

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Economic Development &
 2 Tourism Subcommittee
 3 Representative Magar offered the following:

Amendment (with title amendment)

6 Remove everything after the enacting clause and insert:

7 Section 1. Paragraphs (e) through (q) of subsection (5) of
 8 section 212.08, Florida Statutes, are redesignated as paragraphs
 9 (d) through (p), respectively, and paragraphs (b), (d), and (h)
 10 of that subsection and paragraph (f) of subsection (15) of that
 11 section are amended, to read:

12 212.08 Sales, rental, use, consumption, distribution, and
 13 storage tax; specified exemptions.—The sale at retail, the
 14 rental, the use, the consumption, the distribution, and the
 15 storage to be used or consumed in this state of the following
 16 are hereby specifically exempt from the tax imposed by this
 17 chapter.

18 (5) EXEMPTIONS; ACCOUNT OF USE.—

19 (b) Machinery and equipment used by manufacturers to
 20 ~~increase productive output.~~—

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21 1. Industrial machinery and equipment purchased for
22 ~~exclusive use in this state by a new business in spaceport~~
23 ~~activities as defined by s. 212.02 or for use in new businesses~~
24 ~~that manufacture, process, compound, or produce for sale items~~
25 ~~of tangible personal property at fixed locations are exempt from~~
26 ~~the tax imposed by this chapter if, at the time of purchase, the~~
27 purchaser furnishes the seller with a signed certificate stating
28 that the items to be exempted are for exclusive use as provided
29 in this paragraph. The certificate relieves the seller of the
30 responsibility of collecting the tax on the sale of such items
31 and the department shall look solely to the purchaser for
32 recovery of the tax if it determines that the purchaser was not
33 entitled to the exemption upon an affirmative showing by the
34 ~~taxpayer to the satisfaction of the department that such items~~
35 ~~are used in a new business in this state. Such purchases must be~~
36 ~~made before the date the business first begins its productive~~
37 ~~operations, and delivery of the purchased item must be made~~
38 ~~within 12 months after that date.~~

39 ~~2. Industrial machinery and equipment purchased for~~
40 ~~exclusive use by an expanding facility which is engaged in~~
41 ~~spaceport activities as defined by s. 212.02 or for use in~~
42 ~~expanding manufacturing facilities or plant units which~~
43 ~~manufacture, process, compound, or produce for sale items of~~
44 ~~tangible personal property at fixed locations in this state are~~
45 ~~exempt from any amount of tax imposed by this chapter upon an~~
46 ~~affirmative showing by the taxpayer to the satisfaction of the~~
47 ~~department that such items are used to increase the productive~~

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48 ~~output of such expanded facility or business by not less than 5~~
49 ~~percent.~~

50 ~~3.a. To receive an exemption provided by subparagraph 1.~~
51 ~~or subparagraph 2., a qualifying business entity shall apply to~~
52 ~~the department for a temporary tax exemption permit. The~~
53 ~~application shall state that a new business exemption or~~
54 ~~expanded business exemption is being sought. Upon a tentative~~
55 ~~affirmative determination by the department pursuant to~~
56 ~~subparagraph 1. or subparagraph 2., the department shall issue~~
57 ~~such permit.~~

58 ~~b. The applicant shall maintain all necessary books and~~
59 ~~records to support the exemption. Upon completion of purchases~~
60 ~~of qualified machinery and equipment pursuant to subparagraph 1.~~
61 ~~or subparagraph 2., the temporary tax permit shall be delivered~~
62 ~~to the department or returned to the department by certified or~~
63 ~~registered mail.~~

64 ~~e. If, in a subsequent audit conducted by the department,~~
65 ~~it is determined that the machinery and equipment purchased as~~
66 ~~exempt under subparagraph 1. or subparagraph 2. did not meet the~~
67 ~~criteria mandated by this paragraph or if commencement of~~
68 ~~production did not occur, the amount of taxes exempted at the~~
69 ~~time of purchase shall immediately be due and payable to the~~
70 ~~department by the business entity, together with the appropriate~~
71 ~~interest and penalty, computed from the date of purchase, in the~~
72 ~~manner prescribed by this chapter.~~

