HOUSE OF REPRESENTATIVES
COMMITTEE ON
GOVERNMENTAL OPERATIONS
FINAL ANALYSIS

BILL #: HB 619 **(similar provisions passed in SB 1296, which became law as Chapter 99-334, Laws of Florida)**

RELATING TO: Sales Tax/Manufactured Asphalt

SPONSOR(S): Representative Logan and others

COMPANION BILL(S): 1ST ENG/SB 1296 (similar)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) GOVERNMENTAL OPERATIONS YEAS 4 NAYS 0
(2) FINANCE & TAXATION
(3) TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS
(4)
(5)

I. FINAL ACTION STATUS:

HB 619 died in the House Committee on Finance and Tax. On April 19,1999, the Senate companion, SB 1296, was amended in the Senate Fiscal Resource Committee, and passed by the Senate on April 28,1999, as amended. SB 1296 was received in House messages on April 29,1999, taken up by the House, and passed. On June 11, 1999, SB 1296 became Chapter 99-334, Laws of Florida, with the Governor’s signature. This analysis is of Chapter 99-334.

II. SUMMARY:

Section 212.06, F.S., deals with sales, storage, and use taxes collectible from “dealers”.

Currently, a 6 percent tax is imposed upon the cost of materials that become a component part or ingredient of the finished asphalt and upon the cost of transportation of the components or ingredients.

Additionally, an “indexed tax” is imposed. The indexed tax was originally set at $.38 per ton by statute. It is adjusted on July 1, of each year according to a formula tied to the Producer Price Index from the U.S. Department of Labor, Bureau of Statistics, and was recently pegged at $.48 per ton.

It is estimated that 70+ percent of asphalt that is produced “for one’s own use” in this state is used for state and local government contracts.

SB 1296 exempts 20 per cent of the manufactured asphalt used in any state or local public works project from the “indexed tax”.

SB 1296 has an effective date of July 1, 1999.

The impact of this bill on state government, at 80% of the total manufactured asphalt used, has been estimated to be from approximately $2.9 million to $3.16 million in FY 1999-2000. The impact on local governments for the same period has been estimated at approximately $240,000.

III. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

In 1988, the Legislature passed revisions to section 212.06, F.S., based on recommendations for a uniform, statewide manufacturer's use tax for asphalt. This section levies a 6 percent tax on the cost of materials that become a component part or ingredient of finished asphalt, and upon the cost of transportation of the components or ingredients.

Additionally, an indexed tax, imposed on all other costs associated with the manufacturing of asphalt, was set at $.38 per ton for the first year. The indexed tax is adjusted on July 1, of each year in conjunction with a formula tied to the Producer Price Index average of the "materials and components for construction" series calculated and published by the U.S. Department of Labor, Bureau of Statistics. Recently the indexed tax rate was $.48 per ton.

It is estimated that an overwhelming majority of asphalt is manufactured for "one's own use", and that 70+ percent of that asphalt is used in government contracts.

Proponents believe the imposition of a tax on asphalt used on state and local government public works projects results in an administratively burdensome and expensive waste, since contractors must factor in the cost of the tax into their bids for such projects. Proponents assert that the net result is that the government pays more for a project, then collects the money back in the form of a tax. They believe both contractor and government waste time, as well as the cost of administering the exchange.

B. EFFECT OF PROPOSED CHANGES:

This bill would exempt 20% of the asphalt used in state and local public works projects from the indexed tax.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No. In fact, proponents argue that both private organizations and governmental organizations will be relieved of administrative responsibilities, obligations, and work.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

Not applicable.

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

There would be a reduction in taxes. In principle, this bill would result in a tax/contract fee "wash". Of course, if contractors do not reduce their bids to match the reduction in the tax amount, there would, indeed be a **net** reduction in taxes and revenues, but without the expected benefit of off-setting governmental expenditures.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

They may, by reducing bid prices on governmental public works projects.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

   a. If the bill purports to provide services to families or children:

      Not applicable.

      (1) Who evaluates the family's needs?

          N/A

      (2) Who makes the decisions?

          N/A

      (3) Are private alternatives permitted?

          N/A

      (4) Are families required to participate in a program?

          N/A

      (5) Are families penalized for not participating in a program?

          N/A

   b. Does the bill directly affect the legal rights and obligations between family members?

      No.

   c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

      Not applicable.

      (1) parents and guardians?

          N/A

      (2) service providers?

          N/A

      (3) government employees/agencies?

          N/A

D. STATUTE(S) AFFECTED:

Section 212.06(c), F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. eliminates the applicability of the indexed tax imposed on asphalt, to 20% of the manufactured asphalt used for any state or local government public works project.

Section 2. provides for an effective date of July 1, 1999.

IV. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

The annualized impact on state government is estimated to be between $2.9, and $3.16 million. Due to fluctuations in the indexes used to determine the annual tax, the fiscal impact could vary in either direction from those stated in this paragraph.

3. Long Run Effects Other Than Normal Growth:

Unknown.

4. Total Revenues and Expenditures:

Unknown.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

The annualized impact on local governments is estimated to be from $240,000 to $320,000.

3. Long Run Effects Other Than Normal Growth:

Unknown.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Unknown.

2. Direct Private Sector Benefits:

The superficial benefit would be the net reduction of the indexed tax imposed, however, if contractors reduce their bid prices by the same amount as expected, there would be only the advantages of reduced administrative costs and time.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

V. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds, or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

VI. COMMENTS:

According to the Department of Revenue, subjecting a federal public works project to taxation while exempting state and local government public works projects may be contrary to the United States Supreme Court findings in Davis v. Michigan Department of Treasury, 489 U.S. 803 (U.S. Michigan 1989). There, the court upheld the doctrine of intergovernmental tax immunity, which generally bars state taxes that discriminate against the federal government.

There was a change in the sentence structure in Section 2. of the engrossed version of SB 1296. When being engrossed, it was modified from one sentence, providing for an exemption from the indexed tax of 20% of the manufactured asphalt used for state and local public works projects, to two sentences. The change may give an erroneous impression, but according to the sponsor's staff, *the intention of the sponsor was that only 20% of the manufactured asphalt used for state and local public works projects would be exempt from the indexed tax found in s. 212.06(1)(c)(1).*

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

In its meeting on April 19,1999, the Senate Fiscal Resource Committee adopted an amendment which eliminated a phase-in of a complete exemption from the indexed tax on manufactured asphalt, and replaced it with a partial (20%) exemption. The amendment traveled with the bill through the Senate, and is part of the chapter law.

VIII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:	Staff Director:
Russell J. Cyphers, Jr.	Jimmy O. Helms

FINAL ANALYSIS PREPARED BY THE COMMITTEE ON GOVERNMENTAL OPERATIONS:

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