

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1225 Tax on Sales, Use, and Other Transactions
SPONSOR(S): Glorioso and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 2290, SB 2458

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Finance & Tax Committee		Noriega	Diez-Arguelles
2) PreK-12 Committee			
3) Fiscal Council			
4) _____			
5) _____			

SUMMARY ANALYSIS

This bill provides a sales tax exemption from the sales tax for tangible personal property sold to a contractor directly employed by or as an agent of a governmental entity when the purchased property becomes part of a prekindergarten or elementary school owned by the governmental entity under specified conditions.

The bill also provides the conditions for the tax exemption that apply to governmental entities, contractors, and sellers. Among these conditions are duties relating to documentation and recordkeeping, the provision of certificates of exemption, and verification that the exempt property will be incorporated into a prekindergarten or elementary school. In addition, the bill provides for application of penalties.

The Revenue Estimating Conference has estimated that this bill will have a fiscal impact of \$11.7 million to state government and \$2.4 million to local governments in both FY 2005-06 and 2006-07.

This bill takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure Lower Taxes: This bill provides a sales tax exemption for tangible personal property sold to contractors directly employed by the government when such property becomes part of a prekindergarten or elementary school owned by the governmental entity under specified conditions.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Chapter 212, F.S., provides a 6 percent sales tax on all sales, use, and other transactions, unless exempted by statute. When each article of tangible personal property in this state is either sold at retail, used or consumed, or rented or leased, it will be taxed at a rate of 6 percent of the sales, use, or rental price.¹ Tangible personal property refers to personal property which may be weighed, measured, or touched or is in any manner perceptible to the senses.

Local governments are authorized to levy one or more types of Local Discretionary Sales Surtaxes, ranging from 0.5 percent to 1.0 percent each, with a maximum of 2.5 percent in some jurisdictions.² The local discretionary sales surtax applies to all transactions subject to the state tax imposed on sales, use, services, rentals, admissions, and other authorized transactions.³ The surtax is computed by multiplying the rate imposed by the county where the sale occurs by the amount of taxable sale. The sales amount is not subject to the surtax if the property or service is delivered within a county that does not impose a surtax. In addition, the tax on any sales amount above \$5,000 on any item of tangible personal property is not subject to the surtax. The \$5,000 cap does not apply to the sale of any other service.

Section 212.08(6), F.S., provides an exemption for direct purchases of tangible personal property by governmental entities. However, the statute specifically provides that it does not extend to purchases by contractors of tangible personal property to be incorporated into public facilities under contracts with the governmental entities that own those facilities.

The lack of exemption for contractor purchases leaves governmental entities with two main options regarding the purchase of materials for a public works project. The governmental entity can either directly purchase construction materials for a project contractor (thus taking advantage of the sales tax exemption for governmental entities), or the governmental entity can reimburse the contractor, in accordance with the terms of the contract, for the sales tax paid by the contractor during the project.⁴ However, both of these options have disadvantages. If a governmental entity decides to directly purchase construction materials for a contractor, the contractor has to arrange to have the property picked up from the governmental entity, thus postponing the start date of the project. Moreover, if more supplies are needed during the project, the governmental entity, although not involved in the construction work, must purchase the additional supplies and coordinate delivery with the contractor.

¹s. 212.05, F.S.

²s. 212.055, F.S.

³s. 212.054, F.S.

⁴In 2001, The Department of Revenue (DOR) estimated that local governments directly purchase approximately 49 percent of the materials for their public works projects (based on a limited survey conducted by the Florida League of Cities), that state government directly purchases approximately 50 percent of the materials for its public works projects (based on information from the Department of Management Services), and that the federal government does not directly purchase any of the materials for its public works projects (based on information from a federal purchasing expert).

On the other hand, if the governmental entity chooses to reimburse a contractor for the sales tax paid by the contractor during the project, the governmental entity may be using funds for a sales tax payment that could be used for additional construction or other purposes.

Effect of Proposed Changes

The bill creates a sales tax exemption for tangible personal property sold to a contractor directly employed by or as an agent of a governmental entity when the purchased property becomes part of a prekindergarten or elementary school owned by the governmental entity under specified conditions.

The bill amends s. 212.08(6), F.S., to provide that public works contractors are taxable on materials incorporated into the public facility unless the conditions of s. 212.08(18), F.S., are met. The bill adds subsection (18) to s. 212.08, F.S., to provide a mechanism to permit public works contractors to claim the exemption on purchases made by the contractor for the construction of a public prekindergarten or elementary school.

