

By Senator Sebesta

16-1178-04

1 A bill to be entitled
2 An act relating to the Florida High-Speed Rail
3 Authority; amending s. 341.8203, F.S.;
4 redefining the terms "authority" and
5 "high-speed rail system"; amending s. 341.840,
6 F.S.; revising the tax exemption of the
7 authority and its agents and contractors;
8 providing for annual redetermination of
9 eligibility for exemption; providing for
10 recapture of taxes when an exemption is used
11 inappropriately; providing for rules; providing
12 an effective date.

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

16 Section 1. Subsections (2) and (6) of section
17 341.8203, Florida Statutes, are amended to read:

18 341.8203 Definitions.--As used in this act, unless the
19 context clearly indicates otherwise, the term:

20 (2) "Authority" means the Florida High-Speed Rail
21 Authority and its agents. However, for purposes of s. 341.840,
22 the term does not include any agent of the authority except as
23 provided in that section.

24 (6) "High-speed rail system" means any high-speed
25 fixed guideway system for transporting people or goods, which
26 system is capable of operating at speeds in excess of 120
27 miles per hour, including, but not limited to, a monorail
28 system, dual track rail system, suspended rail system,
29 magnetic levitation system, pneumatic repulsion system, or
30 other system approved by the authority. The term includes a
31 corridor and structures essential to the operation of the

1 line, including the land, structures, improvements,
2 rights-of-way, easements, rail lines, rail beds, guideway
3 structures, ~~stations, platforms, switches, yards, parking~~
4 facilities, power relays, switching houses, and rail stations,
5 ~~associated development, and also includes any other~~ facilities
6 or equipment used exclusively ~~or useful~~ for the purposes of
7 ~~high-speed rail system~~ design, construction, operation,
8 maintenance, or the financing of the high-speed rail system.

9 Section 2. Section 341.840, Florida Statutes, is
10 amended to read:

11 341.840 Tax exemption.--

12 (1) The exercise of the powers granted by this act
13 will be in all respects for the benefit of the people of this
14 state, for the increase of their commerce, welfare, and
15 prosperity, and for the improvement of their health and living
16 conditions. ~~and as~~ The design, construction building,
17 operation, maintenance, and financing of a high-speed rail
18 system by the authority, ~~or~~ its agent, ~~or~~ the owner or lessee
19 thereof, as herein authorized, constitutes the performance of
20 an essential public function.

21 (2)(a) For the purposes of this section, the term
22 "authority" does not include agents of the authority other
23 than contractors who qualify as such pursuant to subsection
24 (7).

25 (b) For the purposes of this section, any item or
26 property that is within the definition of "associated
27 development" in s. 341.8293(1) shall not be considered to be
28 part of the high-speed rail system as defined in s.
29 341.8203(6).

30 (3)(a) Purchases or leases of tangible personal
31 property or real property by the authority, excluding agents

1 of the authority, are exempt from taxes imposed by chapter 212
2 as provided in s. 212.08(6). Purchases or leases of tangible
3 personal property that is incorporated into the high-speed
4 rail system as a component part thereof, as determined by the
5 authority, by agents of the authority or the owner of the
6 high-speed rail system are exempt from sales or use taxes
7 imposed by chapter 212. Leases, rentals, or licenses to use
8 real property granted to agents of the authority or the owner
9 of the high-speed rail system are exempt from taxes imposed by
10 s. 212.031 if the real property becomes part of such system.

11 The exemptions granted in this subsection do not apply to
12 sales, leases, or licenses by the authority, agents of the
13 authority, or the owner of the high-speed rail system.

14 (b) The exemption granted in paragraph (a) to
15 purchases or leases of tangible personal property by agents of
16 the authority or by the owner of the high-speed rail system
17 applies only to property that becomes a component part of such
18 system. It does not apply to items, including, but not limited
19 to, cranes, bulldozers, forklifts, other machinery and
20 equipment, tools and supplies, or other items of tangible
21 personal property used in the construction, operation, or
22 maintenance of the high-speed rail system when such items are
23 not incorporated into the high-speed rail system as a
24 component part thereof.

25 (4) Any bonds or other, neither the authority, its
26 agent, nor the owner of such system shall be required to pay
27 any taxes or assessments upon or in respect to the system or
28 any property acquired or used by the authority, its agent, or
29 such owner under the provisions of this act or upon the income
30 therefrom, any security, and all notes, mortgages, security
31 agreements, letters of credit, or other instruments that arise

1 out of or are given to secure the repayment of bonds or other
2 security, issued by the authority, or on behalf of the
3 authority ~~therefor~~, their transfer, and the income therefrom,
4 including any profit made on the sale thereof, shall at all
5 times be free from taxation of every kind by the state, the
6 counties, and the municipalities and other political
7 subdivisions in the state. This subsection, however, does not
8 exempt from taxation or assessment the leasehold interest of a
9 lessee in any project or any other property or interest owned
10 by the lessee. The exemption granted by this subsection is not
11 applicable to any tax imposed by chapter 220 on interest
12 income or profits on the sale of debt obligations owned by
13 corporations.

