

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: SB 1112

INTRODUCER: Senator Taddeo

SUBJECT: Bottled Water Excise Tax

DATE: January 17, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Reeve	McKay	CM	Pre-meeting
2.			FT	
3.			AP	

I. Summary:

SB 1112 creates part III of chapter 211, F.S., imposing an excise tax of 12.5 cents per gallon on bottled water operators engaged in the business of bottling or packing for sale water extracted from waters of the state. The bill also provides for filing requirements, penalties on unpaid or underpaid taxes, and administrative procedures.

The bill takes effect July 1, 2020.

II. Present Situation:

Water Resources in Florida

Chapter 373 of the Florida Statutes, known as the Florida Water Resources Act of 1972, governs the management of water and related land resources. In order to promote the proper usage of surface and groundwater as a statewide public resource, water is managed on the state and regional basis. The Department of Environmental Protection (DEP) is responsible for the administration of water resources at the state level and exercises general supervisory authority over the state's five water management districts, which are responsible for the administration of water resources at the regional level.¹ Though the DEP may exercise any power authorized to be exercised by a water management district, such power should be delegated to the governing board of a water management district to the greatest extent practicable.²

¹ Florida Department of Environmental Protection, Office of Water Policy – Water Management Districts, *available at* <https://floridadep.gov/water-policy/water-policy/content/water-management-districts> (last visited Jan. 17, 2020). The state's five water management districts are the Northwest Florida Water Management District, the Suwannee River Water Management District, the St. Johns River Water Management District, the Southwest Florida Water Management District, and the South Florida Water Management District.

² Section 373.016(5), F.S.

Water Use Permits

Water use permits, or consumptive use permits, establish the duration of and type of water use permitted as well as the maximum quantity of water that may be withdrawn. Water use permits allow the holder to withdraw a specified amount of water from the ground or a canal, lake, or river for reasonable-beneficial uses.³ The DEP and the water management districts are authorized to issue water use permits and impose reasonable conditions as necessary to ensure such use is not harmful to the water resources of the area.⁴ This authority is primarily delegated to the water management districts, which implement extensive water use permit programs within their respective jurisdictions.⁵ The districts have different schedules for application processing fees, which can vary based on total requested withdrawal amounts or type of application.⁶

Bottled Water

Bottled water is water intended for human consumption that is sealed in bottles or other containers with no added ingredients except that it may optionally contain safe and suitable antimicrobial agents.⁷ The processing and bottling of drinking water is regulated by the Florida Department of Agriculture and Consumer Services, Division of Food Safety, and is subject to the Food and Drug Administration's requirements.⁸ Additionally, s. 500.12(c), F.S., provides guidelines for applications for a food permit for operating a bottled water plant. There are currently no statutory authorizations for the taxation of the processing and bottling of water extracted within the state.

III. Effect of Proposed Changes:

Section 1 renames chapter 211 of the Florida Statutes, "Tax on Production of Oil and Gas and Severance of Solid Minerals," as "Tax on Production of Oil and Gas, Severance of Solid Minerals, and Extraction of Water for Bottling."

Section 2 directs the Division of Law Revision to create part III of ch. 211, F.S., consisting of ss. 211.40 through 211.45, F.S., entitled "Tax on Extraction of Water for Bottling."

Section 3 creates s. 211.40, F.S., providing definitions. "Bottled water operator" means a person engaged in the business of bottling or packaging for sale water extracted from waters of the state. The term does not include a person who bottles or packages water from a public water system, as defined in s. 403.852(2), F.S.⁹ "Water of the state" is synonymous with "waters," defined in s.

³ Section 373.019(16), F.S., defines "reasonable-beneficial use" as the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner which is both reasonable and consistent with the public interest.

⁴ Section 373.219, F.S. No permit is required for domestic consumption of water by individual users.

⁵ Section 373.216, F.S.; Fla Admin. Code R. 40A-2, 40B-2, 40C-2, 40D-2, and 40E-2 (2019).

⁶ See Fla. Admin. Code R. 40C-1.603 (2019), St. Johns River Water Management District's permit fees, for an example of various fees associated with water use permits.

⁷ Section 500.03(1)(d), F.S.