73 ~~d. If a qualifying business entity fails to apply for a~~
74 ~~temporary exemption permit or if the tentative determination by~~
75 ~~the department required to obtain a temporary exemption permit~~

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76 ~~is negative, a qualifying business entity shall receive the~~
77 ~~exemption provided in subparagraph 1. or subparagraph 2. through~~
78 ~~a refund of previously paid taxes. No refund may be made for~~
79 ~~such taxes unless the criteria mandated by subparagraph 1. or~~
80 ~~subparagraph 2. have been met and commencement of production has~~
81 ~~occurred.~~

82 ~~4. The department shall adopt rules governing applications~~
83 ~~for, issuance of, and the form of temporary tax exemption~~
84 ~~permits; provisions for recapture of taxes; and the manner and~~
85 ~~form of refund applications, and may establish guidelines as to~~
86 ~~the requisites for an affirmative showing of increased~~
87 ~~productive output, commencement of production, and qualification~~
88 ~~for exemption.~~

89 ~~2.5. The exemption does exemptions provided in~~
90 ~~subparagraphs 1. and 2. do not apply to machinery or equipment~~
91 ~~purchased or used by electric utility companies, communications~~
92 ~~companies, oil or gas exploration or production operations,~~
93 ~~publishing firms that do not export at least 50 percent of their~~
94 ~~finished product out of the state, any firm subject to~~
95 ~~regulation by the Division of Hotels and Restaurants of the~~
96 ~~Department of Business and Professional Regulation, or any firm~~
97 ~~that does not manufacture, process, compound, or produce for~~
98 ~~sale items of tangible personal property or that does not use~~
99 ~~such machinery and equipment in spaceport activities as required~~
100 ~~by this paragraph. The exemption applies exemptions provided in~~
101 ~~subparagraphs 1. and 2. shall apply to machinery and equipment~~
102 ~~purchased for use in phosphate or other solid minerals~~
103 ~~severance, mining, or processing operations.~~

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104 ~~3.6.~~ For the purposes of the exemption, the term
105 ~~exemptions provided in subparagraphs 1. and 2., these terms have~~
106 ~~the following meanings:~~

107 a. "Industrial machinery and equipment" means tangible
108 personal property or other property that has a depreciable life
109 of 3 years or more and ~~that~~ is used as an integral part in the
110 manufacturing, processing, compounding, or production of
111 tangible personal property for sale ~~or is exclusively used in~~
112 ~~spaceport activities.~~ A building and its structural components
113 are not industrial machinery and equipment unless the building
114 or structural component is so closely related to the industrial
115 machinery and equipment that it houses or supports that the
116 building or structural component can be expected to be replaced
117 when the machinery and equipment are replaced. Heating and air-
118 conditioning systems are not industrial machinery and equipment
119 unless the sole justification for their installation is to meet
120 the requirements of the production process, even though the
121 system may provide incidental comfort to employees or serve, to
122 an insubstantial degree, nonproduction activities. The term
123 includes parts and accessories for industrial machinery and
124 equipment ~~only to the extent that the exemption thereof is~~
125 ~~consistent with the provisions of this paragraph.~~

126 b. ~~"Productive output" means the number of units actually~~
127 ~~produced by a single plant, operation, or product line in a~~
128 ~~single continuous 12-month period, irrespective of sales.~~
129 ~~Increases in productive output shall be measured by the output~~
130 ~~for 12 continuous months selected by the expanding business~~
131 ~~after completion of the installation of such machinery or~~

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132 ~~equipment over the output for the 12 continuous months~~
133 ~~immediately preceding such installation. However, in no case may~~
134 ~~such time period begin later than 2 years after completion of~~
135 ~~the installation of the new machinery and equipment. The units~~
136 ~~used to measure productive output shall be physically comparable~~
137 ~~between the two periods, irrespective of sales.~~

138 ~~(d) Machinery and equipment used under federal procurement~~
139 ~~contract.—~~

