

By Senator Dyer

14-1393-00

1 A bill to be entitled
 2 An act relating to the tax on sales, use, and
 3 other transactions; amending s. 212.08, F.S.;
 4 extending the general governmental sales tax
 5 exemption to specific contracted agents of
 6 school boards; amending s. 235.32, F.S.;
 7 allowing school boards to authorize certain
 8 tax-exempt purchases by the boards' contracted
 9 agents; requiring school boards to develop a
 10 means of verifying to retailers that such
 11 purchases are tax-exempt; prohibiting
 12 contractors from retroactively passing on sales
 13 tax charges to school boards; providing an
 14 effective date.

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 16 Be It Enacted by the Legislature of the State of Florida:

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 18 Section 1. Subsection (6) of section 212.08, Florida
 19 Statutes, is amended to read:

20 212.08 Sales, rental, use, consumption, distribution,
 21 and storage tax; specified exemptions.--The sale at retail,
 22 the rental, the use, the consumption, the distribution, and
 23 the storage to be used or consumed in this state of the
 24 following are hereby specifically exempt from the tax imposed
 25 by this chapter.

26 (6) EXEMPTIONS; POLITICAL SUBDIVISIONS.--There are
 27 also exempt from the tax imposed by this chapter sales made to
 28 the United States Government, a state, or any county,
 29 municipality, or political subdivision of a state when payment
 30 is made directly to the dealer by the governmental entity.
 31 This exemption shall not inure to any transaction otherwise

1 taxable under this chapter when payment is made by a
2 government employee by any means, including, but not limited
3 to, cash, check, or credit card when that employee is
4 subsequently reimbursed by the governmental entity. With the
5 exception of contractors acting as agents for school boards
6 pursuant to s. 235.32,this exemption does not include sales
7 of tangible personal property made to contractors employed
8 either directly or as agents of any such government or
9 political subdivision thereof when such tangible personal
10 property goes into or becomes a part of public works owned by
11 such government or political subdivision. A determination
12 whether a particular transaction is properly characterized as
13 an exempt sale to a government entity or a taxable sale to a
14 contractor shall be based on the substance of the transaction
15 rather than the form in which the transaction is cast. The
16 department shall adopt rules that give special consideration
17 to factors that govern the status of the tangible personal
18 property before its affixation to real property. In developing
19 these rules, assumption of the risk of damage or loss is of
20 paramount consideration in the determination. This exemption
21 does not include sales, rental, use, consumption, or storage
22 for use in any political subdivision or municipality in this
23 state of machines and equipment and parts and accessories
24 therefor used in the generation, transmission, or distribution
25 of electrical energy by systems owned and operated by a
26 political subdivision in this state for transmission or
27 distribution expansion. Likewise exempt are charges for
28 services rendered by radio and television stations, including
29 line charges, talent fees, or license fees and charges for
30 films, videotapes, and transcriptions used in producing radio
31 or television broadcasts. The exemption provided in this

1 subsection does not include sales, rental, use, consumption,
2 or storage for use in any political subdivision or
3 municipality in this state of machines and equipment and parts
4 and accessories therefor used in providing two-way
5 telecommunications services to the public for hire by the use
6 of a telecommunications facility, as defined in s. 364.02(13),
7 and for which a certificate is required under chapter 364,
8 which facility is owned and operated by any county,
9 municipality, or other political subdivision of the state.
10 Any immunity of any political subdivision of the state or
11 other entity of local government from taxation of the property
12 used to provide telecommunication services that is taxed as a
13 result of this section is hereby waived. However, the
14 exemption provided in this subsection includes transactions
15 taxable under this chapter which are for use by the operator
16 of a public-use airport, as defined in s. 332.004, in
17 providing such telecommunications services for the airport or
18 its tenants, concessionaires, or licensees, or which are for
19 use by a public hospital for the provision of such
20 telecommunications services.

21 Section 2. Section 235.32, Florida Statutes, is
22 amended to read:

23 235.32 Substance of contract; contractors to give
24 bond; penalties.--

25 (1) Each board shall develop contracts consistent with
26 this chapter and statutes governing public facilities. Such a
27 contract must contain the drawings and specifications of the
28 work to be done and the material to be furnished, the time
29 limit in which the construction is to be completed, the time
30 and method by which payments are to be made upon the contract,
31 and the penalty to be paid by the contractor for any failure

1 to comply with the terms of the contract. The board may
2 require the contractor to pay a penalty for any failure to
3 comply with the terms of the contract and may provide an
4 incentive for early completion. Upon accepting a satisfactory
5 bid, the board shall enter into a contract with the party or
6 parties whose bid has been accepted. The contractor shall
7 furnish the board with a performance and payment bond as set
8 forth in s. 255.05. Notwithstanding any other provision of
9 this section, if 25 percent or more of the costs of any
10 construction project is paid out of a trust fund established
11 pursuant to 31 U.S.C. s. 1243(a)(1), laborers and mechanics
12 employed by contractors or subcontractors on such construction
13 will be paid wages not less than those prevailing on similar
14 construction projects in the locality, as determined by the
15 Secretary of Labor in accordance with the Davis-Bacon Act, as
16 amended. A person, firm, or corporation that constructs any
17 part of any educational plant, or addition thereto, on the
18 basis of any unapproved plans or in violation of any plans
19 approved in accordance with the provisions of this chapter and
20 rules of the Commissioner of Education relating to building
21 standards or specifications is subject to forfeiture of bond
22 and unpaid compensation in an amount sufficient to reimburse
23 the board for any costs that will need to be incurred in
24 making any changes necessary to assure that all requirements
25 are met and is also guilty of a misdemeanor of the second
26 degree, punishable as provided in s. 775.082 or s. 775.083,
27 for each separate violation.

28 (2) Materials that a school board considers necessary
29 for the completion of any project contracted as described in
30 subsection (1), which materials are authorized under the
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1 contract and purchased by a contractor who is under contract
2 on the project, are sales-tax exempt to the contractor.

3 (a) School districts must determine a method by which
4 to provide to retailers and wholesalers verification that the
5 school board has authorized a contractor to make certain
6 purchases and that the purchases are tax-exempt. Absent
7 specific authorization, purchases made by the contractor are
8 not tax-exempt, and a contractor who has made unauthorized
9 purchases may not retroactively apply to nor pass on to the
10 school board the amount of any sales taxes on those purchases.

11 (b) This exemption applies only to materials that are
12 to be used in the contracted capital project. Purchases of
13 machinery or equipment by contractors are not tax-exempt under
14 this section.

15 Section 3. This act shall take effect July 1, 2000.

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18 SENATE SUMMARY

19 Extends the general governmental sales tax exemption to
20 specific contracted agents of school boards. Allows
21 school boards to authorize certain tax-exempt purchases
22 by the boards' contracted agents. Requires school boards
23 to develop a means of verifying to retailers that such
24 purchases are tax-exempt. Prohibits contractors from
25 retroactively passing on sales tax charges to school
26 boards.
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