

Department of Finance and Administration

Legislative Impact Statement

Bill: HB1888

Bill Subtitle: TO CREATE A SALES AND USE TAX EXEMPTION FOR CONSTRUCTION MATERIALS USED BY THE ARKANSAS DEPARTMENT OF TRANSPORTATION IN PUBLIC CONSTRUCTION PROJECTS; AND TO DECLARE AN EMERGENCY.

Basic Change :

Sponsor: Rep. Penzo

HB1888 would create an exemption from state and local sales and use tax for sales of eligible construction materials for use in highway construction projects.

To be eligible for the tax exemption, the construction project must be initiated by the Arkansas Department of Transportation (ARDOT). Construction materials eligible for the exemption would include all tangible personal property and consumables used directly in the construction project that will remain part of the completed project or are consumed in the construction process. Construction materials for purposes of the exemption would not include construction equipment and tools, motor vehicle fuel, and other tangible personal property that may be used for purposes of a public construction project but do not remain part of the completed construction project or are not consumed during the construction process. The tax exemption would apply to direct purchases by ARDOT and to purchases by contractors conducting a construction project that has been initiated by ARDOT.

This bill includes an emergency clause. The act would be effective on and after July 1, 2019.

Revenue Impact :

FY2020

-\$17.28 Total Loss to State Revenues

(11 months reduced tax collections)

- -\$11.59 million --- State General Revenue (4.5%)
- -\$ 2.25 million --- Educational Adequacy (.875% tax)
- -\$ 1.29 million --- Property Tax Relief Trust Fund (.5%)
- -\$.32 million --- Conservation Tax (.125%)
- -\$ 1.29 million --- Highway Fund (.5%)
- -\$.36 million --- State Central Services
- -\$.17 million --- Constitutional Officers

FY2021

-\$19.42 Total Loss to State Revenues

- -\$11.24 million --- State General Revenue (4.5%)
- -\$ 2.53 million --- Educational Adequacy (.875% tax)
- -\$ 1.45 million --- Property Tax Relief Trust Fund (.5%)
- -\$.36 million --- Conservation Tax (.125%)
- -\$ 1.45 million --- Highway Fund (.5%)
- -\$ 1.64 million --- Educational Excellence Trust Fund
- -\$.14 million --- Educational Adequacy (GR transfer)

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- -\$.41 million --- State Central Services
- -\$.19 million --- Constitutional Officers

[Impact based on information supplied by the Arkansas Department of Transportation that reflects annual purchases of project materials of \$290,000,000 for 2018]

Taxpayer Impact :

ARDOT and contractors conducting highway construction projects initiated by Department of Transportation would no longer pay sales and use tax on their purchases of highway construction materials.

Resources Required :

None.

Time Required :

Adequate time is provided for implementation.

Procedural Changes :

Updates to the sales tax rules will need to be promulgated.

Other Comments :

None.

Legal Analysis :

Currently, construction materials purchased by ARDOT are subject to Arkansas sales and use tax. HB1888 creates a sales and use tax exemption for ARDOT's purchases of eligible construction materials used in a public construction project that is paid for with public funds. The exemption will be codified only in the gross receipts chapter of the code.

The bill defines "eligible construction materials" to mean tangible personal property used directly as part of a public construction project, including without limitation construction materials and consumables that will remain part of the completed project or are consumed in the construction process; however, tools, motor vehicle fuel, and other tangible personal property that do not remain part of the project are excluded from the definition.

It is not clear what types of "consumable" items of property may meet the definition of eligible construction materials and this word is not otherwise defined in the Arkansas Gross Receipts laws. As used in the bill, "used directly" will require significant interpretation and a definition analogous to the direct use in agricultural or manufacturing exemptions will likely be needed.

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Public construction projects are defined as construction projects initiated by ARDOT and paid for with public funds (which are defined to include guarantees from a public entity). "Public entity" is defined as a state, a political subdivision of the state, and the United States Government.

To relieve a seller of eligible construction materials from liability, ARDOT will be required to furnish the seller with proof of entitlement to exemption and ARDOT will then be responsible for the tax if it is later determined that the materials purchased did not qualify for the exemption. See § 26-52-517.