⁸ 21 C.F.R. §§ 129 and 165.110 (2019)

⁹ Section 403.852(2), F.S., defines "public water system" as a system for the provision to the public of water for human consumption through pipes or other constructed conveyances if such system has at least 15 service connections or regularly serves at least 25 individuals daily at least 60 days out of the year. The term includes: (1) any collection, treatment, storage, and distribution facility or facilities under control of the operator of such system and used primarily in connection with such

403.031(13), F.S., as including, but not limited to “rivers, lakes, streams, springs, impoundments, wetlands, and all other waters or bodies of water, including fresh, brackish, saline, tidal, surface, or underground waters.” “Department” means the Department of Revenue.

Section 4 creates s. 211.41, F.S., establishing an excise tax levied on every person who acts as a bottled water operator at a rate of 12.5 cents per gallon of water extracted from waters of the state. Funds from the tax must be deposited in the Wastewater Treatment and Stormwater Management Revolving Loan Trust Fund and used to provide grants and loans to local governmental agencies to accelerate the implementation of water pollution control projects pursuant to s. 403.1835, F.S.

Section 5 creates s. 211.42, F.S. Each bottled water operator must submit, by the 25th day of each month, a return stating the amount of water extracted in the previous month, the source and county of extraction, and the location of all facilities water was extracted from. The return must also include a statement of the tax due. Any taxes due must be remitted with the return, and returns must be submitted even if no taxes are due. Bottled water operators (operators) must also file a declaration of estimated tax by the 25th day of each month following the month taxable water extraction occurred. Operators must remit 90 percent of the estimated tax. An operator’s declaration may be amended and the estimated tax payment will be adjusted to reflect the change. The Department of Revenue (DOR or department) is authorized to provide credits for any overpayments.

All related forms will be created by the DOR. If the submission due date falls on a Saturday, Sunday, or state or federal holiday, the due date is moved to the next day that is not a Saturday, Sunday, or holiday. The department is permitted to grant extensions upon written request.

Section 6 creates s. 211.43, F.S., providing penalties for the failure to pay the tax or file a return. A bottled water operator that does not pay the imposed taxes on or before the due date must pay interest at the rate of 12 percent per year until the payment is due. If taxes are due and an operator does not file a return, the operator must pay a delinquency penalty of 10 percent of the taxes due each month, not to exceed 50 percent. The penalty is \$50 each month, not to exceed \$300, if an operator does not file a return when taxes are not due.

The bill provides that an operator that makes a *substantial* underpayment of taxes, a payment of least 35 percent less than the total taxes due, must pay a penalty of 30 percent of the underpayment. This penalty is assessed in addition to the aforementioned delinquency penalty. An operator that makes an underpayment of estimated tax is liable for interest and a penalty, both at the rate of 12 percent per year. The bill provides a formula for determining an underpayment of estimated tax.

The bill also contains provisions limiting the imposition of penalties or interest for underpayment in certain circumstances. Any penalty imposed may be settled or compromised by the DOR for reasonable cause; interest imposed may only be settled or compromised as authorized by s. 213.21, F.S.

system and (2) any collection or pretreatment storage facility or facilities not under control of the operator of such system but used primarily in connection with such system.

Section 7 creates s. 211.44, F.S., relating to administrative procedures and enforcement of the tax. The bill authorizes the department to adopt rules to administer part III of ch. 211, F.S. All state, county, and municipal agencies, boards, bureaus, departments, and districts must supply any information the department deems necessary for the administration, collection, and enforcement of the excise tax. Each bottled water operator must keep “suitable books and records relating to the extraction of taxable waters of the state” to allow the department to determine the amount of taxes due. These records must be preserved for three years after the tax is due, in accordance with s. 213.35, F.S. The DOR is entitled to inspect the “books, records, or papers of any bottled water operator which are reasonably required for the purposes of this part” and to require such a person to testify under oath regarding the extraction of taxable waters. The bill also allows the department to issue subpoenas to compel third parties to testify or to produce records or other evidence. A circuit court having jurisdiction over such a person is permitted to issue orders necessary to secure compliance. All required books and records must be available for the department to inspect, upon written request, during normal business hours.

To determine whether returns have been properly filed and tax has been properly paid, the bill allows the DOR to audit or examine the books and records of a bottled water operator. Audits must be commenced by a written notice of intent delivered to a bottled water operator either in person or by certified mail. The department may, without an audit, assess the nonpayment or underpayment of taxes, interest, or penalties; the failure to file a return; the filing of a grossly incorrect or fraudulent return; or the refusal to permit the inspection of records based upon the best information available to the department or an estimate of amounts due. In the event of such a deficiency, the DOR shall issue a written notice to a bottled water operator for the tax, penalties, or interest due; the notice shall include the manner in which full payment of the total amount assessed must be made. The burden of showing any errors in an assessment lies with an operator.

