

1                                   A bill to be entitled  
 2           An act relating to public school construction sales tax  
 3           relief; amending s. 212.08, F.S.; exempting tangible  
 4           personal property sold to certain contractors for  
 5           inclusion in prekindergarten through grade 12 school  
 6           construction; providing documentation and recordkeeping  
 7           requirements; providing penalties; providing an effective  
 8           date.

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

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 12           Section 1. Subsection (6) of section 212.08, Florida  
 13 Statutes, is amended, and subsection (19) is added to that  
 14 section, to read:

15           212.08 Sales, rental, use, consumption, distribution, and  
 16 storage tax; specified exemptions.--The sale at retail, the  
 17 rental, the use, the consumption, the distribution, and the  
 18 storage to be used or consumed in this state of the following  
 19 are hereby specifically exempt from the tax imposed by this  
 20 chapter.

21           (6) EXEMPTIONS; POLITICAL SUBDIVISIONS.--There are also  
 22 exempt from the tax imposed by this chapter sales made to the  
 23 United States Government, a state, or any county, municipality,  
 24 or political subdivision of a state when payment is made  
 25 directly to the dealer by the governmental entity. Unless the  
 26 conditions specified in subsection (19) are met, this exemption  
 27 shall not inure to any transaction otherwise taxable under this  
 28 chapter when payment is made by a government employee by any

29 means, including, but not limited to, cash, check, or credit  
30 card when that employee is subsequently reimbursed by the  
31 governmental entity. This exemption does not include sales of  
32 tangible personal property made to contractors employed either  
33 directly or as agents of any such government or political  
34 subdivision thereof when such tangible personal property goes  
35 into or becomes a part of public works owned by such government  
36 or political subdivision. A determination whether a particular  
37 transaction is properly characterized as an exempt sale to a  
38 government entity or a taxable sale to a contractor shall be  
39 based on the substance of the transaction rather than the form  
40 in which the transaction is cast. The department shall adopt  
41 rules that give special consideration to factors that govern the  
42 status of the tangible personal property before its affixation  
43 to real property. In developing these rules, assumption of the  
44 risk of damage or loss is of paramount consideration in the  
45 determination. This exemption does not include sales, rental,  
46 use, consumption, or storage for use in any political  
47 subdivision or municipality in this state of machines and  
48 equipment and parts and accessories therefor used in the  
49 generation, transmission, or distribution of electrical energy  
50 by systems owned and operated by a political subdivision in this  
51 state for transmission or distribution expansion. Likewise  
52 exempt are charges for services rendered by radio and television  
53 stations, including line charges, talent fees, or license fees  
54 and charges for films, videotapes, and transcriptions used in  
55 producing radio or television broadcasts. The exemption provided  
56 in this subsection does not include sales, rental, use,

57 | consumption, or storage for use in any political subdivision or  
 58 | municipality in this state of machines and equipment and parts  
 59 | and accessories therefor used in providing two-way  
 60 | telecommunications services to the public for hire by the use of  
 61 | a telecommunications facility, as defined in s. 364.02(15), and  
 62 | for which a certificate is required under chapter 364, which  
 63 | facility is owned and operated by any county, municipality, or  
 64 | other political subdivision of the state. Any immunity of any  
 65 | political subdivision of the state or other entity of local  
 66 | government from taxation of the property used to provide  
 67 | telecommunication services that is taxed as a result of this  
 68 | section is hereby waived. However, the exemption provided in  
 69 | this subsection includes transactions taxable under this chapter  
 70 | which are for use by the operator of a public-use airport, as  
 71 | defined in s. 332.004, in providing such telecommunications  
 72 | services for the airport or its tenants, concessionaires, or  
 73 | licensees, or which are for use by a public hospital for the  
 74 | provision of such telecommunications services.

75 | (19) EXEMPTIONS; PUBLIC PREKINDERGARTEN THROUGH GRADE 12  
 76 | SCHOOL CONSTRUCTION CONTRACTOR PURCHASES.--

77 | (a) Sales of tangible personal property made to  
 78 | contractors employed directly by or as agents of the United  
 79 | States Government, a state, a county, a municipality, or a  
 80 | political subdivision of a state for public prekindergarten  
 81 | through grade 12 school construction are exempt if all of the  
 82 | following conditions are met:

- 83 | 1. At the time of such sale, the governmental entity or  
 84 | political subdivision holds a current consumer's certificate of

85 exemption from the department.

86 2. The tangible personal property purchased by the  
87 contractor will go into or become part of a public  
88 prekindergarten through grade 12 school owned by the  
89 governmental entity or political subdivision. Tangible personal  
90 property purchased and used by a contractor in the course of  
91 performing a contract which does not become part of the public  
92 prekindergarten through grade 12 school is not exempt under this  
93 subsection.

94 3. The governmental entity or political subdivision bears  
95 the economic burden of the cost of the tangible personal  
96 property, through direct reimbursement of the cost to the  
97 contractor under the contract or inclusion of the cost in the  
98 contractor's price for performance of the contract.