Applicability of the Tax Exemption

In order for the tax exemption to apply, all of the following conditions must be met:

- The governmental entity or political subdivision must hold a current consumer's certificate of exemption issued by the Department of Revenue (DOR);
- The tangible personal property purchased by the contractor must go into or become part of a public prekindergarten or elementary school owned by the governmental entity or political subdivision;
- The governmental entity or political subdivision must bear the economic burden of the cost of the property, either through direct reimbursement of the cost to the contractor or by inclusion of the cost in the contractor's price for performance of the contract;
- The seller of the property must be presented with the following documents:
 - a.) a copy of a current, valid Florida consumer's certificate of exemption held by the governmental entity or political subdivision;
 - b.) a signed and dated statement by the governmental entity that identifies a specific public prekindergarten or elementary school project and names the contractors engaged to perform the work who have been authorized to make exempt purchases of materials for the project; and
 - c.) a signed and dated statement by the purchasing contractor certifying that all purchases will be for incorporation into that public prekindergarten or elementary school project;
- The records of the seller must include both a purchase order that identifies the tangible personal property being purchased, as well as other records that establish the purchased property was charged by a contractor to an account only for purchases for the public prekindergarten or elementary school project; and
- The seller must verify that a purchasing contractor is named in the statement from the governmental entity or political subdivision and that the project identified in the statement of the contractor is the same project identified in the statement of the government entity or political subdivision.

Record Maintenance

The seller must maintain the records described in the previous section for a period of time during which the department may conduct an audit of the seller's books and records. A seller may provide the department with evidence of any exempt status of sale during any protest period provided by statute.⁵

A contractor that claims an exemption must maintain records to establish that the materials purchased were actually incorporated into the public prekindergarten or elementary school project described in the contractor's statement. However, a purchase will not qualify as an exemption if a contractor made the purchase before the date on which a governmental entity issued a statement authorizing that contractor to make exempt purchases for a specific public prekindergarten or elementary school project.

Penalties

Any person who fraudulently issues a statement for use in claiming a tax exemption, for materials that do not satisfy the requirements, are subject to the penalties for fraud.⁶ This includes any public official or contractor who fraudulently issues a written statement for use in claiming the exemption is liable for the tax and the penalties provided by law.

The penalties for a fraudulent claim of exemption includes payment of the tax plus a mandatory penalty of 200 percent of the tax and a fine and punishment as provided for a conviction of a felony of the third degree. Punishment includes a term of imprisonment not exceeding 5 years⁷, unless deemed a habitual offender⁸, and a fine not exceeding \$5,000.⁹ All statements by a governmental entity or a contractor must be made under penalty of perjury as provided by statute.¹⁰

C. SECTION DIRECTORY:

Section 1. Amends s. 212.08, F.S.; creates a tax exemption for tangible personal property sold to a contractor employed directly by or as an agent a governmental entity when such property will become part of a prekindergarten or elementary school; provides certain conditions; provides penalties for fraudulent activities.

Section 2. Establishes that this act will take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference has determined that this bill will have the following fiscal impact on state government:

	<u>2005-2006</u>	<u>2006-2007</u>
General Revenue	(11.7m)	(11.7m)
Trust	<u>(insignificant)</u>	<u>(insignificant)</u>
Total	(11.7m)	(11.7m)

⁵s. 213.21, F.S., Informal conferences, compromises – Protest provision.

⁶s. 212.085, F.S.

⁷s. 775.082, F.S.

⁸s. 775.084, F.S.

⁹s. 775.083, F.S.

¹⁰s. 92.525, F.S.

- 2. Expenditures:
None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

- 1. Revenues:

The Revenue Estimating Conference has estimated that this bill will have the following fiscal impact on local governments:

	<u>2005-2006</u>	<u>2006-2007</u>
Revenue Sharing	(0.4m)	(0.4m)
Local Gov't. Half Cent	(1.0m)	(1.0m)
Local Option	(1.0m)	(1.0m)
Total Local Impact	<u>(2.4m)</u>	<u>(2.4m)</u>

- 2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

- 1. Applicability of Municipality/County Mandates Provision:

The mandates provision does apply because the bill reduces the authority that cities or counties have to raise revenues in the aggregate through local option sales taxes. However, because the reduction is less than \$1.8 million, it is considered insignificant and the bill is exempt from the mandates provision.

- 2. Other:
None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The DOR suggests that the effective date of this bill be changed to January 1, 2006. According to the Department, an effective date of upon becoming law does not give the Department any time to implement this law. The DOR must not only create new forms and change internal processes, but it will

also be required to revise its existing rule on public works contracts to reflect the new exemption. Because of these reasons, the Department believes that a January 1, 2006, effective date, will allow more time and effort to execute a more thorough and better planned implementation.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES