

2015 Regular Session

SENATE BILL NO. 78

BY SENATOR MILLS

TAX/TAXATION. Establishes the Exemption Review Conference to provide for the review of and recommendation concerning tax exemption, exclusion, deduction and credit instruments filed for certain regular sessions and to establish procedures for such instruments. (See Act)

1 AN ACT

2 To enact Chapter 21 of Title 24 of the Louisiana Revised Statutes of 1950, to be comprised  
3 of R.S. 24:991 through 994, relative to tax exemptions, exclusions, deductions, and  
4 credits against state tax; to create the exemption review conference; to provide for  
5 official tax exemption analyses and recommendations; to provide for certain  
6 procedures for tax exemption instruments; to provide for mandatory review; and to  
7 provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 24:991 through 994 are hereby enacted to read as follows:

10 CHAPTER 21. EXEMPTION REVIEW CONFERENCE

11 §991. Definitions

12 As used in this Chapter, the following terms shall have the following  
13 meanings unless another meaning is clearly required by its context:

14 (1) "Tax exemption" or "exemption" means and includes any tax  
15 exemption, exclusion, deduction, or credit against state tax.

16 (2) "Tax exemption instrument" means any bill that enacts, amends, or  
17 renews an existing tax exemption, or any joint resolution that adds a new

1 exemption, or amends or renews an existing tax exemption in the Constitution  
2 of Louisiana, if such instrument would have the effect of materially reducing  
3 state revenues.

4 §992. Exemption Review Conference

5 A.(1) The Exemption Review Conference shall be composed of five  
6 members:

7 (a) The governor, or his designee.

8 (b) The president of the senate, or his designee.

9 (c) The speaker of the house, or his designee.

10 (d) The Legislative Auditor, or his designee.

11 (e) Two economists who have at least ten years of economic forecasting  
12 expertise. The two economists and one alternate shall be selected by the other  
13 three members from a list of as many as six, but no fewer than four, names  
14 submitted to them by the Board of Regents after the board consults with the  
15 president of the Louisiana Association of Independent Colleges and Universities.

16 (2) The Board of Regents in consultation with the president of the  
17 Louisiana Association of Independent Colleges and Universities shall propose  
18 the compensation to be paid to the two economist members of the conference to  
19 ensure that they receive fair market value for their services to the conference.

20 (3) No economist shall be appointed to or retained by the Exemption  
21 Review Conference unless the legislature has appropriated funds to adequately  
22 compensate such economist for any services required by this Chapter.

23 B.(1) A member of the conference shall preside over conference  
24 meetings, convene such meetings, request information, and specify topics to be  
25 included on the conference agenda.

26 (2) The members shall elect from their membership the initial chair of  
27 the conference. Thereafter the chair shall rotate among the membership  
28 annually in an order that shall be determined by the members of the conference  
29 in their initial meeting. No one member shall serve as chair more than once in

1 a five-year period. The chair shall be responsible for preparing and distributing  
2 the proposed tax exemption analysis for adoption by the conference, the written  
3 proposals for recommendations on tax exemption instruments prepared by the  
4 economist members, and any other workpapers or information that the  
5 conference members determine may be necessary prior to a meeting of the  
6 conference.

7 (3) Four members of the conference shall constitute a quorum for the  
8 transaction of business.

9 C.(1) All conference decisions to adopt the official tax exemption analysis  
10 and the recommendations required by this Section or to take any other action  
11 shall be by a majority vote of the total membership of the conference except that  
12 a decision of the conference that a new or updated official analysis and  
13 recommendation are needed shall require the affirmative vote of only two  
14 members of the conference.

15 (2) An economist member of the conference shall recuse himself if he has  
16 a material interest in any tax exemption instrument before the conference for  
17 the review required by this Chapter. The alternate economist shall serve in  
18 place of the recused member. The same procedure shall be utilized in the event  
19 an economist member is otherwise prevented from participating in conference  
20 activities.

