ACT No. 198

Regular Session, 2014

HOUSE BILL NO. 798

BY REPRESENTATIVE STOKES

AN ACT

To amend and reenact R.S. 47:15(14), 114(F)(3), 287.614(C) and (D)(3), 295(C), 299.9, 299.39, 1407(1), 1408, 1409, 1414(C), 1416, 1433 through 1435, 1438, 1486, 1508.1(B), 1561, 1565(C)(3), 1574(introductory paragraph), 1576(A)(1) and (2), (C), and (E), 1578(B)(2), (3), and (4)(a)(introductory paragraph), 1603(A), and 1688, and to enact R.S. 47:1574(5), relative to the enforcement and adjudication of state taxes; to provide with respect to disputes concerning taxes, fees, and claims against the state; to provide with respect to the authority of the secretary of the Department of Revenue regarding the collection and enforcement of taxes and fees; to provide for the jurisdiction, authority, and procedures of the Board of Tax Appeals; to provide for appellate jurisdiction for decisions of the Board of Tax Appeals; to provide for legislative oversight of Board of Tax Appeals rulemaking; to direct the Louisiana State Law Institute to change certain references to the Board of Tax Appeals in certain provisions of current law; to provide for effectiveness; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 47:15(14), 114(F)(3), 287.614(C) and (D)(3), 295(C), 299.9, 299.39, 1407(1), 1408, 1409, 1414(C), 1416, 1433 through 1435, 1438, 1486, 1508.1(B), 1561, 1565(C)(3), 1574(introductory paragraph), 1576(A)(1) and (2), (C), and (E), 1578(B)(2), (3), and (4)(a)(introductory paragraph), 1603(A), and 1688 are hereby amended and reenacted, and R.S. 47:1574(5) is hereby enacted, to read as follows:

§15. Taxpayer's Bill of Rights

There is hereby established a Taxpayer's Bill of Rights to guarantee that the rights, privacy, and property of Louisiana taxpayers are safeguarded and protected.

CODING: Words in struck through type are deletions from existing law; words underscored are additions.
during tax assessment, collection, and enforcement processes administered under the
tax laws of this state. This Taxpayer's Bill of Rights consists of a statement, in
nontechnical terms, of the rights and obligations of the Department of Revenue and
taxpayers. The rights afforded taxpayers to assure that their privacy and property are
safeguarded and protected during tax assessment and collection are available only
insofar as they are implemented in accordance with the Constitution of Louisiana and
Louisiana Revised Statutes of 1950 or the administrative rules of the Department of
Revenue. The rights assured Louisiana taxpayers are:

* * *

(14) The right to a hearing in order to dispute an assessment of taxes,
interest, and penalties by timely filing an appeal with the Board of Tax Appeals in
accordance with R.S. 47:1414, 1431, and 1481 as provided by law. A taxpayer shall
not be required to pay the disputed tax, interest, and penalties in order to exercise this
right.

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§114. Returns and payment of tax

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F. Penalty provision.

* * *

(3) If the failure to timely submit the annual return is attributable, not to the
negligence of the taxpayer, but to other causes set forth in written form and
considered reasonable by the secretary, the secretary may remit or waive payments
of the whole or any part of the specific penalty provided for such failure. In any case
where the penalty exceeds twenty-five thousand dollars, it can be waived by the
secretary only after approval by the Board of Tax Appeals.

* * *

§287.614. Time and place for filing returns; information concerning federal return;
extension of time to file

* * *
C. Any corporation whose federal income tax return is adjusted by the Internal Revenue Service must furnish a statement to the secretary disclosing the nature and amount of such adjustments shall file an amended return within sixty one hundred eighty days of the taxpayer's receipt final determination of such adjustments from the Internal Revenue Service.

D. *

* * *

(3) The secretary may grant an extension of time to file a Louisiana income tax return for a specific taxable period if the taxpayer has received an automatic extension of time to file a federal income tax return for that taxable period. The method for taxpayer notification of the secretary that an automatic federal extension was obtained shall be established by rule. The secretary may otherwise provide for the automatic extension of time to file a corporation return not to exceed seven months, or the extended due date of the federal income tax return, whichever is later.

