A bill to be entitled
An act relating to sales tax exemptions for public
works; amending s. 212.08, F.S.; providing instances
when sales of certain tangible personal property to
contractors are not exempt from sales and use tax;
prohibiting certain nonprofit entities that used a
sales tax exemption illegally from transferring
liability for the tax, penalty, or interest to another
party; requiring the Department of Revenue to adopt
rules prohibiting certain parties that receive a sales
tax exemption from assigning responsibility related to
tangible personal property to other parties; requiring
the department to establish by rule a process to
suspend a public entity's ability to use a tax
exemption if certain conditions are met; amending s.
212.15, F.S.; providing an exception for when certain
taxes are considered state funds; providing an
effective date.

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

Section 1. Paragraph (d) of subsection (6) of section
212.08, Florida Statutes, is redesignated as paragraph (e),
paragraphs (b) and (c) are amended, and a new paragraph (d) is
added to that subsection, to read:
212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.—The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(6) EXEMPTIONS; POLITICAL SUBDIVISIONS; ELIGIBLE NONPROFIT ENTITIES.—

(b) The exemption provided under this subsection does not include sales of tangible personal property made to contractors employed directly to or as agents of any such government or political subdivision if the contractor is responsible for purchasing, maintaining, or paying for the tangible personal property and the when such tangible personal property goes into or becomes a part of public works owned by such government or political subdivision. A determination of whether a particular transaction is properly characterized as an exempt sale to a government entity or a taxable sale to a contractor shall be based upon the substance of the transaction rather than the form in which the transaction is cast. However, for sales of tangible personal property that go into or become a part of public works owned by a governmental entity, other than the Federal Government, a governmental entity claiming the exemption provided under this subsection shall certify to the dealer and the contractor the entity's claim to the exemption by providing...
the dealer and the contractor a certificate of entitlement to
the exemption for such sales. If the department later determines
that such sales, in which the governmental entity provided the
dealer and the contractor with a certificate of entitlement to
the exemption, were not exempt sales to the governmental entity,
the governmental entity shall be liable for any tax, penalty,
and interest determined to be owed on such transactions.
Possession by a dealer or contractor of a certificate of
entitlement to the exemption from the governmental entity
relieves the dealer from the responsibility of collecting tax on
the sale and the contractor for any liability for tax, penalty,
or interest related to the sale, and the department shall look
solely to the governmental entity for recovery of tax, penalty,
and interest if the department determines that the transaction
was not an exempt sale to the governmental entity. The
governmental entity or other eligible nonprofit entity using a
sales tax exemption for any construction-related activities
covered in this chapter may not transfer liability for such tax,
penalty, and interest to another party by contract or agreement.

(c) The department shall adopt rules for determining
whether a particular transaction is properly characterized as an
exempt sale to a governmental entity or other eligible nonprofit
entity or a taxable sale to a contractor which give special
consideration to factors that govern the status of the tangible
personal property before being affixed to real property. In
developing such rules, assumption of the risk of damage or loss
is of paramount consideration in the determination. The
department shall clarify that a government, political
subdivision, religious institution, veterans' organization,
school, college, university, or other eligible nonprofit entity
claiming the exemption may not assign any responsibility,
through an agreement, oral or written, for the ordering,
purchasing, payment, or maintenance of the tangible personal
property, material, or supplies on behalf of that nonprofit
entity. The department shall also adopt, by rule, a certificate
of entitlement to exemption for use as provided in paragraph
(b). The certificate shall require the governmental entity to
affirm that it will comply with the requirements of this
subsection and the rules adopted under paragraph (b) in order to
qualify for the exemption and that it acknowledges its liability
for any tax, penalty, or interest later determined by the
department to be owed on such transactions.

(d) The department shall establish by rule a process by
which the department may suspend a public entity's ability to
use the tax exemption if the entity violates provisions of this
section or rules adopted thereunder.

Section 2. Subsection (1) of section 212.15, Florida
Statutes, is amended to read:

212.15 Taxes declared state funds; penalties for failure
to remit taxes; due and delinquent dates; judicial review.—
(1) The taxes imposed by this chapter shall be considered state funds at the moment of collection except as provided in s. 212.06(5)(a)2.e., or unless an exemption is claimed under s. 212.08(6), become state funds at the moment of collection and shall for each month be due to the department on the first day of the succeeding month and be delinquent on the 21st day of such month. All returns postmarked after the 20th day of such month are delinquent.

Section 3. This act shall take effect July 1, 2022.