



- Legal History / Current Law
- Answers to Select Tax Preference Review Questions
  - Public Policy Objectives
  - Achievement of Objectives & Areas of Uncertainty
  - Beneficiaries
  - Taxpayer Savings
- Recommendations and Comments

## Possible JLARC recommendations



- JLARC issues audit recommendations (not policy recommendations)
- Recommendations may be to:
  - Continue;
  - Modify/clarify;
  - Add an expiration date and conduct another review prior to the expiration date; or
  - Terminate
- Citizens Commission comments may endorse recommendations or take other positions

## Contact Information



### **Keenan Konopaski**

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### **Additional information:**

JLARC:

[www.jlarc.leg.wa.gov](http://www.jlarc.leg.wa.gov)

Citizen Commission on Tax Preferences:


[www.citizentaxpref.wa.gov](http://www.citizentaxpref.wa.gov)

Task Force on Tax Preference Reform:

[www.taxpreftaskforce.leg.wa.gov](http://www.taxpreftaskforce.leg.wa.gov)

## Issues/Concerns Related to EHB 1069 Review of Tax Preferences

Issues/Concerns		Explanation/Example
1.	Legislative intent may be missing, making it difficult to determine the public policy objective.	Most tax preferences, especially those provided before the 1990s, lack a statement of intent.
2.	Legislative intent may be unclear, overly broad, or lack a targeted outcome.	The Legislature may state its intent to provide jobs, but may not specify how many jobs or whether those jobs are to be high wage jobs. Does the addition of a few low-wage jobs meet the objective?
3.	How does the Legislature evaluate the success of "little used" preferences?	For example, the wood biomass fuel exemption reviewed in 2008 had no participants.
4.	What does an expiration date imply about the Legislature's intent?	Does an expiration date mean the preference was intended to be temporary or simply revisited at a set date?
5.	Data to analyze some tax preferences is not required to be reported.	Most use tax exemptions are not required to be reported by the beneficiary.
6.	Taxpayer reports and surveys do not always contain adequate information for analysis.	For instance, surveys ask beneficiaries to report wages by three broad wage bands. It is impossible to determine an average wage from this information.
7.	Taxpayer report and survey responses may be unreliable.	Questions about part-time employment and new jobs creation may not be interpreted consistently. Not all of the questions are verified by DOR.
8.	Some tax preferences must be reviewed too soon after enactment, before data is available for analysis.	The candy manufacturer B&O tax credit must be reviewed in 2011 after only two quarters of taxpayer return information is available.
9.	Statute directs JLARC to determine how the termination of a tax preference would affect the "distribution of liability for payment of state taxes."	Does the Legislature mean the distribution of tax liability between: <ul style="list-style-type: none"> <li>• Households and businesses?</li> <li>• Households of different income levels?</li> <li>• Shifts among payers of a specific tax, such as property tax?</li> </ul>
10.	Prioritizing staff resources.	Should economic impact analysis be limited to tax preferences intended to promote economic development? Statute allows for expedited review of preferences with \$10 million or less in fiscal impact. Should factors other than fiscal impact determine the level of analysis?
11.	Lack of standards to identify which tax preferences to omit from review.	There are no criteria in statute for identifying preferences that are a "critical part of the structure of the tax system." Under the enabling statute, RCW 43.136.045, these preferences may be omitted from review.



# General <sup>3</sup> Overview of Fiscal Notes in the Legislative Process

Presented  
August 18, 2010

## What is a Fiscal Note?

- ▶ An estimate of the direct revenue and expenditure impacts of a bill or amendment over 3 biennia (10 years for I-960 revenue bills). Applies to capital, operating, and transportation budget impacts.
- ▶ The fiscal note analysis compares the legislative proposal to current law (including the enacted budget).
- ▶ Prepared by executive branch agencies and approved by the Office of Financial Management (OFM)
- ▶ Accountability measures include review by legislative staff (can request revisions when appropriate) and members (raise questions on fiscal notes).
- ▶ The Department of Commerce prepares estimates of local government impacts.
- ▶ The Administrative Office of the Courts prepares Judicial fiscal notes.

## How is it used?

- ▶ A fiscal note is one of many pieces of information legislators consider when making decisions on legislative measures.
- ▶ Fiscal notes are a useful consideration when leadership refers a bill that is voted out of a policy committee (whether to send to Rules or a fiscal committee), or that has passed the opposite chamber.
- ▶ Fiscal notes from previous sessions may be useful in current budget discussions between the Legislature, OFM, and state agencies.

