

contractors of tangible personal property to be incorporated into public facilities under contracts with the governmental entities that own those facilities.

This lack of an exemption for contractor purchases leaves governmental entities with two main options with regard to the procurement of materials for a public works project. The governmental entity can either directly purchase construction materials for a project contractor (and, thus, take 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 sales tax paid by the contractor during the project.¹ Both 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. On the other hand, if the governmental entity chooses to reimburse a contractor for sales tax paid by the contractor during the project, the governmental entity might be tying up funds for sales tax payment that could be used for additional construction or other purposes. This effect is especially pronounced on the state level where state government reimburses contractors for sales tax that the contractors have paid to the state, itself.

III. Effect of Proposed Changes:

This bill provides a sales tax exemption for tangible personal property sold to a contractor employed directly by or as an agent of a governmental entity, when the purchased property will become part of a public facility owned by that governmental entity. This bill requires the governmental entity, the contractor, and the seller to meet certain conditions before claiming tax-exempt status.

Conditions for Tax Exemption

Section 1 of this bill amends s. 212.08(6), F.S., to provide that sales of tangible personal property sold to a contractor employed directly by or as an agent of a governmental entity, when the purchased property will become part of a public facility owned by that governmental entity, are exempt from the state tax on sales, use, and other transactions when the conditions in a new s. 212.08(18), F.S., are met. These conditions include:

- at the time of the sale, the governmental entity holds a current consumer's certificate of exemption from the Department of Revenue (department);
- the tangible personal property purchased by the contractor will go into or become part of a public facility owned by the governmental entity;

¹ The Department of Revenue estimates 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).

- the governmental entity bears the economic burden of the cost of the tangible personal property either through direct reimbursement of the cost to the contractor under the contract or inclusion of the cost in the contractor's price for performance of the contract;
- the governmental entity, general contractor, or a subcontractor presents to the seller before or at the time of a purchase:
 - a copy of the governmental entity's consumer's certificate of exemption;
 - a signed, dated statement, made under penalty of perjury, of an officer or authorized employee of the governmental entity which identifies a specific public works project and names the contractor or contractors who have been engaged to perform work on the identified project and have been authorized to make exempt purchases of materials for the project; and
 - a signed, dated statement, made under penalty of perjury, of the purchasing contractor which certifies that all purchases made by that contractor and identified at the time of purchase as pertaining to the public works project specified in the statement of the governmental entity will be for incorporation into that public works project;
- the records of the seller contain documentation for each exempt purchase which includes a purchase order from the contractor which specifically identifies, by description and quantity, the tangible personal property that is being purchased for incorporation by the contractor into a specifically named public works project; or electronic or other records of the seller which establish that the purchased tangible personal property, identified by description and quantity, was charged by a contractor who has provided a statement, as described in above, to an account to which only purchases for the public works project specified in that statement are charged; and
- the seller verifies, before the exemption is granted as to any purchase, that a purchasing contractor is named in the statement from the governmental entity and that the project identified in the statement of the contractor is the same project as that identified in the statement of the governmental entity.

Record Keeping

A contractor that claims exemption under this subsection must maintain records to establish that the materials purchased were actually incorporated into the public works project described in the contractor's statement. The seller must maintain in its records the certificate, statements, and other records documenting the exempt status of any sale for the period of time during which the department may conduct an audit of the seller's books and records.

Protests

A dealer may, through the informal protest provided for in s. 213.21, F.S., and the rules of the department, provide the department with evidence of the exempt status of a sale.² When submitted during the protest period, the department must accept the documents (described above)

² Section 213.21, F.S., relates to the Department of Revenue's adoption of informal conference procedures for resolution of disputes relating to assessment of taxes, interest, and penalties and the denial of refunds.

that were presented by the governmental entity, general contractor, or a subcontractor to the seller before or at the time of a purchase. However, the department may not accept these documents in any proceeding under ch. 120, F.S., or any circuit court action instituted under ch. 72, F.S.³ No exemption will be recognized for any purchase made by a contractor 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 works project.