* * *

§295. Tax imposed on individuals; administration

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C. The secretary of the Department of Revenue shall administer and enforce this Part. He may adopt, prescribe, and from time to time alter and enforce reasonable rules, orders, and regulations for the purpose of implementing this Part. He may, with the approval of the Board of Tax Appeals, upon making a record of his reasons therefor, waive, reduce, or compromise any of the taxes, penalties, or interest or other amounts provided by this Part. In any case when the penalty exceeds twenty-five thousand dollars, it can be waived by the secretary only after approval by the Board of Tax Appeals.

* * *

§299.9. Remittance; equivalent of refund

The remittance by the secretary to the claiming agency and the sending of the notice of offset by certified mail to the address shown on the individual's return shall be deemed to be, to the extent of the remittance, a refund to the individual and to any
other person who has a claim to such refund. The secretary shall refund to the
individual any amount not remitted to a claimant pursuant to an offset request.

§299.39. Remittance; equivalent of refund

The remittance by the secretary to the claimant and the sending of the notice
of offset by certified mail to the address shown on the individual's return shall be
deemed to be, to the extent of the remittance, a refund to the individual and to any
other person who has a claim to such refund. The secretary shall refund to the
individual any amount not remitted to a claimant pursuant to an offset request.

§1407. Jurisdiction of the board

The jurisdiction of the board shall extend to the following:

(1) All matters relating to appeals for the redetermination of assessments, or
for the determination of overpayments, or payment under protest petitions, as
provided in R.S. 47:1431 through 47:1438.

§1408. Power to administer oaths and issue subpoenas

A. For purposes of enforcing or administering this Chapter, any member of
the board, or and the secretary-clerk for the board, shall have the power to
following powers:

(1) Any board member and the secretary-clerk may administer oaths and take
affidavits, and any member of the board shall have the power to

(2) Any board member may compel discovery, subpoena issue subpoenas,
and require the attendance of witnesses and the production of books, papers, and
documents pertaining to the matter under inquiry, at any designated place of hearing;
and to

(3) Any board member may examine such witnesses, and may require the
taking of deposition depositions before any person competent to administer oaths,
either within or without the state, upon notice to the interested party in like manner
that depositions of witnesses are taken or discovery is compelled in civil actions in the district courts of the state.

B. Any party to a matter pending before the board may summon witnesses or require the production of papers, other documents, answers to requests for admissions, or answers to interrogatories in the same manner as witnesses are summoned, discovery completed, or papers required to be produced in civil actions in the district courts of the state.

C. In case of failure of any person fails to comply with any order or subpoena issued under authority of this Chapter, or the refusal of a witness refuses to testify to any matter regarding which he may be lawfully interrogated, the judge of the district court of the parish in which such person either resides, or the parish in which such person or may be personally served, or any other judge with personal jurisdiction over such person, on application of the board or any member thereof, shall immediately compel obedience by ordering the issuance of an instanter subpoena, or other appropriate process for contempt, or a rule as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.

§1409. Witness fees and mileage

Any person summoned or whose deposition is taken shall receive the same fees and mileage as would be allowed in a civil action pending in the district courts and the expense thereof shall be paid by the person summoning such witness or causing the deposition to be taken. These expenses may be assessed as costs by the board.

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§1414. Persons authorized to appear before the board

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C. Certified public accountants duly qualified and licensed under the laws of the state or public accountants shall be entitled to represent any taxpayer or other contestant in any matter to which the jurisdiction of the board shall extend, provided that the board may, in its discretion, permit certified public accountants, duly
qualified and licensed under the laws of the several states or the District of Columbia
and public accountants to represent any taxpayer or other contestant in any matter
to which the board's jurisdiction shall extend, in the same manner as such certified
public accountants and public accountants are permitted to practice in Louisiana.

§1416. Stenographic reports of hearings

The board shall, upon the request of any party to a matter before it or may
upon its own motion, order that the hearing before it shall be reported by a
stenographer, or be otherwise recorded and transcribed pursuant to regulation or rule
of the board, and the expense thereof shall be paid by the board out of the
appropriation for the board. The board may contract for the report of such
proceedings or designate the reporter of the board to report such proceedings. The
board may supply copies of the transcript of the proceedings to anyone requesting the same and may fix the fee for purchasing such copies.

