

By Senator Stewart

17-00600A-23

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1 A bill to be entitled
2 An act relating to an excise tax on water extracted
3 for commercial or industrial use; revising the title
4 of ch. 211, F.S.; creating part III of ch. 211, F.S.,
5 entitled "Tax on Water Extracted for Commercial or
6 Industrial Use"; creating s. 211.40, F.S.; defining
7 terms; creating s. 211.41, F.S.; imposing an excise
8 tax upon persons extracting water from waters of the
9 state for commercial or industrial use, except under
10 certain circumstances; specifying the rate of the tax
11 and the trust fund where tax proceeds are to be
12 deposited; requiring that tax proceeds be separately
13 accounted for and be used for certain purposes by the
14 Department of Environmental Protection; creating s.
15 211.42, F.S.; specifying requirements for extractors
16 in filing monthly returns with the Department of
17 Revenue; authorizing the department to prescribe
18 certain forms by rule; authorizing the department to
19 grant extensions for filing and payment under certain
20 circumstances; creating s. 211.43, F.S.; specifying
21 interest payable on unpaid taxes; specifying the
22 delinquency penalties for failure to timely file a
23 return; specifying the penalty for the substantial
24 underpayment of taxes; providing construction;
25 authorizing the department to settle or compromise
26 taxes in accordance with certain provisions; creating
27 s. 211.44, F.S.; authorizing the department to adopt
28 rules; requiring governmental entities to cooperate
29 with the department and furnish information without

17-00600A-23

2023930__

30 cost to the department for certain purposes;
31 specifying recordkeeping requirements for extractors;
32 specifying the department's authority to inspect,
33 examine, and audit extractor books and records, issue
34 subpoenas, require testimony under oath or affirmation
35 of certain persons, and apply for certain judicial
36 orders; specifying requirements and procedures for the
37 department in conducting audits, assessing
38 deficiencies, and crediting or refunding overpayments;
39 specifying procedures and requirements for claiming
40 refunds; providing that amounts due remain a lien on
41 certain property; specifying requirements and
42 procedures for warrants and alias tax executions
43 issued by the department; requiring that suits brought
44 by the department for violations be brought in circuit
45 court; creating s. 211.45, F.S.; providing criminal
46 penalties for certain violations; amending s. 403.890,
47 F.S.; conforming a provision to changes made by the
48 act; providing an effective date.

49
50 Be It Enacted by the Legislature of the State of Florida:

51
52 Section 1. Chapter 211, Florida Statutes, entitled "Tax on
53 Production of Oil and Gas and Severance of Solid Minerals," is
54 retitled "Tax on Production of Oil and Gas, Severance of Solid
55 Minerals, and Water Extracted for Commercial or Industrial Use."

56 Section 2. The Division of Law Revision is directed to
57 create part III of chapter 211, Florida Statutes, consisting of
58 ss. 211.40-211.45, Florida Statutes, to be entitled "Tax on

17-00600A-23

2023930__

59 Water Extracted for Commercial or Industrial Use.”

60 Section 3. Section 211.40, Florida Statutes, is created to
61 read:

62 211.40 Definitions.—As used in this part, the term:

63 (1) “Department” means the Department of Revenue.

64 (2) “Extractor” means a person engaged in the business of
65 extracting water from waters of the state for commercial or
66 industrial use. For purposes of this part, commercial or
67 industrial use does not include water extracted:

68 (a) For public water supply utilities;

69 (b) By an agricultural producer for the maintenance of
70 land, crops, or livestock; or

71 (c) For use within any structure for restroom, sanitation,
72 or kitchen facilities.

73 (3) “Waters of the state” has the same meaning as the term
74 “waters” as defined in s. 403.031(13).

75 Section 4. Section 211.41, Florida Statutes, is created to
76 read:

77 211.41 Excise tax; distribution and use of tax proceeds.—

78 (1) An excise tax is levied upon every person who acts as
79 an extractor at a rate of 1/1000 of a cent (\$0.001) per gallon
80 of water extracted from waters of the state.

81 (2) The proceeds of the tax imposed by this section must be
82 deposited in the Water Protection and Sustainability Program
83 Trust Fund under s. 403.890 and must be accounted for separately
84 within the fund. In addition to the purposes specified in s.
85 403.890(1)(a), (b), and (c), the tax proceeds must be used by
86 the Department of Environmental Protection for geological
87 surveys to monitor the health of waters of the state and for

17-00600A-23

2023930__

88 saltwater intrusion prevention and management.

89 Section 5. Section 211.42, Florida Statutes, is created to
90 read:

91 211.42 Returns; filing requirements.-

92 (1) Each extractor shall remit tax due and submit to the
93 department a return on or before the 25th day of each month
94 showing the total amount of water extracted from waters of the
95 state during the previous month, the source and county of
96 extraction, the location of all facilities from which taxable
97 water was extracted, and other information required by
98 department rule. The department shall prescribe by rule the form
99 of the return. The return must be filed on or before the last
100 day prescribed for payment of the tax and must be signed and
101 verified under oath by the extractor or the extractor's
102 authorized representative.

