

1 SB99
2 204817-2
3 By Senator Whatley
4 RFD: Finance and Taxation Education
5 First Read: 02-FEB-21
6 PFD: 01/27/2021

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8 SYNOPSIS: Under existing law, a licensed contractor is
9 required to be issued a certificate of exemption
10 from sales and use taxes by the Department of
11 Revenue for the purchase of construction materials
12 and supplies to be used in a construction contract
13 for a governmental entity when the governmental
14 entity is exempt from the payment of sales and use
15 tax. Any contracts for the construction of a
16 highway, road, or bridge is not included in the
17 type of contracts for which a contractor is
18 required to be granted a certificate of exemption
19 under this law.

20 This bill would include any contract for the
21 construction of a highway, road, or bridge entered
22 into on or after January 1, 2022 in the contracts
23 required to be granted a certificate of exemption
24 from sales and use tax for the purchase of
25 construction materials when the contract is for a
26 governmental entity which is tax exempt.
27

1 A BILL
2 TO BE ENTITLED
3 AN ACT
4

5 To amend Section 40-9-14.1 of the Code of Alabama
6 1975, relating to certificates of exemption from sales and use
7 tax for governmental entities and their contractors for the
8 purchase of construction materials for use on construction
9 projects for the governmental entities; to include any
10 contract for the construction of highways, roads, or bridges
11 entered into after January 1, 2022, in the contracts required
12 to be granted a certificate of exemption by the Department of
13 Revenue for the purchase of construction materials to become a
14 part of the project.

15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

16 Section 1. Section 40-9-14.1 of the Code of Alabama
17 1975, is amended to read as follows:

18 "§40-9-14.1.

19 "(a) For the purposes of this section, the term
20 governmental entity means the State of Alabama and its
21 political subdivisions, including a county, a municipality,
22 an industrial or economic development board or authority, and
23 any public water or sewer authority, district, system, or
24 board that otherwise is sales and use tax exempt. A
25 governmental entity shall also include an educational
26 institution of any of the foregoing Alabama political
27 subdivisions including a public college or university, a

1 county or city board of education, and the State Board of
2 Education.

3 "(b) (1) The Department of Revenue shall issue a
4 certificate of exemption to the governmental entity for each
5 tax exempt project.

6 "(2) The Department of Revenue shall grant a
7 certificate of exemption from state and local sales and use
8 taxes to any contractor licensed by the State Licensing Board
9 for General Contractors, or any subcontractor working under
10 the same contract, for the purchase of building materials,
11 construction materials and supplies, and other tangible
12 personal property that becomes part of the structure that is
13 the subject of a written contract for the construction of a
14 building or other project, ~~not to include any contract for the~~
15 ~~construction of any highway, road, or bridge,~~ for and on
16 behalf of a governmental entity which is exempt from the
17 payment of sales and use taxes.

18 "(c) The use of a certificate of exemption for the
19 purchase of tangible personal property pursuant to this
20 section shall include only tangible personal property that
21 becomes part of the structure that is the subject of the
22 construction contract. Any contractor or subcontractor
23 purchasing any tangible personal property pursuant to a
24 certificate of exemption shall maintain an accurate cost
25 accounting of the purchase and use of the property in the
26 construction of the project.

1 "(d) A contractor who has an exemption from sales
2 and use tax for the purchase of materials to use on a
3 government project shall file, in a manner as prescribed by
4 the department, reports of all exempt purchases. The reports
5 shall be filed as a prerequisite to renewal of a certificate
6 of exemption.

7 "(e) (1) The department may assess any contractor or
8 subcontractor with state and local sales or use taxes on any
9 item purchased with a certificate of exemption not properly
10 accounted for and reported as required.

11 "(2) Any contractor or subcontractor who
12 intentionally uses a certificate of exemption in violation of
13 this section shall, in addition to the actual sales or use tax
14 liability due, be subject to a civil penalty levied by the
15 department in the amount of not less than a minimum of two
16 thousand dollars (\$2,000) or two times any state and local
17 sales or use tax due for the property and, based on the
18 contractor's or subcontractor's willful misuse of the
19 certificate of exemption, may be barred from the use of any
20 certificate of exemption on any project for up to two years.

21 "(f) The department may adopt rules to implement
22 this section in order to effectuate the purposes of this
23 section and to provide for accurate accounting and enforcement
24 of this section.

25 "(g) In bidding the work on a tax exempt project,
26 the bid form shall provide for an accounting for the tax
27 savings.

1 "(h) The intent of this section is to lower the
2 administrative cost for the governmental entity, contractor,
3 and subcontractor for public works projects. It is not the
4 intent of this section to change the basis for determining
5 professional services from fair market value, which may
6 include sales and use taxes.

7 "(i) Except as provided for a contract for the
8 construction of a highway, road, or bridge as provided below,
9 this ~~This~~ section shall be operative for contracts entered
10 into with governmental entities as defined in subsection (a),
11 not including public water or sewer authorities, districts,
12 systems, or boards that otherwise are sales and use tax
13 exempt, on January 1, 2014, or thereafter, and shall not apply
14 to any contract entered into prior to January 1, 2014. This
15 section shall be operative for contracts entered into with
16 public water or sewer authorities, districts, systems, or
17 boards that otherwise are sales and use tax exempt on January
18 1, 2019, and thereafter, and shall not apply to any contract
19 entered into with such entities prior to January 1, 2019. In
20 addition, this section shall not apply to any contract change
21 orders or contract extensions, including revised,
22 renegotiated, or altered contracts, when the original contract
23 was entered into prior to January 1, 2014, with a governmental
24 entity. Nor shall this section apply to any contract change
25 orders or contract extensions, including revised,
26 renegotiated, or altered contracts with any public water or
27 sewer authority, district, system, or board that otherwise is

1 sales and use tax exempt, when the original contract was
2 entered into prior to January 1, 2019. This section shall be
3 operative for any contracts with a governmental entity defined
4 in subsection (a) for the construction of a highway, road, or
5 bridge entered into on or after January 1, 2022, and shall not
6 apply to any contracts for the construction of a highway,
7 road, or bridge entered into prior to January 1, 2022, nor
8 shall this section apply to any contract change order or
9 contract extensions, including revised, renegotiated, or
10 altered contracts, when the original contract was entered into
11 prior to January 1, 2022.

12 "(j) The Department of Revenue may adopt rules to
13 implement this section."

14 Section 2. This act shall become effective October
15 1, 2020, following its passage and approval by the Governor,
16 or its otherwise becoming law.