

1 HB340  
2 204817-4  
3 By Representative Faulkner  
4 RFD: Ways and Means Education  
5 First Read: 04-FEB-21

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ENROLLED, 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 include any contract for the construction of highways, roads, or bridges entered into after January 1, 2022, in 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

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

1 accounting of the purchase and use of the property in the  
2 construction of the project.

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

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

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

23 "(f) The department may adopt rules to implement  
24 this section in order to effectuate the purposes of this

1 section and to provide for accurate accounting and enforcement  
2 of this section.

3 "(g) In bidding the work on a tax exempt project,  
4 the bid form shall provide for an accounting for the tax  
5 savings.

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

12 "(i) Except as provided for a contract for the  
13 construction of a highway, road, or bridge as provided below,  
14 this ~~This~~ section shall be operative for contracts entered  
15 into with governmental entities as defined in subsection (a),  
16 not including public water or sewer authorities, districts,  
17 systems, or boards that otherwise are sales and use tax  
18 exempt, on January 1, 2014, or thereafter, and shall not apply  
19 to any contract entered into prior to January 1, 2014. This  
20 section shall be operative for contracts entered into with  
21 public water or sewer authorities, districts, systems, or  
22 boards that otherwise are sales and use tax exempt on January  
23 1, 2019, and thereafter, and shall not apply to any contract  
24 entered into with such entities prior to January 1, 2019. In  
25 addition, this section shall not apply to any contract change

1 orders or contract extensions, including revised,  
2 renegotiated, or altered contracts, when the original contract  
3 was entered into prior to January 1, 2014, with a governmental  
4 entity. Nor shall this section apply to any contract change  
5 orders or contract extensions, including revised,  
6 renegotiated, or altered contracts with any public water or  
7 sewer authority, district, system, or board that otherwise is  
8 sales and use tax exempt, when the original contract was  
9 entered into prior to January 1, 2019. This section shall be  
10 operative for any contracts with a governmental entity defined  
11 in subsection (a) for the construction of a highway, road, or  
12 bridge entered into on or after January 1, 2022, and shall not  
13 apply to any contracts for the construction of a highway,  
14 road, or bridge entered into prior to January 1, 2022, nor  
15 shall this section apply to any contract change order or  
16 contract extensions, including revised, renegotiated, or  
17 altered contracts, when the original contract was entered into  
18 prior to January 1, 2022.

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

21 Section 2. This act shall become effective October  
22 1, 2021, following its passage and approval by the Governor,  
23 or its otherwise becoming law.