140 ~~1. Industrial machinery and equipment purchased by an~~
141 ~~expanding business which manufactures tangible personal property~~
142 ~~pursuant to federal procurement regulations at fixed locations~~
143 ~~in this state are exempt from the tax imposed in this chapter~~
144 ~~upon an affirmative showing by the taxpayer to the satisfaction~~
145 ~~of the department that such items are used to increase the~~
146 ~~implicit productive output of the expanded business by not less~~
147 ~~than 10 percent. The percentage of increase is measured as~~
148 ~~deflated implicit productive output for the calendar year during~~
149 ~~which the installation of the machinery or equipment is~~
150 ~~completed or during which commencement of production utilizing~~
151 ~~such items is begun divided by the implicit productive output~~
152 ~~for the preceding calendar year. In no case may the commencement~~
153 ~~of production begin later than 2 years following completion of~~
154 ~~installation of the machinery or equipment.~~

155 ~~2. The amount of the exemption allowed shall equal the~~
156 ~~taxes otherwise imposed by this chapter on qualifying industrial~~
157 ~~machinery or equipment reduced by the percentage of gross~~
158 ~~receipts from cost-reimbursement type contracts attributable to~~

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159 ~~the plant or operation to total gross receipts so attributable,~~
160 ~~accrued for the year of completion or commencement.~~

161 ~~3. The exemption provided by this paragraph shall inure to~~
162 ~~the taxpayer only through refund of previously paid taxes. Such~~
163 ~~refund shall be made within 30 days of formal approval by the~~
164 ~~department of the taxpayer's application, which application may~~
165 ~~be made on an annual basis following installation of the~~
166 ~~machinery or equipment.~~

167 ~~4. For the purposes of this paragraph, the term:~~

168 ~~a. "Cost reimbursement type contracts" has the same~~
169 ~~meaning as in 32 C.F.R. s. 3-405.~~

170 ~~b. "Deflated implicit productive output" means the product~~
171 ~~of implicit productive output times the quotient of the national~~
172 ~~defense implicit price deflator for the preceding calendar year~~
173 ~~divided by the deflator for the year of completion or~~
174 ~~commencement.~~

175 ~~c. "Eligible costs" means the total direct and indirect~~
176 ~~costs, as defined in 32 C.F.R. ss. 15-202 and 15-203, excluding~~
177 ~~general and administrative costs, selling expenses, and profit,~~
178 ~~defined by the uniform cost-accounting standards adopted by the~~
179 ~~Cost Accounting Standards Board created pursuant to 50 U.S.C. s.~~
180 ~~2168.~~

181 ~~d. "Implicit productive output" means the annual eligible~~
182 ~~costs attributable to all contracts or subcontracts subject to~~
183 ~~federal procurement regulations of the single plant or operation~~
184 ~~at which the machinery or equipment is used.~~

185 ~~e. "Industrial machinery and equipment" means tangible~~
186 ~~personal property or other property that has a depreciable life~~

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187 ~~of 3 years or more, that qualifies as an eligible cost under~~
188 ~~federal procurement regulations, and that is used as an integral~~
189 ~~part of the process of production of tangible personal property.~~
190 ~~A building and its structural components are not industrial~~
191 ~~machinery and equipment unless the building or structural~~
192 ~~component is so closely related to the industrial machinery and~~
193 ~~equipment that it houses or supports that the building or~~
194 ~~structural component can be expected to be replaced when the~~
195 ~~machinery and equipment are replaced. Heating and air-~~
196 ~~conditioning systems are not industrial machinery and equipment~~
197 ~~unless the sole justification for their installation is to meet~~
198 ~~the requirements of the production process, even though the~~
199 ~~system may provide incidental comfort to employees or serve, to~~
200 ~~an insubstantial degree, nonproduction activities. The term~~
201 ~~includes parts and accessories only to the extent that the~~
202 ~~exemption of such parts and accessories is consistent with the~~
203 ~~provisions of this paragraph.~~

204 ~~f. "National defense implicit price deflator" means the~~
205 ~~national defense implicit price deflator for the gross national~~
206 ~~product as determined by the Bureau of Economic Analysis of the~~
207 ~~United States Department of Commerce.~~

