SB216

204817-1

By Senator Whatley

RFD: Finance and Taxation Education

First Read: 20-FEB-20
SYNOPSIS: Under existing law, a licensed contractor is required to be issued a certificate of exemption from sales and use taxes by the Department of Revenue for the purchase of construction materials and supplies to be used in a construction contract for a governmental entity when the governmental entity is exempt from the payment of sales and use tax. Any contracts for the construction of a highway, road, or bridge is not included in the type of contracts for which a contractor is required to be granted a certificate of exemption under this law.

This bill would include any contract for the construction of a highway, road, or bridge entered into on or after January 1, 2021 in the contracts required to be granted a certificate of exemption from sales and use tax for the purchase of construction materials when the contract is for a governmental entity which is tax exempt by deleting the exclusion of the contracts in existing law.
A BILL
TO BE ENTITLED
AN ACT

To amend Section 40-9-14.1 of the Code of Alabama 1975, relating to certificates of exemption from sales and use tax for governmental entities and their contractors for the purchase of construction materials for use on construction projects for the governmental entities; to delete the exclusion of any contracts for the construction of highways, roads, or bridges from the contracts required to be granted a certificate of exemption by the Department of Revenue for the purchase of construction materials to become a part of the project.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

"§40-9-14.1.

(a) For the purposes of this section, the term governmental entity means the State of Alabama and its political subdivisions, including a county, a municipality, an industrial or economic development board or authority, and any public water or sewer authority, district, system, or board that otherwise is sales and use tax exempt. A governmental entity shall also include an educational institution of any of the foregoing Alabama political
subdivisions including a public college or university, a county or city board of education, and the State Board of Education.

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

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

"(c) The use of a certificate of exemption for the purchase of tangible personal property pursuant to this section shall include only tangible personal property that becomes part of the structure that is the subject of the construction contract. Any contractor or subcontractor purchasing any tangible personal property pursuant to a certificate of exemption shall maintain an accurate cost accounting of the purchase and use of the property in the construction of the project.
(d) A contractor who has an exemption from sales and use tax for the purchase of materials to use on a government project shall file, in a manner as prescribed by the department, reports of all exempt purchases. The reports shall be filed as a prerequisite to renewal of a certificate of exemption.

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

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

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

(g) In bidding the work on a tax exempt project, the bid form shall provide for an accounting for the tax savings.
"(h) The intent of this section is to lower the administrative cost for the governmental entity, contractor, and subcontractor for public works projects. It is not the intent of this section to change the basis for determining professional services from fair market value, which may include sales and use taxes.

"(i) Except as provided for a contract for the construction of a highway, road, or bridge as provided below, this section shall be operative for contracts entered into with governmental entities as defined in subsection (a), not including public water or sewer authorities, districts, systems, or boards that otherwise are sales and use tax exempt, on January 1, 2014, or thereafter, and shall not apply to any contract entered into prior to January 1, 2014. This section shall be operative for contracts entered into with public water or sewer authorities, districts, systems, or boards that otherwise are sales and use tax exempt on January 1, 2019, and thereafter, and shall not apply to any contract entered into with such entities prior to January 1, 2019. In addition, this section shall not apply to any contract change orders or contract extensions, including revised, renegotiated, or altered contracts, when the original contract was entered into prior to January 1, 2014, with a governmental entity. Nor shall this section apply to any contract change orders or contract extensions, including revised, renegotiated, or altered contracts with any public water or sewer authority, district, system, or board that otherwise is
sales and use tax exempt, when the original contract was
entered into prior to January 1, 2019. This section shall be
operative for any contracts with a governmental entity defined
in subsection (a) for the construction of a highway, road, or
bridge entered into on or after January 1, 2021, and shall not
apply to any contracts for the construction of a highway,
road, or bridge entered into prior to January 1, 2021, nor
shall this section apply to any contract change order or
contract extensions, including revised, renegotiated, or
altered contracts, when the original contract was entered into
prior to January 1, 2021.

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

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