14 (5) When property of the authority is leased to
15 another person or entity, the property shall be exempt from ad
16 valorem taxation only if the use by the lessee qualifies the
17 property for exemption under s. 196.199.

18 (6) A leasehold interest held by the authority is not
19 subject to intangible tax. However, if a leasehold interest
20 held by the authority is subleased to a nongovernmental
21 lessee, such subleasehold interest shall be deemed to be an
22 interest described in s. 199.023(1)(d), and is subject to the
23 intangible tax.

24 (7)(a) In order to be considered an agent of the
25 authority for purposes of the exemption from sales and use tax
26 granted by subsection (3) for tangible personal property
27 incorporated into the high-speed rail system, a contractor of
28 the authority that purchases or fabricates such tangible
29 personal property must be certified by the authority as
30 provided in this subsection.

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1 (b)1. A contractor must apply for a renewal of the
2 exemption not later than December 1 of each calendar year.

3 2. A contractor must apply to the authority on the
4 application form adopted by the authority, which shall develop
5 the form in consultation with the Department of Revenue.

6 3. The authority shall review each submitted
7 application and determine whether it is complete. The
8 authority shall notify the applicant of any deficiencies in
9 the application within 30 days. Upon receipt of a completed
10 application, the authority shall evaluate the application for
11 exemption under this subsection and issue a certification that
12 the contractor is qualified to act as an agent of the
13 authority for purposes of this section or a denial of such
14 certification within 30 days. The authority shall provide the
15 Department of Revenue with a copy of each certification issued
16 upon approval of an application. Upon receipt of a
17 certification from the authority, the Department of Revenue
18 shall issue an exemption permit to the contractor.

19 (c)1. The contractor may extend a copy of its
20 exemption permit to its vendors in lieu of paying sales tax on
21 purchases of tangible personal property qualifying for
22 exemption under this section. Possession of a copy of the
23 exemption permit relieves the seller of the responsibility of
24 collecting tax on the sale, and the Department of Revenue
25 shall look solely to the contractor for recovery of tax upon a
26 determination that the contractor was not entitled to the
27 exemption.

28 2. The contractor may extend a copy of its exemption
29 permit to real property subcontractors supplying and
30 installing tangible personal property that is exempt under
31 subsection (3). Any such subcontractor is authorized to extend

1 a copy of the permit to the subcontractor's vendors in order
2 to purchase qualifying tangible personal property tax-exempt.
3 If the subcontractor uses the exemption permit to purchase
4 tangible personal property that is determined not to qualify
5 for exemption under subsection (3), the Department of Revenue
6 may assess and collect any tax, penalties, and interest that
7 are due from either the contractor holding the exemption
8 permit or the subcontractor that extended the exemption permit
9 to the seller.

10 (d) Any contractor authorized to act as an agent of
11 the authority under this section shall maintain the necessary
12 books and records to document the exempt status of purchases
13 and fabrication costs made or incurred under the permit. In
14 addition, an authorized contractor extending its exemption
15 permit to its subcontractors shall maintain a copy of the
16 subcontractor's books, records, and invoices indicating all
17 purchases made by the subcontractor under the authorized
18 contractor's permit. If, in an audit conducted by the
19 Department of Revenue, it is determined that tangible personal
20 property purchased or fabricated claiming exemption under this
21 section does not meet the criteria for exemption, the amount
22 of taxes not paid at the time of purchase or fabrication shall
23 be immediately due and payable to the Department of Revenue,
24 together with the appropriate interest and penalty, computed
25 from the date of purchase, in the manner prescribed by chapter
26 212.

27 (e) If a contractor fails to apply for a high-speed
28 rail system exemption permit, or if a contractor initially
29 determined by the authority to not qualify for exemption is
30 subsequently determined to be eligible, the contractor shall
31 receive the benefit of the exemption in this subsection

1 through a refund of previously paid taxes for transactions
2 that otherwise would have been exempt. A refund may not be
3 made for such taxes without the issuance of a certification by
4 the authority that the contractor was authorized to make
5 purchases tax-exempt and a determination by the Department of
6 Revenue that the purchases qualified for the exemption.

7 (f) The authority may adopt rules governing the
8 application process for exemption of a contractor as an
9 authorized agent of the authority.

10 (g) The Department of Revenue may adopt rules
11 governing the issuance and form of high-speed rail system
12 exemption permits, the audit of contractors and subcontractors
13 using such permits, the recapture of taxes on nonqualified
14 purchases, and the manner and form of refund applications.

15 Section 3. This act shall take effect January 1, 2005.

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18 SENATE SUMMARY

19 Revises provisions that grant tax exemption to the
20 Florida High-Speed Rail Authority and its agents. Limits
21 the purchases that are exempt to property that becomes a
22 component of the system and does not exempt machinery and
23 equipment. Requires annual recertification of
24 applications for exempt status by contractors. Provides
25 for recapture of taxes when an exemption has been
26 incorrectly given or used.
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