The bill permits the department to credit or refund any overpayment revealed by an audit or for which a timely claim for refund has been filed, the period for which is specified in s. 215.26(2), F.S., as 3 years after the date the tax is paid.

Amounts due to the department remain as a lien upon the property, assets, and effects of a bottled water operator until paid or collected. The department may issue a warrant for the amount due, directed to the sheriff, if such a tax becomes delinquent or in jeopardy. Tax executions are permitted to be levied upon any third party in possession of any assets of, or is indebted to, a delinquent bottled water operator. The bill provides that any suit brought against any person for violating part III of ch. 211, F.S, must be brought in circuit court.

Section 8 creates s. 211.45, F.S., establishing certain criminal penalties. A person who willfully fails to file a return, fails to keep books or records on the extraction of water, files a fraudulent return, willfully fails or refuses to produce said books or records, or willfully violates any provision of this part, or any rule adopted by the department under this part, commits a first degree misdemeanor. A person who withholds tax due under this part and willfully fails to make remittance or purports to make remittance but willfully fails to do so commits a third degree felony.

Section 9 provides an effective date of July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

Section 19(a), Article VII of the Florida Constitution limits the authority of the legislature to enact legislation that imposes a new state tax or fee by requiring such legislation to be approved by a 2/3 vote in each chamber of the legislature. SB 1112 imposes a 12.5 cent per gallon excise tax on bottled water operators extracting water from waters of the state. Because the Department of Revenue does not currently have the authority to impose such a tax, the voting requirements found in Section 19(a), Article VII of the Florida Constitution appear to apply.

Section 19(e), Article VII of the Florida Constitution provides that a state tax or fee imposed, authorized, or raised must be contained in a separate bill that contains no other subject. SB 1112 imposes a state tax and creates provisions for the administration of said tax. It is unclear whether the bill meets the single-subject requirement or if a separate bill is necessary.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has not yet met regarding the bill.

B. Private Sector Impact:

Bottled water operators extracting water from state waters will be required to remit to the Department of Revenue an excise tax of 12.5 cents per gallon of water extracted.

C. Government Sector Impact:

The Department of Revenue estimates that \$124,306 in nonrecurring funds will be required in Fiscal Year 2020-2021 to modify the department's tax systems in order to comply with the bill's provisions. The department would also require \$18,000 in recurring funding, beginning in Fiscal Year 2020-2021, to continue supporting the necessary modifications.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 3 of the bill defines a bottled water operator as a "person engaged in the business of bottling or packaging for sale water extracted from water of the state." Section 4 levies an excise tax on "every person who acts as a bottled water operator at a rate of 12.5 cents per gallon of water extracted from waters of the state." The definition of "bottled water operator" explicitly refers not to persons *extracting* the water but persons *bottling or packing* the water. Because the bill seems to intend to impose the tax on persons extracting and bottling or packaging water, the definition of "bottled water operator" may need to be revised to include such language.

Section 5 of the bill contains misleading language that could imply bottled water operators do not have to submit taxes along with the return required by the section and that the return is simply a report of the previous month's water extraction. The Department of Revenue recommends the following change to line 91 for clarity:

"(1) Each bottled water operator shall remit tax due ~~prepare~~ and submit to..."

Similarly, the provisions regarding both forms required to be submitted to the department use similar language; both refer to forms prescribed by the department due on or before the 25th day of the month. The current language does not provide a clear enough distinction between the two forms.

Section 5 of the bill requires each bottled water operator to file a "declaration of estimated tax." It is unclear how an operator is to calculate estimated tax. Section 212.11, F.S., provides three methods for taxpayers to calculate estimated tax, and s. 211.33, F.S., defines estimated tax and prescribes an annual installment schedule for payment of estimated tax.

Lines 263-267 authorize the department to credit or refund any overpayment revealed by an audit. Operators must submit a claim for refund within a certain period of time. The bill does not provide a date by which the department must notify an operator of any overpayments. Without such a notification deadline, an operator may not be notified of an overpayment within the period of time the operator is able to submit a claim for refund.

The Department of Revenue has stated that it will be difficult to fully implement a new tax by the bill's effective date of July 1, 2020 and instead suggests an effective date of January 1, 2021.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 211.40, 211.45, 211.41, 211.42, 211.43, and 211.44.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