103 (a) The return must include a statement of the tax due
104 under this part and such other information as the department may
105 reasonably require.

106 (b) A return must be filed even though no tax is due. Any
107 tax, penalty, or interest due must be remitted with the return.

108 (2) If any due date prescribed by this section falls on a
109 Saturday, Sunday, or state or federal holiday, the last date
110 prescribed for filing or payment is the next day that is not a
111 Saturday, Sunday, or holiday. The date of receipt by the
112 department, or the postmark date if mailed, determines the
113 timeliness of payment or filing.

114 (3) The department may grant an extension of time for
115 payment or filing of a return upon written request submitted on
116 or before the due date.

17-00600A-23

2023930__

117 Section 6. Section 211.43, Florida Statutes, is created to
118 read:

119 211.43 Interest and penalties; failure to pay tax or file
120 return.-

121 (1) If any part of the tax imposed by this part is not paid
122 on or before the due date, interest must be added to the amount
123 due at the rate of 12 percent per year from the due date until
124 the date of payment.

125 (2) An extractor who fails to file the return required
126 under s. 211.42 by the due date shall pay a delinquency penalty.
127 If tax is due with the return, the delinquency penalty is 10
128 percent for each month, or portion thereof, of the amount of tax
129 due with the return, not to exceed 50 percent. If no tax is due
130 with the return, the delinquency penalty is \$50 for each month,
131 or portion thereof, during which the return was not filed, not
132 to exceed \$300 in aggregate. The amount of tax due with a return
133 must be reduced by amounts properly creditable against the tax
134 liability shown on the return on the date the return was due.

135 (3) An extractor who makes a substantial underpayment of
136 the tax due under this part shall pay a penalty of 10 cents per
137 gallon of water extracted for which tax was not paid. For
138 purposes of this subsection, a substantial underpayment of tax
139 is a deficiency of tax in an amount exceeding 35 percent of the
140 total tax due for a month.

141 (4) Any penalty or interest imposed under this section is
142 deemed assessed upon the assessment of the tax and must be
143 collected and paid in the same manner as the tax.

144 (5) Any penalty imposed by this section may be settled or
145 compromised by the department for reasonable cause in accordance

17-00600A-23

2023930__

146 with s. 213.21. The department may settle or compromise interest
147 imposed by this section only as authorized by s. 213.21.

148 Section 7. Section 211.44, Florida Statutes, is created to
149 read:

150 211.44 Administration and enforcement; books and records;
151 refunds.—

152 (1) The department may adopt rules to administer this part,
153 including prescribing the form and content of returns and
154 reports.

155 (2) All state, county, or municipal agencies, boards,
156 bureaus, departments, or districts shall cooperate with the
157 department and furnish any information the department deems
158 necessary, without cost to the department, for the purposes of
159 administering, collecting, or enforcing the tax imposed under
160 this part.

161 (3) (a) Each extractor shall keep suitable books and records
162 relating to the extraction of taxable waters of the state to
163 enable the department to determine the amount of tax due under
164 this part. Such books and records must be preserved until the
165 time within which the department may make an assessment with
166 respect thereto has expired in accordance with s. 213.35.

167 (b) The department may inspect or examine the books,
168 records, or papers of any extractor which are reasonably
169 required for the purposes of this part and may require the
170 extractor to testify under oath or affirmation or to answer
171 competent questions regarding the extractor's business or
172 extraction of taxable waters of the state.

173 1. The department may issue subpoenas to compel third
174 parties to testify or to produce records or other evidence in

17-00600A-23

2023930__

175 their possession.

176 2. Any duly authorized representative of the department may
177 administer an oath or affirmation.

178 3. If any person fails to comply with a request of the
179 department for the inspection of records, fails to give
180 testimony or respond to competent questions, or fails to comply
181 with a subpoena, a circuit court having jurisdiction over such
182 person may, upon application by the department, issue orders
183 necessary to secure compliance.

184 (c) All books and records required to be kept under this
185 subsection must be available for inspection by the department
186 upon written request during normal business hours.

187 (4) The department may audit or examine the books and
188 records of an extractor to determine whether returns have been
189 properly filed and tax has been properly paid. An audit may be
190 commenced for any month for which the power of the department to
191 make an assessment of amounts due under this part is available.
192 An audit must be commenced by service of a written notice of
193 intent to audit upon the extractor, either in person or by
194 certified mail. The date of personal contact or the date of the
195 notice governs the period subject to audit. If there is jeopardy
196 to the revenue and jeopardy is asserted in or with an
197 assessment, the department must proceed in the manner specified
198 for jeopardy assessment in s. 213.732.