21 §993. Tax exemption instrument review and recommendation

22 A. Each tax exemption instrument required to be prefiled pursuant to  
23 the Constitution of Louisiana shall be prefiled with an Exemption Explanatory  
24 Note attached to the instrument prepared by the author, or by a proponent of  
25 the instrument on the author's behalf, relative to the economic effects of the  
26 enactment of the legislative instrument. The Exemption Explanatory Note shall  
27 include the following:

28 (1) The total decrease in taxes, fees, charges, or other revenue estimated  
29 over the five ensuing fiscal years from the instrument's effective date.

1           **(2) The state's revenue loss ratio; that is, the amount of money to be**  
2           **gained by the state compared to the cost of the benefit granted.**

3           **(3) The effect on household earnings, employment, and value added in**  
4           **Louisiana.**

5           **(4) An indication of which beneficial economic actions will be**  
6           **incentivized by the instrument.**

7           **(5) Data indicating whether the same or similar provisions have been**  
8           **enacted in other states or territories of the United States or other nations.**

9           **(6) The methodology and assumptions utilized to produce the**  
10           **information in the report.**

11           **C.(1) Promptly upon such pre-filing, the chief clerical officer of the house**  
12           **of the legislature in which the instrument was filed shall provide to the**  
13           **Exemption Review Conference a copy of the tax exemption instrument and the**  
14           **attached Exemption Explanatory Note. The two economist members of the**  
15           **conference shall review the tax exemption instrument and the note. The review**  
16           **shall encompass all aspects of the instrument and the note including but not**  
17           **limited to the following:**

18                   **(a) The reasonableness of the revenue loss estimates.**

19                   **(b) The validity, credibility, or reasonableness of the information in the**  
20                   **Exemption Explanatory Note or the methodology and assumptions utilized to**  
21                   **produce the information, or questions raised by such information or**  
22                   **methodology.**

23                   **(c) Whether the actions being incentivized are already occurring without**  
24                   **the enactment of the instrument.**

25                   **(d) A review of the data in the Exemption Explanatory Note and from**  
26                   **other sources as to whether the same or similar provisions have been enacted**  
27                   **in other states or territories of the United States or other nations.**

28                   **(e) Any other information not included in the Exemption Explanatory**  
29                   **Note which may have a bearing on the question of whether the conference**

1 should recommend the tax exemption instrument for enactment.

2 (2)(a) The two economist members of the Exemption Review Conference  
3 shall prepare their own analysis, and then shall prepare and present in writing  
4 to the other members of the conference a proposed tax exemption analysis for  
5 adoption by the conference and a written proposal to the conference for the type  
6 of action the conference should recommend to the legislature with regard to the  
7 tax exemption instrument.

8 (b) The Exemption Review Conference shall meet and adopt an official  
9 tax exemption analysis and make an official recommendation to the legislature  
10 with regard to the disposition of the tax exemption instrument prior to the last  
11 day for filing legislative instruments for the session in which the instrument is  
12 prefiled, with reasons, of any of the following:

13 (i) For enactment, addition, or renewal of the tax exemption.

14 (ii) For enactment, addition, or renewal of the tax exemption with  
15 modifications.

16 (iii) Against enactment, addition, or renewal of the tax exemption.

17 (c) The Exemption Review Conference recommendation and the official  
18 tax exemption analysis shall be delivered to the chief clerical officer of the house  
19 of the legislature in which the tax exemption instrument is prefiled and such  
20 officer shall attach the recommendation and the analysis to the tax exemption  
21 instrument.

22 (3) Any tax exemption instrument, or any amendment to a tax exemption  
23 instrument, which does not have an official tax exemption analysis or a  
24 recommendation from the Exemption Review Conference attached, shall, at any  
25 time, upon motion of any legislator, be referred to the conference for a  
26 determination within five legislative days as to whether the instrument requires  
27 a new or revised analysis and recommendation. A decision that a new or revised  
28 analysis and recommendation are needed shall require the affirmative vote of  
29 only two members of the conference. If the decision of the conference is that a

1 new or revised analysis and recommendation are required, then the Exemption  
2 Review Conference may either proceed with the process provided for in  
3 Paragraphs (1) and (2) of this Subsection or shall defer such process until the  
4 interim between legislative sessions.