§1433. Publication of opinions and decisions

The board shall provide for the publication of such of its reports, opinions
and decisions or judgments as are of public interest, in such form as it may deem best
adapted for public convenience and use, and such authorized publication shall be
competent evidence of the reports of the board therein contained in for purposes of
all courts of the state, without any further proof or authentication thereof. The
board's internal deliberations concerning a pending matter shall be considered
judicial proceedings for the purposes of R.S. 42:17(B).

§1434. Judicial review of decision of the board

After A.(1) Within thirty days of the signing of a decision or judgment of
the board, the collector or the taxpayer may, within thirty calendar days after such
decision or judgment has been rendered and signed, file a petition with the district
appellate court in accordance with the provisions hereinafter set out, for review of
the said decision or judgment of the board. The party filing such intending to file
the petition shall, prior to its filing, notify the board of this intention before the filing
of same, either at open hearing or by motion, notify the board of his intention to file
such petition for review. Provided that when In any case where the board has found
any tax to be due, except in any payment under protest petition, the taxpayer must;
shall post a bond when giving the notice of intention to file a petition for review, post
bond, with surety in a form approved by the board conditioned upon for the payment
of the tax as finally determined, together with any interest, additional amounts or
additions to the tax provided for by law, including applicable penalties and attorney
fees. The bond shall be payable to the collector, in an amount not to exceed one and
one-half times the said tax, interest, and penalty penalties, and attorney fees, if any,
found to be due in said decision or judgment of the board, and the The posting of
such bond shall be a condition precedent to the filing of any petition for review in
any district appellate court.

(2) Except as to the amount, and to the extent not otherwise inconsistent with
the provisions of this Section, the nature of the bond or security and the procedures
for posting bond or providing other security shall be consistent with the provisions
for providing security in connection with a suspensive appeal under the Code of
Civil Procedure.

Thereafter, and within the thirty calendar days from the date of the rendering
and signing of such decision or judgment of the board, the taxpayer may file his
petition for review with the proper district court, setting forth specifically any errors
which may have been committed by the board in reaching its decision or judgment.

(3) The other deadlines and rules governing the briefing and answering of
an appeal filed pursuant to this Section shall be as provided for in civil matters under
the Code of Civil Procedure and all applicable court rules.

B. When the district judge has ordered the review, a copy of the order and
petition shall be mailed a petition for review is lodged with an appellate court, the
court or its clerk shall mail a copy of the petition to both the secretary-clerk of the
board, and the opposing party or his counsel representing him, and the order. Within
ten days from the lodging of the petition, the appellate court shall command the
secretary-clerk of the board to send up the appellate court, within twenty thirty days
§1435. Jurisdiction of district courts to review decisions of the board

A. The district courts of appeal shall have exclusive jurisdiction to review the decisions or judgments of the board, and the judgment of any such court shall be subject to further appeal, suspensive only, in accordance with the law relating to civil matters. If a suspensive appeal is taken from a judgment of the district court no further bond need be posted and the bond originally posted remains in full force and effect to guarantee the payment of any tax, interest, and penalty until final decision of the court.

B. The court of appeal where a case would be appealable pursuant to R.S. 47:1436 may exercise supervisory jurisdiction over the case pending before the board in the same manner as provided for in a civil matter pending in a district court within its circuit. The supreme court may exercise supervisory jurisdiction over the board in all of its cases, in the same manner as provided for in civil matters.

C. Upon such review, such the courts shall have the power to affirm or, if the decision or judgment of the board is not in accordance with law or is manifestly erroneous on the facts considering the record as a whole, to modify, or to reverse the decision or judgment of the board, with or without remanding the case for further proceedings as justice may require. An appellate court may also remand a case with an order that it be immediately transferred to the district court pursuant to R.S. 47:1432(B).

