

CHAMBER ACTION

1 The Finance & Tax Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to public school construction sales tax
7 relief; amending s. 212.08, F.S.; providing an exemption
8 from the tax on sales, use, and other transactions for
9 tangible personal property sold to a contractor directly
10 employed by or as an agent of the United States Government
11 or state or local government when such property becomes
12 part of a prekindergarten or elementary school owned by
13 the governmental entity under specified conditions;
14 providing duties of governmental entities, contractors,
15 and sellers relating to documentation and recordkeeping;
16 providing for application of penalties; providing an
17 effective date.

18
19 Be It Enacted by the Legislature of the State of Florida:

20
21 Section 1. Subsection (6) of section 212.08, Florida
22 Statutes, is amended, and subsection (18) is added to that
23 section, to read:

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

30 (6) EXEMPTIONS; POLITICAL SUBDIVISIONS.--There are also
31 exempt from the tax imposed by this chapter sales made to the
32 United States Government, a state, or any county, municipality,
33 or political subdivision of a state when payment is made
34 directly to the dealer by the governmental entity. Unless the
35 conditions specified in subsection (18) are met, this exemption
36 shall not inure to any transaction otherwise taxable under this
37 chapter when payment is made by a government employee by any
38 means, including, but not limited to, cash, check, or credit
39 card when that employee is subsequently reimbursed by the
40 governmental entity. This exemption does not include sales of
41 tangible personal property made to contractors employed either
42 directly or as agents of any such government or political
43 subdivision thereof when such tangible personal property goes
44 into or becomes a part of public works owned by such government
45 or political subdivision. A determination whether a particular
46 transaction is properly characterized as an exempt sale to a
47 government entity or a taxable sale to a contractor shall be
48 based on the substance of the transaction rather than the form
49 in which the transaction is cast. The department shall adopt
50 rules that give special consideration to factors that govern the
51 status of the tangible personal property before its affixation

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52 | to real property. In developing these rules, assumption of the
53 | risk of damage or loss is of paramount consideration in the
54 | determination. This exemption does not include sales, rental,
55 | use, consumption, or storage for use in any political
56 | subdivision or municipality in this state of machines and
57 | equipment and parts and accessories therefor used in the
58 | generation, transmission, or distribution of electrical energy
59 | by systems owned and operated by a political subdivision in this
60 | state for transmission or distribution expansion. Likewise
61 | exempt are charges for services rendered by radio and television
62 | stations, including line charges, talent fees, or license fees
63 | and charges for films, videotapes, and transcriptions used in
64 | producing radio or television broadcasts. The exemption provided
65 | in this subsection does not include sales, rental, use,
66 | consumption, or storage for use in any political subdivision or
67 | municipality in this state of machines and equipment and parts
68 | and accessories therefor used in providing two-way
69 | telecommunications services to the public for hire by the use of
70 | a telecommunications facility, as defined in s. 364.02(15), and
71 | for which a certificate is required under chapter 364, which
72 | facility is owned and operated by any county, municipality, or
73 | other political subdivision of the state. Any immunity of any
74 | political subdivision of the state or other entity of local
75 | government from taxation of the property used to provide
76 | telecommunication services that is taxed as a result of this
77 | section is hereby waived. However, the exemption provided in
78 | this subsection includes transactions taxable under this chapter
79 | which are for use by the operator of a public-use airport, as

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80 defined in s. 332.004, in providing such telecommunications
81 services for the airport or its tenants, concessionaires, or
82 licensees, or which are for use by a public hospital for the
83 provision of such telecommunications services.

84 (18) EXEMPTIONS; PUBLIC PREKINDERGARTEN AND ELEMENTARY
85 SCHOOL CONSTRUCTION CONTRACTOR PURCHASES.--

86 (a) Sales of tangible personal property made to
87 contractors employed directly by or as agents of the United
88 States Government, a state, a county, a municipality, or a
89 political subdivision of a state for public prekindergarten or
90 elementary school construction are exempt if all of the
91 following conditions are met:

92 1. At the time of such sale, the governmental entity or
93 political subdivision holds a current consumer's certificate of
94 exemption from the department.

95 2. The tangible personal property purchased by the
96 contractor will go into or become part of a public
97 prekindergarten or elementary school owned by the governmental
98 entity or political subdivision. Tangible personal property
99 purchased and used by a contractor in the course of performing a
100 contract which does not become part of the public
101 prekindergarten or elementary school is not exempt under this
102 subsection.

103 3. The governmental entity or political subdivision bears
104 the economic burden of the cost of the tangible personal
105 property, through direct reimbursement of the cost to the
106 contractor under the contract or inclusion of the cost in the
107 contractor's price for performance of the contract.

