

STORAGE NAME: h0619.grr

DATE: February 7, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
GOVERNMENTAL RULES AND REGULATIONS
ANALYSIS**

BILL #: HB 619

RELATING TO: Taxpayer/Assessment of Tax

SPONSOR(S): Representative Ryan and others

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) GOVERNMENTAL RULES AND REGULATIONS
 - (2) FINANCE AND TAXATION
 - (3) GENERAL GOVERNMENT APPROPRIATIONS
 - (4)
 - (5)
-

I. SUMMARY:

House Bill 619 addresses aspects of taxpayer contest proceedings regarding assessments made under Fla. Stat. chapter 212 (Tax on Sales) with the Department of Revenue.

The bill amends Fla. Stat. s. 120.80 to provide that an administrative law judge shall issue a final order in taxpayer contests of assessment of tax, penalty, or interest or the denial of a refund with respect to any tax imposed under Fla. Stat. chapter 212.

The bill also amends Fla. Stat. s. 231.21 to provide that the Department of Revenue shall issue its notice of decision within 150 days after the filing of a taxpayer's written protest to the assessment of tax, penalty, or interest or the denial of a refund under Fla. Stat. chapter 212 and after the initiation of informal conference proceedings under this section.

The department indicates that implementing the bill will require recurring expenditures of approximately eighty thousand dollars.

The bill takes effect upon becoming a law.

Representative Ryan will offer a strike-everything amendment. Please see Part VI of this analysis for details.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

B. PRESENT SITUATION:

Fla Stat. s. 120.80(14) provides exceptions to and special requirements for administrative hearings in the Department of Revenue. Fla Stat. s. 120.80(14)(b) provides special requirements for taxpayer contest proceedings, including designation of respondent agency depending on the tax assessment contested, burden of proof, payment of uncontested tax amounts prior to filing of petition, and award of attorney's fees and costs in certain instances.

The Department of Revenue reports that for the period 1997-1999, the Division of Administrative Hearings rendered 60 recommended orders on taxpayer contests of tax assessments imposed by the department. The department reports that it accepted 52 of the recommended orders and modified four. Of the remaining cases two were settled, one was dismissed, and the division relinquished jurisdiction on one case to the department.

Fla. Stat. s. 213.21(1) provides authority to the Department of Revenue to establish an informal conference procedure to resolve disputes relating to assessment of taxes, interest, penalties and the denial of refunds, and for informal hearings under Fla. Stat. ss. 120.569 and 120.57(2).

A department PB² measurement is the time from the postmark of a taxpayer contest notice to the time of the issuance of the notice of decision. Attached to this analysis is a chart describing the performance of the department on this measurement. Although the department appears not to be meeting its proposed level of service, it has reduced the average time to conclusion by eleven days from 1997 to 1999. This is the same rate of reduction shown in the proposed level of service between 1997 and 1999.

C. EFFECT OF PROPOSED CHANGES:

The changes would impact the speed at which the Department of Revenue moves to a decision in a taxpayer contest of the assessment under Chapter 212 (Tax on Sales), in that the bill would impose a timeframe of 150 days in which the department would have to come to a decision in taxpayer contests to assessments under that chapter and for which informal conference procedures have been initiated. The bill would also remove from the department the authority to enter a final decision in the appeal of these cases to the

Division of Administrative Hearings, instead vesting the final decision authority in an administrative law judge.

D. SECTION-BY-SECTION ANALYSIS:

Section one. Creates Fla. Stat. s. 120.80(14)(b)6 to provide that where a taxpayer contest proceeding is brought with respect to tax assessment, penalty, interest or for the denial of a refund under Fla. Stat. chapter 212, an administrative law judge will issue a final order at the conclusion of the proceedings.

Section two. Creates Fla. Stat. s. 213.21(1)(d) to provide that when a taxpayer files a written protest with the department and informal conference procedures are initiated with respect to any tax imposed under Fla. Stat. chapter 212, the department shall issue its notice of decision within 150 days after the written protest is filed.

Section three. Provides that the act shall be effective upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

The Department of Revenue makes the following estimates:

1. Revenues:

| | FY 2002 | FY 2003 | |
|---------------------------|------------|------------|----------|
| General Revenue | (\$39,347) | (\$35,549) | |
| Administrative Trust Fund | | (49,647) | (44,855) |

2. Expenditures:

| A. Nonrecurring Expenditures | FY 2002 | FY 2003 |
|-------------------------------|----------|---------|
| OCO | \$4,000 | |
| Expenses | 4,590 | |
| B. Recurring Expenditures | | |
| FTE | 2 | 2 |
| Salaries | \$68,342 | 68,342 |
| Expenses | 12,062 | 12,062 |
| C. Total | 88,994 | 88,944 |

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

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1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

D. FISCAL COMMENTS:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

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

B. REDUCTION OF REVENUE RAISING AUTHORITY:

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

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

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

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Representative Ryan's proposed strike-everything amendment amends both substantive sections of the bill. In section one, it provides for the issuance of a final order by the administrative law judge within 60 days of the conclusion of the proceedings.

Currently, Fla. Stat. s. 120.569(2)(l) provides that the final order in cases affecting the substantial interest of persons must be rendered within 90 days of the conclusion of the hearing conducted by the agency, after the recommended order is submitted to the agency and is mailed to all parties, or after the agency has received the written and oral material it has authorized to be submitted, if there is not hearing.

In section two, the amendment provides for the extension of the 150 period for issuance of a notice of decision by agreement of the parties. The amendment also provides that failure of the department to issue its notice of decision within 150 days or within any extension thereof, will result in the dismissal of the underlying tax assessment and the prohibition of further action on the tax assessment.

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL RULES AND REGULATIONS:

Prepared by:

Staff Director:

David M. Greenbaum

David M. Greenbaum