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§1438. Date judgment becomes final

For the purposes of this Title, the date on which a decision or judgment of the board becomes final shall be determined as provided herein. The decision or judgment of the board shall become final in either of the following circumstances:

CODING: Words in struck through type are deletions from existing law; words underscored are additions.
(1) Upon the expiration of the time allowed for filing a petition for review,
if no such petition has been duly filed within such time;

(2) Upon the expiration of the time allowed for filing a petition for appeal;
if the decision or judgment of the board has been affirmed or the petition for review
dismissed by the district court, and no appeal has been taken; or

(3) Upon dismissal of the appeal, if the decision or judgment of the board has
been affirmed or the petition for review dismissed by the district court; or

(4) Upon the expiration of thirty days from the date of issue of the
mandate of the supreme court, if such court directs that the decision or judgment of
the board be affirmed or the petition for review dismissed:

If the Supreme Court directs that the decision or judgment of the board be
modified or reversed, the decision or judgment of the board rendered in accordance
with the mandate of the supreme court shall become final upon the expiration of
thirty days from the time it was rendered, unless within such thirty days either the
collector or the taxpayer has instituted proceedings to have such decision or
judgment corrected to accord with the mandate, in which event the decision or
judgment of the board shall become final when so corrected:

If the decision or judgment of the board is modified or reversed by the district
court, and if the time allowed for taking an appeal has expired and no such appeal
has been taken; or if the appeal has been dismissed; or if the decision of the court has
been affirmed by the supreme court, then the decision or judgment of the board
rendered in accordance with the mandate of the district court shall become final on
the expiration of thirty days from the time such decision or judgment of the board
was rendered, unless within such thirty days either the collector or the taxpayer has
instituted proceedings to have such decision corrected so that it will accord with the
mandate, in which event the decision or judgment of the board shall become final
when so corrected:

If the Supreme Court orders a rehearing, or if the case is remanded by the
district court to the board for rehearing, and if the time allowed for taking an appeal
has expired, and no such petition has been duly filed; or if the appeal has been
dismissed; or if the decision of the court has been affirmed by the supreme court, then the decision or judgment of the board rendered upon such rehearing shall become final in the same manner as though no prior decision or judgment of the board has been rendered.

As used in this section, the term "district court" means any district court of the State of Louisiana having jurisdiction to review the decision or judgment of the board; and the term "mandate" in case a mandate has been recalled prior to the expiration of thirty days from date of issuance thereof, means the final mandate. If a petition for review of a judgment of the board is timely filed with the applicable appellate court, the judgment of the appellate court shall become final in the same manner, and at the same time, as provided for in civil matters under the Code of Civil Procedure.

§1486. No appeal from action of board

An action of the board rejecting or refusing to approve any claim under this Part may not be appealed to the courts. However, nothing contained in this Part shall deny a claimant whose claim has been rejected by the board the right to petition the legislature for permission to sue on the claim in a court of proper jurisdiction when such cause of action is otherwise allowed by law.

§1508.1. Unauthorized disclosure of information

B. Nothing contained in this Section shall be construed to prevent such persons from disclosing a return of a taxpayer or the records of the secretary as authorized by law in any Board of Tax Appeals or other judicial proceeding in which the state or any political subdivision thereof is a party.

§1561. Alternative remedies for the collection of taxes

A. In addition to following any of the special remedies provided in the various chapters of this subtitle Subtitle, the collector may, in his discretion, proceed
to enforce the collection of any taxes due under this **Subtitle** by means of any
of the following alternative remedies or procedures:

(1) Assessment and distraint, as provided in R.S. 47:1562 through 47:1573.
(2) Summary court proceeding, as provided in R.S. 47:1574.
(3) Ordinary suit under the provisions of the general laws regulating actions
for the enforcement of obligations.

**B.** The collector may choose which of these procedures he **shall** pursue
in each case, and the counter-remedies and delays to which the taxpayer **shall**
be entitled **shall** be only those which are not inconsistent with the proceeding
initiated by the collector, provided that in every case the taxpayer shall be entitled
to proceed under R.S. 47:1576 except (a) **after** under any of the following
circumstances:

(1) After he has filed a petition with the **Board of Tax Appeals** for a redetermination of the assessment; or (b) when
(2) When an assessment for the tax in question has become final or (c) when
(3) When a suit involving the same tax obligation is pending against him;
and provided further, that the

**C.** The fact that the collector has initiated proceedings under the assessment
and distraint procedure **shall** not preclude him from thereafter proceeding by
summary or ordinary court proceedings for the enforcement of the same tax
obligation.

