HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 689 Public School Construction Sales Tax Relief
SPONSOR(S): Glorioso
TIED BILLS: **IDEN./SIM. BILLS:** SB 434

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 for tangible personal property sold to a contractor directly employed by or acting 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 negative fiscal impact of $26.4 million to state government and $5.9 million to local governments in FY 2006-07, and of $26.1 million to state government and $5.9 million to local governments in FY 2007-08.

The bill has an effective date of upon becoming a law.

The bill may be a mandate requiring a two-thirds vote of the membership of each house to pass.

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 a contractor directly employed by or acting 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.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Chapter 212, F.S., provides a 6 percent sales tax on all sales of tangible personal property, 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 is 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 the 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.

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 an 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 purchase construction materials directly 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. On the other hand, if the governmental entity chooses to reimburse a contractor for the sales tax paid

[1] s. 212.05, F.S.
[2] s. 212.055, F.S.
[3] s. 212.054, F.S.
[4] In 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).

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.

Proposed Changes

The bill creates a sales tax exemption for tangible personal property sold to a contractor directly employed by or acting 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 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. In addition, the bill amends s. 212.08(6), F.S., to provide that public works contractors are to pay tax on materials incorporated into the public facility, unless the conditions of s. 212.08(18), F.S., are met.

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

- The government 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 tangible personal 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 copy of a current, valid Florida consumer's certificate of exemption held by the governmental entity or political subdivision;
    - a signed and dated statement by the governmental entity or political subdivision 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
    - a signed and dated statement by the purchasing contractor certifying that all purchases made by the contractor, and identified at the time of purchase as property that will go into or become part of the public prekindergarten or elementary school project specified in the statement, will be for incorporation into that public prekindergarten or elementary school;

- The records of the seller must include both a purchase order from the contractor that specifically identifies the tangible personal property being purchased, as well as other records that establish that the contractor charged the purchased property to an account for which only public prekindergarten or elementary school project purchases can be charged;

- The statements of the governmental entity or political subdivision and of the purchasing contractor must be dated and contain the following printed or typed declaration at the end of the statement and immediately above the signature of the public officer, employee, or contractor:

    "Under penalties of perjury as provided in s. 92.525, Florida Statutes, I declare that I have read the foregoing statement and that the facts stated in it are true."; 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 DOR may conduct an audit of the seller's books and records. A seller may provide DOR 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. The contractor must accrue and remit use tax on any items purchased as exempt under s. 212.08(18), F.S., that are not incorporated into the public prekindergarten or elementary school project.

However, a purchase will not qualify for an exemption under s. 212.08(18), F.S., if a contractor makes the purchase before the date on which a governmental entity or political subdivision has issued a signed and dated statement authorizing that contractor to make exempt purchases for a specified public prekindergarten or elementary school project.

Penalties

Any person who fraudulently issues a written statement for use in claiming an exemption for materials that do not satisfy the requirements is subject to the penalties for fraud,[6] in addition to being liable for the payment of the tax due on such materials. This provision also applies to public officials or contractors.

The penalties for a fraudulent claim of exemption include 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 years,[7] unless deemed a habitual offender,[8] 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.; by creating a tax exemption for tangible personal property sold to a contractor employed directly by or acting as an agent of a governmental entity when such property will become part of a prekindergarten or elementary school; by providing certain conditions; by providing penalties for fraudulent activities.

Section 2. Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

[5] s. 213.21, F.S., Informal conferences; compromises – Protest provision.
[6] s. 212.085, F.S.
[7] s. 775.082, F.S.
[8] s. 775.084, F.S.
[9] s. 775.083, F.S.
[10] s. 92.525, F.S.

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

	2006-2007	2007-2008
General Revenue	(26.3m)	(26.0m)
Trust	(0.1m)	(0.1m)
Total	(26.4m)	(26.1m)

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

	2006-2007	2007-2008
Revenue Sharing	(0.9m)	(0.9m)
Local Gov't. Half Cent	(2.5m)	(2.5m)
Local Option	(2.5m)	(2.5m)
Total Local Impact	(5.9m)	(5.9m)

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:

This bill reduces the authority that cities and counties have to raise revenues in the aggregate through local option sales taxes. No exemption applies. Therefore, the bill may be a mandate requiring a two-thirds vote of the membership of each house.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

DOR suggests that the effective date of this bill be changed to January 1, 2007. According to the Department, an effective date of upon becoming a law does not give DOR any time to implement this law, particularly to create new forms and change internal processes. Because of these reasons, the Department believes that a January 1 effective date will allow DOR more time and effort to execute a more thorough and better-planned implementation of this bill.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.