5 D. All meetings of the Exemption Review Conference shall be open to the  
6 public as provided in R.S. 42:11 et seq. The conference shall consider  
7 information provided by any participants at meetings of the conference,  
8 including any testimony from the author of the tax exemption instrument,  
9 proponents of the instrument on the author's behalf, and any other member of  
10 the public in developing the official tax exemption analysis and recommendation  
11 for a tax exemption instrument.

12 E. Subject to appropriation of adequate funds and in accordance with  
13 any other applicable laws, the Exemption Review Conference may utilize  
14 whatever staff, information, and technical expertise which it may determine is  
15 required to prepare a tax exemption analysis or a recommendation. The  
16 conference may request and shall receive from all public officers, departments,  
17 agencies, and authorities of the state and its political subdivisions such  
18 assistance and data as will enable the conference to fulfill its duties.

19 **§994. Schedule of tax exemption termination**

20 A. The Exemption Review Conference shall meet to review and prepare  
21 a tax exemption analysis report on each tax exemption existing prior to July 1,  
22 2016, by no later than September 1, 2016. The tax exemption analysis report  
23 shall include:

24 (1) An estimate of the total decrease in taxes, fees, charges or other  
25 revenue resulting from each credit for the previous fiscal year in which data is  
26 fully available.

27 (2) An estimate of the state's revenue loss ratio from each exemption;  
28 that is, the amount of money gained by the state compared to the cost of the  
29 benefit granted from each exemption for the previous fiscal year in which data

1 is fully available.

2 (3) An estimate of the effect on household earnings, employment, and  
 3 value added in Louisiana from each exemption for the previous fiscal year in  
 4 which data is fully available.

5 (4) A summary of which beneficial economic actions are incentivized by  
 6 each exemption.

7 (5) A recommendation as to whether a sunset should or should not be  
 8 proposed by the legislature for each exemption.

9 (6) A summary of the methodology and assumptions utilized to produce  
 10 the information in the report.

11 B. The tax exemption analysis report provided for in Subsection A shall  
 12 be reviewed and may be amended by the Senate Committee on Revenue and  
 13 Fiscal Affairs and the House Committee on Ways and Means meeting jointly.  
 14 The committees shall meet within sixty days of receipt of the report from the  
 15 Exemption Review Committee.

16 Section 2. The commissioner of administration shall convene the initial meeting of  
 17 Exemption Review Conference on or before January 1, 2016, and shall preside until the  
 18 economist members are selected and there is an election for a chair. The initial selection of  
 19 the two economists and one alternate shall occur by May 1, 2016.

20 Section 3. This Act shall take effect and become operative if and when the proposed  
 21 amendment of Article III, Sections 2(A)(2)(d) and 15.1 and Article XIII, Section 1(A)(3),  
 22 and the addition of Article III, Sections 2(A)(2)(e) of the Constitution of Louisiana contained  
 23 in the Act which originated as Senate Bill No. 75 of this 2015 Regular Session of the  
 24 Legislature is adopted at the statewide election to be held on October 24, 2015, and becomes  
 25 effective.

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The original instrument and the following digest, which constitutes no part  
 of the legislative instrument, were prepared by Riley Boudreaux.

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SB 78 Engrossed

DIGEST  
 2015 Regular Session

Mills

A proposed constitutional amendment filed in the 2015 Session [SB 75] that any bill or joint

resolution that enacts a "tax exemption" or amends or renews an existing "tax exemption", which would have the effect of materially reducing state revenues, must be prefiled and must have an Exemption Explanatory Note attached that is prepared by the author, or by a proponent of the instrument on the author's behalf relative to the fiscal and economics of the exemption.