* * *

**§1565. Notice of assessment and right to appeal**

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**C.**

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(3) The remedies of a taxpayer aggrieved by any action of the secretary are
by appeal to the **Board of Tax Appeals** or by payment of the
disputed tax under protest and suit **petition** to recover as provided in this **Subtitle**.

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are additions.
§1574. Collection by summary court proceeding authorized  

In addition to any other procedure provided in this Subtitle or elsewhere in the laws of this state; and for the purpose of facilitating and expediting the determination and trial of all claims for taxes, penalties, interest, attorney fees, or other costs and charges arising under this Subtitle, there is hereby provided a summary proceeding for the hearing and determination of all claims by or on behalf of the state, or by or on behalf of the collector, for taxes, excises, and licenses and for the penalties, interest, attorney fees, costs or other charges due thereon, by preference in all courts, all as follows:  

*   *   *

(5) The provisions of this Section shall apply only in the following instances:  

(a) The proceeding is for collection of a tax assessment that has become final, or to which the provisions of RS. 47:1567 or 1568 apply.  

(b) A jeopardy assessment has been or could be issued against the defendant pursuant to R.S. 47:1566 for the same tax.  

(c) A rule to cease business has been or is concurrently brought against the defendant pursuant to R.S. 47:314, 1574.1, or 1582.  

(d) The matter also involves the special authority to enforce collection of taxes collected or withheld from others pursuant to R.S. 47:1561.1.  

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§1576. Remittance of tax under protest; suits to recover  

A.(1)(a) Except as otherwise provided in Subsection B of this Section, any taxpayer protesting the payment of any amount found due by the secretary of the Department of Revenue, or the enforcement of any provision of the tax laws in relation thereto, shall remit to the Department of Revenue the amount due and at that time shall give notice of intention to either file suit for the recovery of such tax.  

(b) In the case of sales or use taxes that are required to be collected and remitted by a selling dealer as provided for in R.S. 47:304, the purchaser, in order to avail himself of the alternative remedy provided by this Section, shall remit
protested sales or use tax to the selling dealer, and shall retain copies of
documentation evidencing the amount of the sales or use tax paid to the dealer on the
transactions. On or before the twentieth day of the month following the month of the
transactions on which the selling dealer charged the tax, the purchaser shall inform
the department by certified mail or other reasonable means of the dates and amounts
of the protested taxes that were charged by the selling dealer, and shall give notice
of the purchaser's intention to either file suit for or file a petition with the Board of
Tax Appeals for purposes of recovery of the tax.

(2) Upon receipt of this notice, the amount remitted to the Department of
Revenue or the amount of protested taxes that have been paid to the selling dealer
shall be placed in an escrow account and held by the secretary or his duly authorized
representative for a period of thirty days. If suit is filed for recovery of the tax
within the thirty-day period, or if a petition is filed with the Board of Tax Appeals
for recovery of the tax paid within the thirty-day period, the funds in the escrow
account shall be further held pending the outcome of the suit, the petition, or an
appeal therefrom.

*  *  *

C. This Section shall afford a legal remedy and right of action in the Board
of Tax Appeals as provided by law, or in any state court having jurisdiction of the
parties and subject matter, for a full and complete adjudication of any and all
questions arising in the enforcement of this Subtitle as to the legality of any tax
accrued or accruing or the method of enforcement thereof. In such action, service
of process upon the secretary shall be sufficient service, and he shall be the sole
necessary and proper party defendant in any such suit.