208 ~~5. The exclusions provided in subparagraph (b)5. apply to~~
209 ~~this exemption. This exemption applies only to machinery or~~
210 ~~equipment purchased pursuant to production contracts with the~~
211 ~~United States Department of Defense and Armed Forces, the~~
212 ~~National Aeronautics and Space Administration, and other federal~~
213 ~~agencies for which the contracts are classified for national~~
214 ~~security reasons. In no event shall the provisions of this~~

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215 ~~paragraph apply to any expanding business the increase in~~
216 ~~productive output of which could be measured under the~~
217 ~~provisions of sub-subparagraph (b) 6.b. as physically comparable~~
218 ~~between the two periods.~~

219 (g) ~~(h)~~ Business property used in an enterprise zone.-

220 1. Business property purchased for use by businesses
221 located in an enterprise zone which is subsequently used in an
222 enterprise zone is ~~shall be~~ exempt from the tax imposed by this
223 chapter. This exemption inures to the business only through a
224 refund of previously paid taxes. A refund shall be authorized
225 upon an affirmative showing by the taxpayer, to the satisfaction
226 of the department, that the requirements of this paragraph have
227 been met.

228 2. To receive a refund, the business must file ~~under oath~~
229 with the governing body or enterprise zone development agency
230 that has ~~having~~ jurisdiction over the enterprise zone where the
231 business is located, as applicable, an application, under oath,
232 which includes:

233 a. The name and address of the business claiming the
234 refund.

235 b. The identifying number assigned pursuant to s. 290.0065
236 to the enterprise zone in which the business is located.

237 c. A specific description of the property for which a
238 refund is sought, including its serial number or other permanent
239 identification number.

240 d. The location of the property.

241 e. The sales invoice or other proof of purchase of the
242 property, showing the amount of sales tax paid, the date of

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243 purchase, and the name and address of the sales tax dealer from
244 whom the property was purchased.

245 f. Whether the business is a small business as defined by
246 s. 288.703.

247 g. If applicable, the name and address of each permanent
248 employee of the business, including, for each employee who is a
249 resident of an enterprise zone, the identifying number assigned
250 pursuant to s. 290.0065 to the enterprise zone in which the
251 employee resides.

252 3. Within 10 working days after receipt of an application,
253 the governing body or enterprise zone development agency shall
254 review the application to determine if it contains all the
255 information required pursuant to subparagraph 2. and meets the
256 criteria set out in this paragraph. The governing body or agency
257 shall certify all applications that contain the information
258 required pursuant to subparagraph 2. and meet the criteria set
259 out in this paragraph as eligible to receive a refund. If
260 applicable, the governing body or agency shall also certify if
261 20 percent of the employees of the business are residents of an
262 enterprise zone, excluding temporary and part-time employees.
263 The certification must ~~shall~~ be in writing, and a copy of the
264 certification must ~~shall~~ be transmitted to the executive
265 director of the Department of Revenue. The business is ~~shall be~~
266 responsible for forwarding a certified application to the
267 department within the time specified in subparagraph 4.

268 4. An application for a refund pursuant to this paragraph
269 must be submitted to the department within 6 months after the
270 tax is due on the business property that is purchased.

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271 5. The amount refunded on purchases of business property
272 under this paragraph shall be the lesser of 97 percent of the
273 sales tax paid on such business property or \$5,000, or, if ~~no~~
274 ~~less than~~ 20 percent or more of the employees of the business
275 are residents of an enterprise zone, excluding temporary and
276 part-time employees, the amount ~~refunded on purchases of~~
277 ~~business property under this paragraph~~ shall be the lesser of 97
278 percent of the sales tax paid on such business property or
279 \$10,000. A refund must ~~approved pursuant to this paragraph shall~~
280 be made within 30 days after formal approval by the department
281 of the application for the refund. A refund may not be granted
282 ~~under this paragraph~~ unless the amount to be refunded exceeds
283 \$100 in sales tax paid on purchases made within a 60-day time
284 period.

285 6. The department shall adopt rules governing the manner
286 and form of refund applications and may establish guidelines as
287 to the requisites for an affirmative showing of qualification
288 for exemption under this paragraph.