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108 4. The governmental entity or political subdivision,
109 general contractor, or a subcontractor presents to the seller
110 before or at the time of a purchase:

111 a. A copy of a current, valid Florida consumer's
112 certificate of exemption held by the governmental entity or
113 political subdivision.

114 b. A signed and dated statement of an officer or
115 authorized employee of the governmental entity or political
116 subdivision that identifies a specific public prekindergarten or
117 elementary school project and names the contractor or
118 contractors engaged to perform work on the identified project
119 who have been authorized to make exempt purchases of materials
120 for the project.

121 c. A signed and dated statement of the purchasing
122 contractor certifying that all purchases made by that contractor
123 and identified at the time of purchase as property that will go
124 into or become a part of the public prekindergarten or
125 elementary school project specified in the statement of the
126 governmental entity or political subdivision will be for
127 incorporation into that public prekindergarten or elementary
128 school.

129
130 A seller may rely on a single copy of the governmental entity's
131 or political subdivision's consumer's certificate of exemption
132 and a single signed and dated statement from the governmental
133 entity or political subdivision to make sales to any contractor
134 named on that statement if the other certification and
135 recordkeeping requirements of this subsection have also been

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136 satisfied. A seller may rely on a single signed statement of a
137 purchasing contractor to make sales to that contractor for the
138 public prekindergarten or elementary school project specified in
139 that statement if the other certification and recordkeeping
140 requirements of this subsection have also been satisfied.

141 5. The records of the seller contain documentation for
142 each exempt purchase, as follows:

143 a. A purchase order from the contractor specifically
144 identifying, by description and quantity, the tangible personal
145 property being purchased for incorporation by the contractor
146 into a specifically named public prekindergarten or elementary
147 school project; or

148 b. Electronic or other records of the seller that
149 establish that the purchased tangible personal property,
150 identified by description and quantity, was charged by a
151 contractor who has provided a statement as described in
152 subparagraph 4. to an account to which only purchases for the
153 public prekindergarten or elementary school project specified in
154 that statement are charged.

155 6. The statements of the governmental entity or political
156 subdivision and of the purchasing contractor described in this
157 paragraph must be dated and contain the following printed or
158 typed declaration at the end of the statement and immediately
159 above the signature of the public officer, employee, or
160 contractor:

161
162 "Under penalties of perjury as provided in s. 92.525,
163 Florida Statutes, I declare that I have read the

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164 foregoing statement and that the facts stated in it
165 are true."
166

167 7. The seller verifies that a purchasing contractor is
168 named in the statement from the governmental entity or political
169 subdivision and that the project identified in the statement of
170 the contractor is the same project as that identified in the
171 statement of the governmental entity or political subdivision
172 before the exemption is granted as to any purchase.

173 (b)1. The seller shall maintain in its records the
174 certificate, statements, and other records described in
175 paragraph (a) to document the exempt status of any sale for the
176 period of time during which the department may conduct an audit
177 of the seller's books and records. A dealer may, through the
178 informal protest provided for in s. 213.21 and the rules of the
179 department, provide the department with evidence of the exempt
180 status of a sale. A consumer's certificate of exemption executed
181 by a governmental entity or political subdivision that was
182 registered with the department at the time of sale, a statement
183 of the governmental entity or political subdivision as described
184 in sub-subparagraph (a)4.b. that had been issued and signed
185 before or on the date of the sale for which exemption was
186 claimed, and a purchasing contractor's statement as described in
187 sub-subparagraph (a)4.c. from a contractor that could have
188 issued such statement at the time of the sale shall be accepted
189 by the department when submitted during the protest period but
190 may not be accepted in any proceeding under chapter 120 or any
191 circuit court action instituted under chapter 72. A purchase

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192 does not qualify for exemption under this subsection if a
193 contractor made the purchase before the date on which a
194 governmental entity or political subdivision has issued a signed
195 and dated statement authorizing that contractor to make exempt
196 purchases for a specified public prekindergarten or elementary
197 school project.

198 2. A contractor that claims an exemption under this
199 subsection shall maintain records to establish that the
200 materials purchased were actually incorporated into the public
201 prekindergarten or elementary school project described in the
202 contractor's statement. The contractor shall accrue and remit
203 use tax on any items purchased as exempt under this subsection
204 that are not incorporated into the public prekindergarten or
205 elementary school project, unless such items are transferred to
206 the governmental entity or political subdivision or returned to
207 the seller for a credit to the contractor's account. The
208 contractor shall maintain records to document any such transfers
209 or returns.

210 3. Any person who fraudulently, for the purpose of evading
211 tax, issues a written statement for use in claiming an exemption
212 under this subsection for materials that do not satisfy the
213 requirements for such exemption, in addition to being liable for
214 the payment of the tax due on such materials, is subject to the
215 penalties provided in s. 212.085.

216 Section 2. This act shall take effect January 1, 2007.