

1 State of Arkansas  
2 89th General Assembly  
3 Regular Session, 2013  
4

# A Bill

HOUSE BILL 1266

5 By: Representatives Dale, Catlett, Eubanks  
6 By: Senator G. Stubblefield  
7

## For An Act To Be Entitled

9 AN ACT TO CREATE A SALES AND USE TAX EXEMPTION FOR  
10 CONSTRUCTION MATERIALS PURCHASED TO CONSTRUCT,  
11 REPAIR, OR REMODEL A FACILITY TO BE USED BY AN EXEMPT  
12 ENTITY; AND FOR OTHER PURPOSES.  
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## Subtitle

15 TO CREATE A SALES AND USE TAX EXEMPTION  
16 FOR CONSTRUCTION MATERIALS PURCHASED TO  
17 CONSTRUCT, REPAIR, OR REMODEL A FACILITY  
18 TO BE USED BY AN EXEMPT ENTITY.  
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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24 SECTION 1. Arkansas Code Title 26, Chapter 52, Subchapter 4 is amended  
25 to add an additional section to read as follows:

26 26-52-446. Construction materials.

27 (a) As used in this section:

28 (1) "Construction materials" means materials, supplies, and  
29 other tangible personal property purchased and used by:

30 (A) An exempt entity to construct, repair, or remodel a  
31 facility to be used by the exempt entity in the conduct of the exempt  
32 entity's regular functions and activities; or

33 (B) A contractor to directly fulfill a contract with an  
34 exempt entity to construct, repair, or remodel a facility to be used by the  
35 exempt entity in the conduct of the exempt entity's regular functions and  
36 activities; and



1           (2) "Exempt entity" means a rural water association, a municipal  
 2 water company, and any other publicly owned water facility, wastewater  
 3 facility, or water and wastewater facility.

4           (b) The gross receipts or gross proceeds derived from the sale of  
 5 construction materials are exempt from the gross receipts tax levied by the  
 6 Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., and the  
 7 compensating use tax levied by the Arkansas Compensating Tax Act of 1949, §  
 8 26-53-101 et seq.

9           (c)(1) For each project that is eligible for the exemption under this  
 10 section, the exempt entity shall:

11                   (A) Assign a unique project identification number to the  
 12 project;

13                   (B) Create a project exemption certificate as required by  
 14 subdivision (c)(2) of this section; and

15                   (C) Provide a copy of the project exemption certificate  
 16 to:

17                               (i) A supplier when purchasing construction  
 18 materials; or

19                               (ii) The contractor, which shall provide a copy to  
 20 each supplier from which it purchases construction materials.

21           (2) The project exemption certificate shall contain the  
 22 following information:

23                   (A) The exempt entity's:

24                               (i) Name;

25                               (ii) Address; and

26                               (iii) Tax identification number;

27                   (B) The signature of an authorized representative of the  
 28 exempt entity;

29                   (C) The construction project's:

30                               (i) Location;

31                               (ii) Description; and

32                               (iii) Identification number;

33                   (D) The date the contract was executed;

34                   (E) The estimated project completion date;

35                   (F) The expiration date as determined by the exempt  
 36 entity; and

1                   (G) Any other information required by the Director of the  
2 Department of Finance and Administration.

3                   (3) Each contractor shall furnish a copy of the project  
4 exemption certificate to each subcontractor.

5                   (4) The project exemption certificate is renewable for a given  
6 project at the option of the exempt entity if revising the project exemption  
7 certificate's expiration date is necessary to complete the project.

8                   (d)(1) A supplier shall provide to a contractor purchasing  
9 construction materials under this section an invoice bearing the name of the  
10 exempt entity and the project identification number.

11                   (2) The contractor shall maintain invoices provided under this  
12 subsection for at least five (5) years.

13                   (e)(1) Any excess resalable materials, supplies, or other tangible  
14 personal property that is purchased for a project by a contractor under a  
15 project exemption certificate but that is not incorporated into or consumed  
16 in the construction of the project shall be returned to the supplier for  
17 credit.

18                   (2) If the contractor is not able to return the excess resalable  
19 materials, supplies, or other tangible personal property to the supplier for  
20 credit, the appropriate sales and use tax on the excess resalable materials,  
21 supplies, and other tangible personal property shall be reported on a return  
22 and paid by the contractor no later than the due date of the contractor's  
23 state sales and use tax return following the month in which it was determined  
24 that the excess resalable materials, supplies, or tangible personal property  
25 was not to be used in the project.

26                   (f)(1) If an exempt entity fails to revise the project exemption  
27 certificate expiration date as necessary to complete work required by the  
28 contract, a contractor or material supplier shall not be required to pay  
29 sales and use tax on materials, supplies, and tangible personal property  
30 incorporated into or consumed in the construction of the project.

31                   (2) If it is determined that sales and use tax is owed on  
32 materials, supplies, or tangible personal property because of the exempt  
33 entity's failure to revise the project exemption certificate expiration date,  
34 then the exempt entity is liable for the sales and use tax owed.

35                   (g) The exempt entity may monitor all construction materials  
36 purchased, used, and consumed in fulfilling the construction project.

1       (h) This section does not exempt from sales and use tax the purchase  
 2 of machinery, equipment, or tools used in fulfilling construction contracts.

3       (i)(1) If an exempt entity issues a project exemption certificate for  
 4 the purchase of materials, supplies, or other tangible personal property that  
 5 is incorporated into or consumed in the exempt entity's construction project  
 6 and the exempt entity is found not to have had the authority granted by this  
 7 section to issue the project exemption certificate, then the exempt entity is  
 8 liable for the sales and use tax owed on the materials, supplies, and other  
 9 tangible personal property.

10       (2) If an exempt entity issues a project exemption certificate  
 11 for the purchase of materials, supplies, and other tangible personal property  
 12 that are incorporated into or consumed in the construction of a project or  
 13 part of a project that is found not to be related to the exempt entity's  
 14 functions and activities, then the exempt entity is liable for the sales and  
 15 use tax owed on the materials, supplies, and other tangible personal  
 16 property.

17       (j) The director may promulgate rules to implement this section.

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 19       SECTION 2. EFFECTIVE DATE. Section 1 of this act is effective on the  
 20 first day of the second calendar month following the effective date of this  
 21 act.

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