289 7. If the department determines that the business property
290 is used outside an enterprise zone within 3 years after ~~from~~ the
291 date of purchase, the amount of taxes refunded to the business
292 purchasing such business property is ~~shall~~ immediately ~~be~~ due
293 and payable to the department by the business, together with the
294 appropriate interest and penalty, computed from the date of
295 purchase, in the manner provided by this chapter.

296 Notwithstanding this subparagraph, business property used
297 exclusively in:

298 a. Licensed commercial fishing vessels,

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299 b. Fishing guide boats, or

300 c. Ecotourism guide boats

301
302 that leave and return to a fixed location within an area
303 designated under s. 379.2353, Florida Statutes 2010, are
304 eligible for the exemption ~~provided under this paragraph~~ if all
305 requirements of this paragraph are met. Such vessels and boats
306 must be owned by a business that is eligible to receive the
307 exemption ~~provided under this paragraph~~. This exemption does not
308 apply to the purchase of a vessel or boat.

309 8. The department shall deduct an amount equal to 10
310 percent of each refund granted under this paragraph from the
311 amount transferred into the Local Government Half-cent Sales Tax
312 Clearing Trust Fund pursuant to s. 212.20 for the county area in
313 which the business property is located and shall transfer that
314 amount to the General Revenue Fund.

315 9. For the purposes of this exemption, the term "business
316 property" means new or used property defined as "recovery
317 property" in s. 168(c) of the Internal Revenue Code of 1954, as
318 amended, except:

319 a. Property classified as 3-year property under s.
320 168(c)(2)(A) of the Internal Revenue Code of 1954, as amended;

321 b. Industrial machinery and equipment as defined in
322 subparagraph (b)3. ~~sub-subparagraph (b)6.a.~~ and eligible for
323 exemption under paragraph (b);

324 c. Building materials as defined in sub-subparagraph
325 (g)8.a.; and

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326 d. Business property having a sales price of under \$5,000
327 per unit.

328 10. This paragraph expires on the date specified in s.
329 290.016 for the expiration of the Florida Enterprise Zone Act.

330 (15) ELECTRICAL ENERGY USED IN AN ENTERPRISE ZONE.—

331 (f) For the purpose of the exemption provided in this
332 subsection, the term "qualified business" means a business that
333 ~~which~~ is:

334 1. First occupying a new structure to which electrical
335 service, other than that used for construction purposes, has not
336 been previously provided or furnished;

337 2. Newly occupying an existing, remodeled, renovated, or
338 rehabilitated structure to which electrical service, other than
339 that used for remodeling, renovation, or rehabilitation of the
340 structure, has not been provided or furnished in the three
341 preceding billing periods; or

342 3. Occupying a new, remodeled, rebuilt, renovated, or
343 rehabilitated structure for which a refund has been granted
344 pursuant to paragraph (5) (f) ~~(5) (g)~~.

345 Section 2. Section 212.0602, Florida Statutes, is amended
346 to read:

347 212.0602 Education; limited exemption.—To facilitate
348 investment in education and job training, there is also exempt
349 from the taxes levied under this chapter, subject to the
350 provisions of this section, the purchase or lease of materials,
351 equipment, and other items or the license in or lease of real
352 property by any entity, institution, or organization that is
353 primarily engaged in teaching students to perform any of the

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354 activities or services described in s. 212.031(1)(a)9., that
355 conducts classes at a fixed location located in this state, that
356 is licensed under chapter 1005, and that has at least 500
357 enrolled students. Any entity, institution, or organization
358 meeting the requirements of this section shall be deemed to
359 qualify for the exemptions under ~~in~~ ss. 212.031(1)(a)9. and
360 212.08(5)(e) ~~212.08(5)(f)~~ and (12), and to qualify for an
361 exemption for its purchase or lease of materials, equipment, and
362 other items used for education or demonstration of the school's
363 curriculum, including supporting operations. ~~Nothing in~~ This
364 section does not ~~shall~~ preclude an entity described in this
365 section from qualifying for any other exemption provided under
366 ~~for in~~ this chapter.

