A bill to be entitled

An act relating to a bottled water excise tax;
revising the title of ch. 211, F.S.; creating part III
of ch. 211, F.S., entitled “Tax on Extraction of Water
for Bottling”; creating s. 211.40, F.S.; defining
terms; creating s. 211.41, F.S.; imposing an excise
tax upon bottled water operators; specifying the rate
of the tax and the trust fund where tax proceeds are
to be deposited; requiring that tax proceeds be
separately accounted for and be used for certain
purposes; creating s. 211.42, F.S.; specifying
requirements for bottled water operators in filing
monthly returns with the Department of Revenue;
authorizing the department to grant extensions for
filing and payment under certain circumstances;
specifying the department’s rulemaking authority;
creating s. 211.43, F.S.; specifying interest payable
on unpaid taxes; specifying the delinquency penalty
for failure to timely file a return; specifying the
penalty for the substantial underpayment of taxes;
providing construction; authorizing the department to
settle or compromise taxes in accordance with certain
provisions; creating s. 211.44, F.S.; authorizing the
department to adopt rules; requiring local governments
to cooperate with the department and furnish
information without cost to the department for certain
purposes; specifying recordkeeping requirements for
bottled water operators; specifying the department’s
authority to inspect, examine, and audit bottled water
operator books and records, issue subpoenas, require
testimony under oath or affirmation of certain
persons, and apply for certain judicial orders;
specifying requirements and procedures for the
department in conducting audits, assessing
deficiencies, and crediting or refunding overpayments;
specifying procedures and requirements for claiming
refunds; providing that amounts due remain a lien on
certain property; specifying requirements and
procedures for warrants and alias tax executions
issued by the department; requiring that suits brought
by the department for violations be brought in circuit
court; creating s. 211.45, F.S.; providing criminal
penalties for certain violations; providing an
effective date.

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

Section 1. Chapter 211, Florida Statutes, entitled "Tax on
Production of Oil and Gas and Severance of Solid Minerals," is
retitled "Tax on Production of Oil and Gas, Severance of Solid
Minerals, and Extraction of Water for Bottling."

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

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

211.40 Definitions.—As used in this part, the term:
(1) “Bottled water operator” means a person engaged in the business of extracting water from waters of the state and bottling or packaging the water for sale. The term does not include a person who extracts and bottles or packages water from a public water system as defined in s. 403.852(2).

(2) “Department” means the Department of Revenue.

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

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

211.41 Bottled water excise tax; distribution and use of tax proceeds.—

(1) An excise tax is levied upon 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.

(2) The proceeds of the tax imposed by this section must be deposited in the Wastewater Treatment and Stormwater Management Revolving Loan Trust Fund and must be accounted for separately within the fund. The tax proceeds must be used to provide grants and loans to local governmental agencies pursuant to s. 403.1835, with priority given to projects that connect existing onsite sewage treatment and disposal systems to central sewerage systems.

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

211.42 Returns; filing requirements.—

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

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

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

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

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

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

211.43 Interest and penalties; failure to pay tax or file
return.—

(1) If any part of the tax imposed by this part is not paid
on or before the due date, interest must be added to the amount
due at the rate of 12 percent per year from the due date until
A bottled water operator who fail[s] to file the return required under s. 211.42 by the due date shall pay a delinquency penalty. If tax is due with the return, the delinquency penalty is 10 percent for each month, or portion thereof, of the amount of tax due with the return, not to exceed 50 percent. If no tax is due with the return, the delinquency penalty is $50 for each month, or portion thereof, during which the return was not filed, not to exceed $300 in aggregate. The amount of tax due with a return must be reduced by amounts properly creditable against the tax liability shown on the return on the date the return was due.

A bottled water operator who makes a substantial underpayment of the tax due under this part shall pay a penalty of 30 percent of the underpayment in addition to the delinquency penalty imposed under subsection (2). For purposes of this subsection, a substantial underpayment of tax is a deficiency of tax in an amount exceeding 35 percent of the total tax due for a month.

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

Any penalty imposed by this section may be settled or compromised by the department for reasonable cause in accordance with s. 213.21. Interest imposed by this section may be settled or compromised only as authorized by s. 213.21.

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

211.44 Administration and enforcement; books and records;
refunds.

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

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

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

(b) The department may inspect or examine the books, records, or papers of any bottled water operator which are reasonably required for the purposes of this part and may require such person to testify under oath or affirmation or to answer competent questions regarding such person’s business or extraction of taxable waters of the state.

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

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

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

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

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

(5)(a) The department may assess, with or without an audit, any deficiency resulting from nonpayment or underpayment of the tax, interest, or penalties imposed by this part. The department shall inform the bottled water operator by written notice of the amount of any deficiency or overpayment revealed by an audit, including the tax, interest, or penalties due, and shall explain the basis for the determination.

(b) The department may make an assessment under this part based upon the best information available to it. The department
may make an assessment based upon an estimate of amounts due under this part if a bottled water operator fails to file a return, files a grossly incorrect or fraudulent return, or refuses to permit inspection of records. An assessment of the amounts due under this part is deemed prima facie correct and the bottled water operator has the burden of showing any error in it.

(c) In the event of a deficiency, the department shall issue its written notice to a bottled water operator for the tax, penalties, or interest due. Full payment of the total amount assessed must be made in the manner prescribed by the department in its notice.

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

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

(c) A claim for refund must be signed by the bottled water operator or the bottled water operator’s duly authorized representative, successor, or assignee and must include information the department requires to determine the correctness of the claim.

(7)(a) Amounts due under this part remain a lien upon the property, assets, and effects of a bottled water operator until paid or until collection thereof is barred under s. 95.091. Amounts due may be recovered by the department, on behalf of the state, by an action in any county where the property, assets, or effects of the bottled water operator are located.

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

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

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

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

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

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

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

211.45 Criminal penalties.—

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

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

Section 9. This act shall take effect July 1, 2021.