The proposed constitutional amendment provides that a "tax exemption instrument" must be subject to an official tax exemption analysis and recommendation procedure - which is defined as any bill or any joint resolution which enacts a "tax exemption", or amends or renews an existing "tax exemption", if such instrument would have the effect of materially reducing state revenues. "Tax exemption" is broadly defined to mean and include any tax exemption, exclusion, deduction, or credit against state tax.

However, the requirement is only effective for tax exemption instruments in a regular session for which the Legislative Auditor has provided written certification to the governor, the President of the Senate, and the Speaker of the House of Representatives by August First of the year prior to such regular session that the legislature has appropriated funds sufficient to adequately compensate both economist members of the Exemption Review Conference for their services for that regular session.

Proposed law prohibits an economist from being appointed to or retained by the Exemption Review Conference unless the legislature has appropriated funds to adequately compensate such economist for any services required by the proposed law.

Proposed law requires the proposed Exemption Explanatory Note to include the following:

- (1) The total decrease in taxes, fees, charges or other revenue estimated over the five ensuing fiscal years from the instrument's effective date.
- (2) The state's revenue loss ratio; that is, the amount of money to be gained by the state compared to the cost of the benefit granted.
- (3) The effect on household earnings, employment, and value added in Louisiana.
- (4) An indication of which beneficial economic actions will be incentivized by the instrument.
- (5) Data indicating whether the same or similar provisions have been enacted in other states or territories of the United States or other nations.
- (6) The methodology and assumptions utilized to produce the information in the report.

Proposed law creates the Exemption Review Conference (Conference), composed of six members:

- (1) The governor, or his designee.
- (2) The president of the Senate, or his designee.
- (3) The speaker of the House of Representatives, or his designee.
- (4) The Legislative Auditor, or his designee.
- (5) Two economists who each have at least 10 years of economic forecasting expertise. The two economists and one alternate shall be selected by the other three members from a list of as many as six, but no fewer than four names, submitted to them by the Board of Regents after the board consults with the president of the Louisiana Association of Independent Colleges and Universities.

Provides that the Board of Regents in consultation with the La. Assn. of Independent Colleges and Universities shall propose the compensation to be paid to the economist members of the conference.

Requires the election of the initial chair of the conference from the membership. Thereafter, the chair shall rotate among the membership annually, with no one member serving as chair more than once in a five-year period. Provides for the duties of the chair.

Provides for the commissioner of administration to convene the initial meeting of the conference on or before January 31, 2016, and preside until the economist members are selected and there is an election for a chair. The initial selection of the two economists and alternate shall occur by May 1, 2016.

Proposed law provides that four members of the Conference shall constitute a quorum for the transaction of business and requires the Conference to be subject to the Open Meetings Law. Requires the conference to consider information provided by any participant at meetings of the conference, including members of the public.

Authorizes the Conference to utilize whatever staff, information, and technical expertise is required in its determinations, and the Conference may request and shall receive assistance from any public entity.

Proposed law provides that decisions to adopt an official exemption analysis and recommendations or any other action shall be by a majority vote of the total membership of the conference.

Proposed law requires an economist member of the conference to recuse himself if he has a material interest in any tax exemption instrument before the conference. The alternate economist shall serve in place of the recused member.

Proposed law provides that when a tax exemption instrument is prefiled, the chief clerical officer of the house of origin shall promptly provide a copy of the instrument and the attached Exemption Explanatory Note to the Exemption Review Conference. The two economists shall review the instrument and note, which review shall encompass all aspects of the instrument and note, including but not limited to the following:

- (1) The reasonableness of the revenue loss estimates.
- (2) The validity, credibility, or reasonableness of the information in the Exemption Explanatory Note or the methodology and assumptions utilized to produce the information, or questions raised by such information or methodology.
- (3) Whether the actions being incentivized are already occurring without the enactment of the instrument.
- (4) A review of the data in the Exemption Explanatory Note and from other sources as to whether the same or similar provisions have been enacted in other states or territories of the United States or other nations.
- (5) Any other information not included in the Exemption Explanatory Note which may have a bearing on the question of whether the conference should recommend the tax exemption instrument for enactment.