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Prepared by House Ways &amp; Means Committee Staff, OPR

8-18-2010

## A fiscal note should...

- ▶ Represent the best estimate that can be prepared within the time available.
- ▶ Be timely, objective, and clear, and prepared without regard to the policy views of the agency, Governor, or local governments.
- ▶ Represent a coordinated and consistent view of the bill.
- ▶ Clearly articulate any/all assumptions.
- ▶ Be prepared without regard to the Governor's budget proposal.
- ▶ Be prepared without regard to bill language that directs an agency to absorb the costs of implementation.

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## A fiscal note...

- ▶ *Does not* include ripple effects into other programs.
- ▶ *Is not* the final word on program budget costs or impacts (just as the agency or Governor's request budget is not the final word on the budget), but generally is used to determine balance sheet impacts on revenue legislation.
- ▶ *Does not* prevent the legislature from making budget decisions like directing an agency to absorb the cost of implementing a bill or assuming different implementation funding levels or approaches.

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## Relevant Statutes

- ▶ Fiscal note processes and requirements are laid out in statute and in instructions prepared by OFM.
- ▶ Chapter 43.88A RCW – Legislative Fiscal Notes
  - ▶ OFM develops the process in coordination with the Legislature.
  - ▶ OFM publishes instructions.
  - ▶ Fiscal notes related to measures that fall under I-960 take precedence.
  - ▶ Legislators can request a fiscal note on any legislative proposal.
  - ▶ Lack of a fiscal note does not preclude either house from considering a bill, and an inaccurate fiscal note (or no fiscal note) does not affect the validity of any measure enacted by the legislature.
- ▶ Chapter 43.132 RCW – Local Government Fiscal Notes.
- ▶ Note also RCW 29A.72.025 – Fiscal impact of an initiative or referendum.

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8-18-2010

## Potential Fiscal Note Challenges

- ▶ Timeliness.
- ▶ Accuracy.
- ▶ Trade offs between content, speed, volume and quality.
- ▶ Perception of possible bias.
- ▶ Estimate of direct impacts, not indirect impacts, not dynamic, not cost/benefit analysis.
  - ▶ While additional information on dynamic/indirect impacts can be helpful in decision making, challenges to changing the process to consider dynamic /indirect impacts include accommodating analysis that takes more time and is more speculative and subjective.
  - ▶ Including dynamic/indirect impacts may present additional long-term risks to the budget.

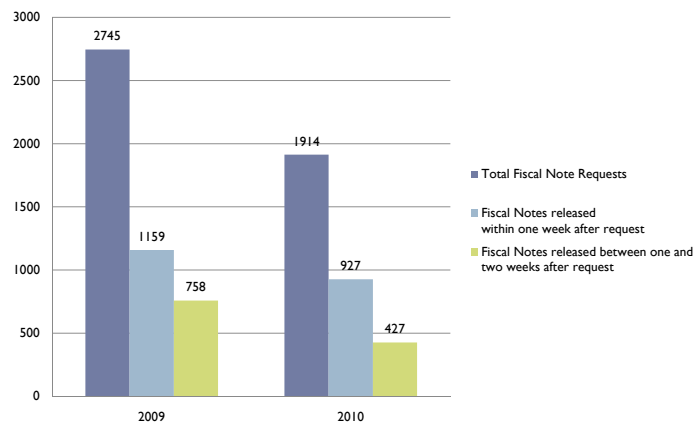
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## Appendix

**Fiscal Note Requests  
Sessions 2009 and 2010**



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### ***Workload:***

- For the 2009-11 Biennium the Research Division completed 803 fiscal notes
- 2009 – 490 fiscal notes
- 2010 – 313 fiscal notes
- In 2010 we completed 73 I-960 fiscal notes – 23% of total
- Our average turnaround was 2.5 days
- Delivered 184 out of 196 notes (94%) to legislative staff at least 4 hours before hearing
- In 2010 we completed 472 fiscal estimates

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### ***Elements of a Fiscal Note***

- Bill Description
- Expenditure Impact
- Revenue Impact

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## Fiscal Note Process



### ▪ **Bill Description:**

- Current law vs. Proposed Legislation

### ▪ **Expenditure Impact:**

- First Year Costs
- Ongoing Costs

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## Fiscal Note Process



### ▪ **Revenue Impact:**

- Six year estimate – Ten year estimate for I-960 fiscal notes
- Available data / Assumptions
- Targeted to Forecast Council's November Forecast
- Review / Approval Process

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### ***Tax Preferences – Fiscal Notes Principles***

- The impact of large, unique construction projects have been based on historical patterns (Nucor) or expected demand (Sumas)
- The revenue impact of economic incentive bills is based on the expected level of activity under current law

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### ***What economic impacts are addressed in a fiscal note***

- Revenue impacts at current level of activity
- Immediate economic impacts
- Noncompliance

### ***What economic impacts are not addressed in a fiscal note***

- No secondary or “long-term” economic impacts
- Benefits from the legislation – job creation

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Questions?