99 4. The governmental entity or political subdivision,  
100 general contractor, or a subcontractor presents to the seller  
101 before or at the time of a purchase:

102 a. A copy of a current, valid Florida consumer's  
103 certificate of exemption held by the governmental entity or  
104 political subdivision.

105 b. A signed and dated statement of an officer or  
106 authorized employee of the governmental entity or political  
107 subdivision that identifies a specific public prekindergarten  
108 through grade 12 school project and names the contractor or  
109 contractors engaged to perform work on the identified project  
110 who have been authorized to make exempt purchases of materials  
111 for the project.

112 c. A signed and dated statement of the purchasing

113 contractor certifying that all purchases made by that contractor  
 114 and identified at the time of purchase as property that will go  
 115 into or become a part of the public prekindergarten through  
 116 grade 12 school project specified in the statement of the  
 117 governmental entity or political subdivision will be for  
 118 incorporation into that public prekindergarten through grade 12  
 119 school.

120  
 121 A seller may rely on a single copy of the governmental entity's  
 122 or political subdivision's consumer's certificate of exemption  
 123 and a single signed and dated statement from the governmental  
 124 entity or political subdivision to make sales to any contractor  
 125 named on that statement if the other certification and  
 126 recordkeeping requirements of this subsection have also been  
 127 satisfied. A seller may rely on a single signed statement of a  
 128 purchasing contractor to make sales to that contractor for the  
 129 public prekindergarten through grade 12 school project specified  
 130 in that statement if the other certification and recordkeeping  
 131 requirements of this subsection have also been satisfied.

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

134 a. A purchase order from the contractor specifically  
 135 identifying, by description and quantity, the tangible personal  
 136 property being purchased for incorporation by the contractor  
 137 into a specifically named public prekindergarten through grade  
 138 12 school project; or

139 b. Electronic or other records of the seller that  
 140 establish that the purchased tangible personal property,

141 identified by description and quantity, was charged by a  
142 contractor who has provided a statement as described in  
143 subparagraph 4. to an account to which only purchases for the  
144 public prekindergarten through grade 12 school project specified  
145 in that statement are charged.

146 6. The statements of the governmental entity or political  
147 subdivision and of the purchasing contractor described in this  
148 paragraph must be dated and contain the following printed or  
149 typed declaration at the end of the statement and immediately  
150 above the signature of the public officer, employee, or  
151 contractor:

152  
153 "Under penalties of perjury as provided in s. 92.525,  
154 Florida Statutes, I declare that I have read the  
155 foregoing statement and that the facts stated in it  
156 are true."

157  
158 7. The seller verifies that a purchasing contractor is  
159 named in the statement from the governmental entity or political  
160 subdivision and that the project identified in the statement of  
161 the contractor is the same project as that identified in the  
162 statement of the governmental entity or political subdivision  
163 before the exemption is granted as to any purchase.

164 (b)1. The seller shall maintain in its records the  
165 certificate, statements, and other records described in  
166 paragraph (a) to document the exempt status of any sale for the  
167 period of time during which the department may conduct an audit  
168 of the seller's books and records. A dealer may, through the

169 informal protest provided for in s. 213.21 and the rules of the  
170 department, provide the department with evidence of the exempt  
171 status of a sale. A consumer's certificate of exemption executed  
172 by a governmental entity or political subdivision that was  
173 registered with the department at the time of sale, a statement  
174 of the governmental entity or political subdivision as described  
175 in sub-subparagraph (a)4.b. that had been issued and signed  
176 before or on the date of the sale for which exemption was  
177 claimed, and a purchasing contractor's statement as described in  
178 sub-subparagraph (a)4.c. from a contractor that could have  
179 issued such statement at the time of the sale shall be accepted  
180 by the department when submitted during the protest period but  
181 may not be accepted in any proceeding under chapter 120 or any  
182 circuit court action instituted under chapter 72. A purchase  
183 does not qualify for exemption under this subsection if a  
184 contractor made the purchase before the date on which a  
185 governmental entity or political subdivision has issued a signed  
186 and dated statement authorizing that contractor to make exempt  
187 purchases for a specified public prekindergarten through grade  
188 12 school project.

189 2. A contractor that claims an exemption under this  
190 subsection shall maintain records to establish that the  
191 materials purchased were actually incorporated into the public  
192 prekindergarten through grade 12 school project described in the  
193 contractor's statement. The contractor shall accrue and remit  
194 use tax on any items purchased as exempt under this subsection  
195 that are not incorporated into the public prekindergarten  
196 through grade 12 school project, unless such items are

HB 89

2007

197 transferred to the governmental entity or political subdivision  
198 or returned to the seller for a credit to the contractor's  
199 account. The contractor shall maintain records to document any  
200 such transfers or returns.

201 3. Any person who fraudulently, for the purpose of evading  
202 tax, issues a written statement for use in claiming an exemption  
203 under this subsection for materials that do not satisfy the  
204 requirements for such exemption, in addition to being liable for  
205 the payment of the tax due on such materials, is subject to the  
206 penalties provided in s. 212.085.

207 Section 2. This act shall take effect January 1, 2008.