Proposed law provides for the two economists to prepare their own analysis, and present the analysis in writing to the Conference for adoption, along with a written proposal for the type of action the Conference should recommend to the legislature regarding the instrument.

Proposed law provides that prior to the last day for prefiling legislative instruments in a legislative session, the Exemption Review Conference shall, in a public meeting, adopt an official tax exemption analysis and make an official recommendation to the legislature regarding the disposition of the tax exemption instrument, with reasons, of any of the following:

- (1) For enactment, addition, or renewal of the tax exemption.
- (2) For enactment, addition, or renewal of the tax exemption with modifications.
- (3) Against enactment, addition, or renewal of the tax exemption.

Requires that the Exemption Review Conference recommendation and the official tax exemption analysis be attached to the tax exemption instrument by the chief clerical officer of the house of the legislature where the instrument was filed.

Proposed law provides that a tax exemption instrument that does not have an official tax exemption analysis and recommendation attached, or any tax exemption instrument that has been amended and has no revised analysis and recommendation attached, shall at any time, upon the motion of any legislator, be referred to the conference for a determination within five legislative days as to whether the instrument requires such an analysis and recommendation. A decision that an analysis and recommendation are needed shall require the affirmative vote of only two members of the conference.

Proposed law provides that if the decision is that an analysis and recommendation are required, then the Exemption Review Conference may either proceed with preparation of an analysis and recommendation, or defer the process until the interim between legislative sessions. Provides that if the item is deferred, it may be introduced and considered in the next regular session, whether it is an odd-numbered year session or not.

Proposed law requires the Exemption Review Conference to meet to review and prepare a tax exemption analysis report on each tax exemption existing prior to July 1, 2016, by no later than September 1, 2016. The tax exemption analysis report must include:

- (1) An estimate of the total decrease in taxes, fees, charges or other revenue resulting from each credit for the previous fiscal year in which data is fully available.
- (2) An estimate of the state's revenue loss ratio from each exemption; that is, the amount of money gained by the state compared to the cost of the benefit granted from each exemption for the previous fiscal year in which data is fully available.
- (3) An estimate of the effect on household earnings, employment, and value added in Louisiana from each exemption for the previous fiscal year in which data is fully available.
- (4) A summary of which beneficial economic actions are incentivized by each exemption.
- (5) A recommendation as to whether a sunset should or should not be proposed by the legislature for each exemption.
- (6) A summary of the methodology and assumptions utilized to produce the information in the report.

The exemption analysis report must be reviewed and may be amended by the Senate Committee on Revenue and Fiscal Affairs and the House Committee on Ways and Means meeting jointly within 60 days of its receipt.

Effective if and when the proposed amendment of Article III, Sections 2(A)(2)(d) and 15.1 and Article XIII, Section 1(A)(3), and the addition of Article III, Sections 2(A)(2)(e) of the Constitution of Louisiana contained in the Act which originated as Senate Bill No. 75 of the 2015 Regular Session of the Legislature is adopted at the statewide election to be held on October 24, 2015, and becomes effective.

(Adds R.S. 24:991-994)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Revenue and Fiscal Affairs to the original bill

1. Prohibits an economist from being appointed to or retained by the Exemption Review Conference unless the legislature has appropriated funds to adequately compensate such economist for any services required by the proposed law.
2. Requires the Exemption Review Conference to meet to review and prepare a tax exemption analysis report on each tax exemption existing prior to July 1, 2016, by no later than September 1, 2016, and for the tax committees to meet within 60 days of its receipt and review and amend it.
3. Adds the Legislative Auditor or his designee as a member of the Conference.