Penalties

Any person who fraudulently issues a written statement for use in claiming the exemption is liable for the tax, a mandatory penalty of 200 percent of the tax, and fine and punishment as provided for a conviction of a third-degree felony in ss. 775.082, 775.083, or 775.084, F.S.

Section 2 of this bill provides for an effective date of January 1, 2002.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill falls under subsection (b) of s. 18 of Art. VII, Florida Constitution. Subsection (b) requires a two-thirds vote of the membership of each house in order to enact a general law reducing the authority that municipalities and counties had on February 1, 1989, to raise revenues in the aggregate. By adding an exemption to the state sales tax, this bill has the effect of adding an exemption to the local option county sales surtax. Since the annual local revenue loss is estimated to be more than \$1.6 million, this bill will not be exempt from the requirements of subsection (b).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The Revenue Estimating Conference estimates the fiscal impact of this bill to be the following:

- a FY 2001-02 General Revenue loss of \$69.8 million with an annualized first-year loss of \$76.1 million;

³ Chapter 120, F.S., is the Administrative Procedure Act. Chapter 72, F.S., outlines tax matters, the jurisdiction of circuit courts in specific tax matters, the process of administrative hearings and appeals, the time for commencing actions, the parties involved, and required deposits.

- a FY 2001-02 local government loss of \$14 million with an annualized first-year loss of \$15.3 million; and
- a FY 2001-02 loss to the Solid Waste Management Trust Fund of \$200,000 with an annualized first-year loss of \$200,000.

Fiscal Year 2001-2002								
Issue/Fund	General Revenue		Trust		Local		Total	
	1st Year	Recurring	1st Year	Recurring	1st Year	Recurring	1st Year	Recurring
Public Works	\$ (69.8)	\$ (76.1)	\$ (0.2)	\$ (0.2)	\$ (14.0)	\$ (15.3)	\$ (84.0)	\$ (91.6)

The Department of Revenue estimates that local government public works projects will account for approximately 77 percent of the sales tax revenue loss, while federal government projects and state government projects will account for approximately 13 percent and 10 percent of the loss, respectively. According to the Department of Management Services, decreases in state expenditures should offset decreases in sales tax revenues caused by state public works projects, because state government would no longer be reimbursing contractors for the payment of the tax. Additionally, federal and local government might redirect sales tax payments to pay for additional construction work. All levels of government would probably experience a reduction in administrative costs as a result of this bill. The amount of those savings, though, is indeterminate.

B. Private Sector Impact:

This bill provides a sales tax exemption for tangible personal property sold to a contractor employed directly by or as an agent of a governmental entity, when the purchased property will become part of a public facility owned by that governmental entity. This bill requires certain parties, including the contractor and the seller, to meet certain conditions before claiming tax-exempt status. The process of purchasing of tangible personal property for use in public works projects should be simplified by the provisions of this bill.

C. Government Sector Impact:

This bill provides a sales tax exemption for tangible personal property sold to a contractor employed directly by or as an agent of a governmental entity, when the purchased property will become part of a public facility owned by that governmental entity. This bill requires certain parties, including the governmental entity, to meet certain conditions before claiming tax-exempt status. The process of purchasing of tangible personal property for use in public works projects should be simplified by the provisions of this bill.

The Department of Revenue (department) will be required to revise its existing rule on public works contracts to reflect the new exemption (12A-1.094, F.A.C.). Furthermore, for the convenience of governmental entities, contractors, suppliers, and department auditors, the department may wish to develop suggested standard formats for the written statements to be provided by the governmental entities and contractors claiming the exemption.

VI. Technical Deficiencies:

Although the new s. 212.08(18), F.S., provides penalties for fraudulently claiming an exemption under this subsection, the title of the bill does not reference those penalties.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Commerce & Economic Opportunities:
Title amendment.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