367 Section 3. Paragraph (c) of subsection (1) of section
368 220.183, Florida Statutes, is amended to read:

369 220.183 Community contribution tax credit.—

370 (1) AUTHORIZATION TO GRANT COMMUNITY CONTRIBUTION TAX
371 CREDITS; LIMITATIONS ON INDIVIDUAL CREDITS AND PROGRAM
372 SPENDING.—

373 (c) The total amount of tax credit which may be granted
374 for all programs approved under this section, s. 212.08(5)(o)
375 ~~212.08(5)(p)~~, and s. 624.5105 is \$10.5 million annually for
376 projects that provide homeownership opportunities for low-income
377 households or very-low-income households as those terms are
378 defined in s. 420.9071~~(19) and (28)~~ and \$3.5 million annually
379 for all other projects.

380 Section 4. Paragraph (a) of subsection (9) of section
381 290.0056, Florida Statutes, is amended to read:

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382 290.0056 Enterprise zone development agency.—

383 (9) The following powers and responsibilities shall be
384 performed by the governing body creating the enterprise zone
385 development agency acting as the managing agent of the
386 enterprise zone development agency, or, contingent upon approval
387 by such governing body, such powers and responsibilities shall
388 be performed by the enterprise zone development agency:

389 (a) To review, process, and certify applications for state
390 enterprise zone tax incentives pursuant to ss. 212.08(5)(f), (g)
391 ~~212.08(5)(g), (h)~~, and (15); 212.096; 220.181; and 220.182.

392 Section 5. Subsections (4) and (5) of section 290.007,
393 Florida Statutes, are amended to read:

394 290.007 State incentives available in enterprise zones.—
395 The following incentives are provided by the state to encourage
396 the revitalization of enterprise zones:

397 (4) The sales tax exemption for building materials used in
398 the rehabilitation of real property in enterprise zones provided
399 in s. 212.08(5)(f) ~~212.08(5)(g)~~.

400 (5) The sales tax exemption for business equipment used in
401 an enterprise zone provided in s. 212.08(5)(g) ~~212.08(5)(h)~~.

402 Section 6. Paragraph (c) of subsection (1) of section
403 624.5105, Florida Statutes, is amended to read:

404 624.5105 Community contribution tax credit; authorization;
405 limitations; eligibility and application requirements;
406 administration; definitions; expiration.—

407 (1) AUTHORIZATION TO GRANT TAX CREDITS; LIMITATIONS.—

408 (c) The total amount of tax credit which may be granted
409 for all programs approved under this section and ss.

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410 212.08(5)(o) ~~212.08(5)(p)~~ and 220.183 is \$10.5 million annually
411 for projects that provide homeownership opportunities for low-
412 income households or very-low-income households as those terms
413 are defined in s. 420.9071~~(19)~~ and ~~(28)~~ and \$3.5 million
414 annually for all other projects.

415 Section 7. Subsection (1) of section 1011.94, Florida
416 Statutes, is amended to read:

417 1011.94 University Major Gifts Program.—

418 (1) The ~~There is established a~~ University Major Gifts
419 Program is established. The purpose of the program is to enable
420 each university to provide donors with an incentive in the form
421 of matching grants for donations for the establishment of
422 permanent endowments and sales tax exemption matching funds
423 received pursuant to s. 212.08(5)(i) ~~212.08(5)(j)~~, which must be
424 invested, with the proceeds of the investment used to support
425 libraries and instruction and research programs, as defined by
426 the Board of Governors.

427 Section 8. This act shall take effect upon becoming a law.
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432 -----
433 **T I T L E A M E N D M E N T**

434 Remove everything before the enacting clause and insert:
435 An act relating to exemptions from the tax on sales, use, and
436 other transactions; amending s. 212.08, F.S.; revising the sales
437 tax exemption for certain business purchases of industrial

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 391 (2013)

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438 machinery and equipment; deleting certain limitations on, and
439 procedural requirements relating to, the exemption; deleting the
440 sales tax exemption for machinery and equipment used for certain
441 federal procurement contracts; conforming cross-references;
442 amending ss. 212.0602, 220.183, 290.0056, 290.007, 627.5105, and
443 1011.94, F.S.; conforming cross-references; providing an
444 effective date