199 (5) (a) The department may assess, with or without an audit,
200 any deficiency resulting from nonpayment or underpayment of the
201 tax, interest, or penalties imposed by this part. The department
202 shall inform the extractor by written notice of the amount of
203 any deficiency or overpayment revealed by an audit, including

17-00600A-23

2023930__

204 the tax, interest, or penalties due, and shall explain the basis
205 for the determination.

206 (b) The department may make an assessment under this part
207 based upon the best information available to it. The department
208 may make an assessment based upon an estimate of amounts due
209 under this part if an extractor fails to file a return, files a
210 grossly incorrect or fraudulent return, or refuses to allow
211 inspection of records. An assessment of the amounts due under
212 this part is deemed prima facie correct, and the extractor has
213 the burden of showing any error in it.

214 (c) In the event of a deficiency, the department shall
215 issue its written notice to an extractor for the tax, penalties,
216 or interest due. Full payment of the total amount assessed must
217 be made in the manner prescribed by the department in its
218 notice.

219 (6) (a) The department may credit or refund any overpayments
220 of amounts due under this part which are revealed by an audit or
221 for which a timely claim for refund has been properly filed.

222 (b) A claim for refund may be filed within the period
223 specified in s. 215.26(2).

224 (c) A claim for refund must be signed by the extractor or
225 the extractor's duly authorized representative, successor, or
226 assignee and must include information the department requires to
227 determine the correctness of the claim.

228 (7) (a) Amounts due under this part remain a lien upon the
229 property, assets, and effects of an extractor until paid or
230 until collection thereof is barred under s. 95.091. Amounts due
231 may be recovered by the department, on behalf of the state, by
232 an action in any county where the property, assets, or effects

17-00600A-23

2023930__

233 of the extractor are located.

234 (b) When any tax imposed by this part becomes delinquent or
235 is otherwise in jeopardy, the department may issue a warrant for
236 the full amount due or estimated to be due, including the tax,
237 penalties, interest, and costs of collection. The warrant must
238 be directed to each sheriff and may be recorded with the clerk
239 of the circuit court in any county where the extractor's
240 property is located. Upon recording, the clerk of the circuit
241 court shall execute the warrant in the same manner prescribed by
242 law for executions upon judgments and is entitled to the same
243 fees for this service. Upon payment of the warrant, the
244 department shall satisfy the lien of record within 30 days.
245 Thereafter, any interested person may compel the department to
246 satisfy the lien of record.

247 (c) An alias tax execution may be issued whenever the
248 department deems it necessary. Each alias tax execution must be
249 so designated on its face and has the same force and effect as
250 the original.

251 (d) Tax executions may be levied upon any third party who
252 is in possession or control of any assets of a delinquent
253 extractor or who is indebted to a delinquent extractor. Such tax
254 executions have the force and effect of a writ of garnishment.
255 The third party shall pay the debt or deliver the assets of the
256 delinquent extractor to the department, and receipt by the
257 department discharges the third party completely to the extent
258 of the debt paid or assets surrendered to the department.

259 (e) When any tax execution becomes void, the department may
260 cancel it of record and shall do so upon the request of any
261 interested person.

17-00600A-23

2023930__

262 (8) Any employee of the department may be designated by the
263 executive director to make and sign assessments, tax warrants,
264 and satisfactions of tax warrants.

265 (9) Any suit brought by the department against any person
266 for violating this part must be brought in circuit court.

267 Section 8. Section 211.45, Florida Statutes, is created to
268 read:

269 211.45 Criminal penalties.—

270 (1) A person who willfully fails to file a return or keep
271 books or records on the extraction of waters of the state which
272 is taxable under this part, who files a fraudulent return, who
273 willfully fails or refuses to produce books or records, or who
274 willfully violates any provision of this part or any rule
275 adopted by the department under this part commits a misdemeanor
276 of the first degree, punishable as provided in s. 775.082 or s.
277 775.083.

278 (2) A person who withholds tax due under this part and
279 willfully fails to make remittance as required by this part or
280 who purports to make payments due under this part but willfully
281 fails to do so because the remittance fails to clear the bank or
282 depository institution against which it is drawn commits a
283 felony of the third degree, punishable as provided in s.
284 775.082, s. 775.083, or s. 775.084.

285 Section 9. Paragraph (d) is added to subsection (1) of
286 section 403.890, Florida Statutes, to read:

287 403.890 Water Protection and Sustainability Program.—

288 (1) Revenues deposited into or appropriated to the Water
289 Protection and Sustainability Program Trust Fund shall be
290 distributed by the Department of Environmental Protection for

17-00600A-23

2023930__

291 the following purposes:

292 (d) From revenues of the tax collected under s. 211.41, the
293 purposes specified in s. 211.41(2).

294 Section 10. This act shall take effect July 1, 2023.