



The Florida Senate

Issue Brief 2010-315

September 2009

Committee on Environmental Preservation and Conservation

WATER SUPPLY FUNDING

Statement of the Issue

Beginning with the significant declines in documentary stamp tax revenue and the corresponding declines in appropriations to the Water Protection Sustainability Trust Fund, funding for water resource development projects has virtually disappeared. As a result, the Department of Environmental Protection proposed the imposition of a severance fee on any producer of bottled water for each gallon of water withdrawn from surface water or groundwater in the state used to produce and bottle water. The potential revenue would be used as a replacement source of funds for water resource development projects.

Discussion

Severance taxes are excise taxes on natural resources “severed” from the earth. Traditionally, they are applied to specific industries such as mining or gas or oil production. The tax is usually imposed as a flat rate per ton, per barrel for oil, or per foot for gas. According to the 2006 Commerce Clearing House State Tax Guide, thirty-nine states impose severance taxes of various types.

Currently, Florida imposes severances taxes on the production of oil and gas and on the severance of solid minerals. Specifically, Chapter 211, Florida Statutes provides:

An excise tax be levied upon anyone who severs oil in the state for sale, transport, storage, profit, or commercial use. The tax is based upon the value of the oil produced and saved or sold during a specific time frame.

An excise tax be levied upon anyone engaged in the business of severing solid minerals¹. Provisions of Chapter 211, F.S. provide a specific tax rate for general solid minerals, phosphate rock, and heavy minerals.

Numerous states impose water use fees. According to research completed by the Department of Environmental Protection during the development of its proposal concerning a fee on water bottlers, the fees were on the use of water as a public resource. The corresponding funds received were generally used for water protection activities. Specific types include:

- Kansas assesses a \$0.03 per thousand gallons “water protection fee” on public water supply systems, industrial uses, and stock watering. In addition, public water supply systems pay a “clean water protection fee” of \$0.03 per thousand gallons. Revenues from this latter fee are deposited into a state water plan fund and used for the renovation and protection of water bodies.
- Kentucky has established a Kentucky River Authority that charges a water use fee of \$0.022 per thousand gallons from all facilities, except agricultural interests, for using water from the Kentucky River Basin.
- Michigan, in addition to a fee on public water supply systems, assesses facilities with wells serving primarily transient populations, including campgrounds, rest stops, and motels and restaurants. The state uses its water fees to administer its Clean Drinking Water Act program.
- Minnesota charges a fee based on annual water use: above 500 million gallons per year, the fee is \$7.50 per million gallons. A maximum fee range exists from \$750 for agricultural irrigation permits to \$250,000 for cities with populations of more than 100,000. In addition to the annual use fee, the state has established a summer surcharge of \$20 per million gallons that applies to water usage during June, July and August.
- Louisiana applies a 3.8% sales tax on water sales to commercial and industrial users. While individual residential consumers are exempt, sales where one meter applies to several residential units are subject to the tax.

¹ Section 211.30, F.S., defines “solid mineral” to mean all solid minerals, including, but not limited to, clay, gravel, phosphate rock, lime, shells (excluding live shellfish), stone, sand, heavy minerals, and any rare earths which have heretofore been discovered or may be discovered in the future, which are contained in the soils or waters of the state.

Concerning bottled water, the department's survey of other states found variations on the application of a state's existing sales tax. Many states have chosen to apply either the full tax rate or some reduced rate on bottled waters, while others have specifically provided that bottled water does not meet the definition of "food" that is exempted from the sales tax. One recent and new approach was enacted by the city of Chicago which charges a \$0.05 per bottle tax. The impetus behind this fee is not water funding but to reduce waste.

To date, only one state has considered legislation that would establish a fee specifically on water withdrawn from a public source for the purpose of sale as bottled water. In 2000, New Hampshire considered the establishment of a \$0.02 per gallon fee. The proceeds were to be used for a grant program for the purchase of land and easements to protect drinking water sources. In 2005, the state again considered the establishment of a fee on water bottlers. Neither proposal was ever enacted. The original ended in an interim study, while the second ran into potential state constitutional issues².

Historically, Florida has relied on many sources for funding water resource development projects. The primary sources have been partnerships between the state's water management districts and local governments or utilities. However, as the state's population continued to grow, the state's ability to rely on traditional sources of water and traditional funding methods was determined to be inadequate. In response, the Water Protection and Sustainability Program was created in 2005. One of the main goals of the program was to provide state funds as a match to water management district and local efforts in order to develop alternative supplies of water.

As originally created, \$100 million was to be transferred from documentary stamp tax revenue to the water protection program on an annual basis. However, funding for the program has declined since its inception to the point that no appropriation was made for the 2009-2010 fiscal year. In response to this decline in funding, the DEP proposed that a severance fee of \$0.06 per gallon be imposed on any producer of bottled water for each gallon of water withdrawn from a surface water or groundwater source in the state and used to produce and bottle water. According to the state's revenue estimating conference, this proposed fee would have been anticipated to raise \$66 million annually. DEP estimated that the fee would raise almost \$80 million. According to data supplied by various state agencies and the U.S. Geological Survey, a snap shot of the bottled water industry in Florida shows:

- As of 2008 there were 52 water bottlers,
- At least 20 active operations obtain all or some of their water from a public water supplier,
- 36 water bottlers hold a water management district consumptive use permit but only 28 are active, and
- The permits would allow for a total withdrawal of 11.2 million gallons per day but that the actual withdrawal totals are 3.6 million per day.

In conjunction with the discussion on a potential severance fee, the potential for eliminating the sales tax exemption for bottled water also occurred. According to the bottlers, repeal of this exemption would generate an estimated \$45 million, which was a figure they supplied to the recent Taxation and Budget Reform Commission.

The use of water for the production of bottled water is only one small piece of overall water use by Floridians. According to recent departmental data, fresh water use in the state can be broken down as follows:

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| ➤ Agricultural irrigation | 2.8 billion gallons |
| ➤ Public supply | 2.5 billion gallons |
| ➤ Power generation | 558.1 million gallons |
| ➤ Commercial – industrial – mining | 488.3 million gallons |
| ➤ Recreational irrigation | 329.6 million gallons |
| ➤ Domestic self-supplied | 185.5 million gallons |

To date, the state has not imposed a direct fee on the actual withdrawal of water.

Florida's current system for using its water is governed by the water management districts under the consumptive use permitting program. The program directs that any entity or person that wants to use large amounts of water, except for those exempted by statute or rule, is required to obtain a permit. These permits are issued for a finite duration and, upon expiration, must be renewed. In general you need a permit if:

- You plan to withdraw more than 100,000 gallons per day, or

² Part I, Article 28 of the New Hampshire state constitution states: "No subsidy, charge, tax, impost, or duty shall be established, fixed, laid, or levied, under any pretext whatsoever, without the consent of the people, or their representatives in the legislature, or authority derived from that body."

- The outside diameter of your groundwater well is six inches or larger, or
- The outside diameter of your withdrawal pipe from a surface water source is four inches or larger, or
- Your total withdrawal capacity is 1 million gallons per day or larger.

Some exceptions exist but most are for single family homes or duplexes, fire fighting water wells, salt water use, or reclaimed water use. Based on data supplied by the districts, the fee for obtaining a permit may range from free for minor modifications to over \$11,000. The fees vary between districts but are generally based on withdrawal rates and well size. Based on fiscal year 2006-2007, the districts received \$2 million in consumptive use permit fee revenue.