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E. Upon request of a taxpayer and upon proper showing by such taxpayer
that the principle of law involved in an additional assessment is already pending
before the courts for judicial determination or pending before the Board of Tax
Appeals, the taxpayer, upon agreement to abide by the decision of the courts, the
Board of Tax Appeals, or by a final judgment of a court upon a timely appeal of a
decision of the Board of Tax Appeals, may remit the additional assessment under protest, but need not file an additional suit or petition. In such cases, the tax so paid under protest shall be placed in an escrow account and held by the secretary until the question of law involved has been determined by the courts, the Board of Tax Appeals, or by a final judgment of a court upon a timely appeal of a decision of the Board of Tax Appeals, and shall then be disposed of as therein provided.

§1578. Cancellation of lien, privilege, and mortgage; compromises

B. In other cases, the secretary may authorize the cancellation or release of a lien, privilege, or mortgage subject to the following terms and conditions:

(2) Subject to approval by the Board of Tax Appeals, the secretary may authorize the release of any real immovable property from the effect and operation of any lien, privilege, mortgage, or other encumbrance, recorded by virtue of this Subtitle, provided, that the secretary is satisfied that the remaining real immovable property belonging to the tax debtor and upon which said lien, privilege, and mortgage bears, is valued at not less than the amount of the remaining tax obligation, including all penalties, interest and other costs incurred, and the amount of all prior liens upon such property. In determining the value of the remaining property, due consideration shall be given to prior ranking encumbrances, if any exist on said property.

(3) Subject to the approval of the Board of Tax Appeals, the secretary may issue a certificate of release of any part of the property subject to any lien, privilege, mortgage, or other encumbrance recorded by virtue of this Subtitle, if there is paid over to the secretary in partial satisfaction of the liability an amount determined by the secretary, which shall not be less than the value, as determined by the secretary, of the interest of the state of Louisiana in the part to be released, or the secretary determines at any time that the interest of the state of Louisiana in the part to be released has no value. In determining the value of the interest of the state of Louisiana in the part to be released has no value.
Louisiana in the part to be released, the secretary shall give consideration to the value of the part and to all prior ranking liens or other encumbrances existing on the part to be released.

(4)(a) Notwithstanding any other provision of this Chapter, the secretary, with the approval of two assistant secretaries and the Board of Tax Appeals, may compromise any judgments for taxes of five hundred thousand dollars or less exclusive of interest and penalty, including assessments for such amounts which are equivalent to judgments upon a determination that any of the following apply:

§1603. Waiver of penalty for delinquent filing or delinquent payment

A.(1) If the failure to make any return at the time such return becomes due or the filing of a return without remittance of the full amount due, is attributable, not to the negligence of the taxpayer, but to other cause set forth in written form and considered reasonable by the secretary of the Department of Revenue, the secretary may remit or waive payment of the whole or any part of the specific penalty provided for such failure.

(2)(a) In order to promote the effective administration of the tax laws of this state, the secretary may also promulgate rules and regulations pursuant to the Administrative Procedure Act concerning the waiver of penalties, including but not limited to the establishment of a voluntary disclosure program.

(b) The secretary may, pursuant to the rules and regulations referenced in Subparagraph (a) of this Paragraph, remit or waive the payment of the whole or any part of the penalties provided for in this Subtitle.

(3) In any case when the penalty exceeds twenty-five thousand dollars, it can be waived by the secretary only after approval by the Board of Tax Appeals.

§1688. Suspension of dealer's permit

Whenever the collector of revenue determines that a dealer holding a permit under R.S. 47:1683 has violated any of the provisions of this Part, he shall...
suspend the permit of such dealer for a period of not less than six months nor more
than one year; provided that any dealer aggrieved by such action on the part of the
secretary may appeal suspensively to the Board of Tax Appeals.

Section 2. The Board of Tax Appeals and the secretary of the Department of
Revenue may enter into an agreement for a fixed annual interagency transfer to the board
as payment in lieu of filing fees owed by the secretary.

Section 3. The Louisiana State Law Institute is authorized and directed to revise the
Louisiana Revised Statutes of 1950, as amended, by changing all references to the "board
of tax appeals" to "Board of Tax Appeals".

Section 4. This Act shall become effective on July 1, 2014; if vetoed by the governor
and subsequently approved by the legislature, this Act shall become effective on July 1,
2014, or on the day following such approval by the legislature, whichever is later.