

1 HB334  
2 204817-1  
3 By Representatives Faulkner and Garrett  
4 RFD: Ways and Means Education  
5 First Read: 27-FEB-20

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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, 2021 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 by deleting  
27                              the exclusion of the contracts in existing law.

1  
2 A BILL  
3 TO BE ENTITLED  
4 AN ACT  
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6 To amend Section 40-9-14.1 of the Code of Alabama  
7 1975, relating to certificates of exemption from sales and use  
8 tax for governmental entities and their contractors for the  
9 purchase of construction materials for use on construction  
10 projects for the governmental entities; to delete the  
11 exclusion of any contracts for the construction of highways,  
12 roads, or bridges from the contracts required to be granted a  
13 certificate of exemption by the Department of Revenue for the  
14 purchase of construction materials to become a part of the  
15 project.

16 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

17 Section 1. Section 40-9-14.1 of the Code of Alabama  
18 1975, is amended to read as follows:

19 "§40-9-14.1.

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

1 subdivisions including a public college or university, a  
2 county or city board of education, and the State Board of  
3 Education.

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

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

19 "(c) The use of a certificate of exemption for the  
20 purchase of tangible personal property pursuant to this  
21 section shall include only tangible personal property that  
22 becomes part of the structure that is the subject of the  
23 construction contract. Any contractor or subcontractor  
24 purchasing any tangible personal property pursuant to a  
25 certificate of exemption shall maintain an accurate cost  
26 accounting of the purchase and use of the property in the  
27 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, 2021, and shall not  
6 apply to any contracts for the construction of a highway,  
7 road, or bridge entered into prior to January 1, 2021, 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, 2021.

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.