

1 HB364  
2 135947-1  
3 By Representatives Thomas and McMillan  
4 RFD: County and Municipal Government  
5 First Read: 21-FEB-12

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8 SYNOPSIS: Under existing law, a severance tax is  
9 levied on certain purchasers of severed material  
10 such as sand, gravel, and limestone. The tax is  
11 collected by the operator of the mine or quarry,  
12 paid to the Department of Revenue, and distributed  
13 to the county in which the material is severed.

14 Under existing law, a county is not  
15 specifically entitled to any taxpayer reports or  
16 information related to which operators pay the tax  
17 to the department and the amount of taxes paid.  
18 Additionally, counties have no authority to request  
19 audits of mine or quarry operators to determine  
20 whether taxes are being properly paid.

21 This bill would require the Department of  
22 Revenue to provide the county commission of a  
23 county with certain tax records and information  
24 related to severance tax collections and payments  
25 from operators in the county and would require the  
26 information to be treated as confidential by the  
27 county commission.

1                   This bill would authorize the county to  
2                   request that the department conduct audits of  
3                   certain operators subject to the severance tax and  
4                   would provide for the county to pay the costs of  
5                   the audit in the event the audit results in a  
6                   finding that all taxes have been properly paid. The  
7                   bill would also require interest and penalties on  
8                   unpaid delinquent taxes and would provide for civil  
9                   penalties.

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11   A BILL  
12   TO BE ENTITLED  
13   AN ACT

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15                   To amend Sections 40-13-53, 40-13-55, 40-13-56,  
16                   40-13-57, 40-13-58, and 40-13-61, Code of Alabama 1975,  
17                   relating to the severance tax on certain materials; to require  
18                   the Department of Revenue to provide the county commission of  
19                   a county with certain tax records and information related to  
20                   severance tax collections and payments from operators in the  
21                   county and to require the information to be treated as  
22                   confidential by the county commission; to authorize the county  
23                   commission to request that the department conduct audits of  
24                   certain operators subject to the severance tax and to provide  
25                   for the county commission to pay the costs of the audit in the  
26                   event the audit results in a finding that all taxes have been  
27                   properly paid; and to require interest and penalties to be

1 imposed on delinquent taxes and to provide for civil  
2 penalties.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Sections 40-13-53, 40-13-55, 40-13-56,  
5 40-13-57, 40-13-58, and 40-13-61, Code of Alabama 1975, are  
6 amended to read as follows:

7 "§40-13-53.

8 "The term "severed material," as defined in  
9 subdivision (8) of Section 40-13-51 shall not include lime or  
10 limestone used for agricultural purposes or for pollution  
11 control or abatement purposes, nor rock dust used for settling  
12 coal dust in underground mines or similar uses, nor any  
13 natural minerals used for the purpose of producing portland  
14 cement, nor processed sand used in the foundry cores, mold,  
15 and linings, nor clay that produces lightweight aggregate,  
16 marble and marble by-products, iron ore, quartzite, coal, oil,  
17 and natural gas and the severance of marble and marble  
18 by-products, iron ore, quartzite, coal, oil, and natural gas  
19 shall not be subject to the provisions of this article.

20 "(a) The tax levied by this article shall apply to  
21 all severed material severed from the ground within this state  
22 and sold as tangible personal property, regardless of the  
23 place of sale or the fact that delivery may be made outside  
24 the county, except that no tax shall be due on any such  
25 minerals that are sold to a purchaser for use outside the  
26 state if such minerals are not transported on public roads in  
27 Alabama. Records relating to minerals purchased for use

1 outside the state, including method of delivery, shall be  
2 available for verification and audit purposes to the  
3 department and the department shall make the records available  
4 to the county commission of the county from which the  
5 materials were severed upon request of the county commission.

6 "(b) Notwithstanding the provisions of subsection  
7 (a), or any other provisions in this article to the contrary:

8 "(1) Any severed material severed from the earth by  
9 an operator or producer and moved from one place to another on  
10 the same site, or transported to another site owned by the  
11 same operator or producer shall not be considered a severance  
12 thereof for purposes of taxation; and

13 "(2) Any severed materials or any other kind of  
14 material when severed and used for fill by an operator,  
15 producer or any other person, whether from the same  
16 construction site, job site, borrow pit, or any site other  
17 than a commercial quarry shall be exempt from the severance  
18 tax levied by this article.

19 "(3) Chert shall be exempt from the severance tax  
20 levied by this article, including any county or municipality  
21 owned and operated chert facility.

22 "(c) Any severed material which has been severed and  
23 on which any county severance tax has accrued prior to October  
24 1, 2004, in the county in which the severance has occurred  
25 shall be exempt if such tax has been paid.

26 "§40-13-55.

1           "(a) The department shall administer and collect  
2 this tax and shall promulgate rules and regulations necessary  
3 and reasonable for the administration of this article. It  
4 shall be the duty of the department to include in such  
5 regulations an appropriate method to allocate funds collected  
6 to the county where the severed material was severed or  
7 processed. Any records related to the collection,  
8 distribution, and enforcement of this tax in a particular  
9 county, including tax returns, shall be made available to the  
10 county commission of the county upon request from the county  
11 commission.

12           "(b) The department and producers shall use the  
13 inventory accounting principle known as "first in-first out"  
14 in determining the tax payable on stockpiles or inventories of  
15 severed material sold, and to which county the tax revenue  
16 should be allocated, regardless of where the severed material  
17 is stored or sold. Any records detailing the allocation of  
18 funds under this subsection shall be forwarded to the county  
19 commission in a county receiving an allocation at the time the  
20 monies are distributed to the county.

21           "§40-13-56.

22           "For the purpose of ascertaining the amount of tax  
23 due and payable under this article, it shall be the duty of  
24 all producers to transmit to the department, on or before the  
25 twentieth day of the month next succeeding the month in which  
26 the tax accrues, a return upon the forms provided by the  
27 department. The return shall show the month or period covered,

1 the total number of tons of each type of severed material sold  
2 from each production unit operated, owned, or controlled by  
3 the producer in each county during the period covered, the  
4 amount of the tax due, and such other information as the  
5 department may reasonably require to allocate the tax between  
6 raw materials severed and finished products sold, as the case  
7 may be in particular counties. The return shall be signed by  
8 the producer and shall be accompanied by the full amount of  
9 the tax shown to be due in good and immediate funds. A copy of  
10 the tax return shall be made available to any county  
11 commission receiving a portion of the tax paid upon request by  
12 the county commission.

13 "§40-13-57.

14 "(a) The tax levied by this article shall become  
15 delinquent on the twenty-first day of the month next  
16 succeeding the month in which the tax is due. Provided,  
17 however, that the department, for good cause shown, may extend  
18 the time for making a return required under this article  
19 pursuant to rules adopted by the department.

20 "(b) The department ~~may~~ shall impose interest and  
21 penalties on unpaid taxes which become delinquent. One-half of  
22 all interest and penalties collected with respect to the tax  
23 imposed by this article shall be retained by the department to  
24 help defray the expenses of administration and collection of  
25 the tax.

26 "§40-13-58.

1           "(a) All revenues collected from the tax levied  
2 pursuant to this article, less an amount to cover the expenses  
3 of administration and collection and one-half of all interest  
4 and penalties collected, as provided in subsection (b) of  
5 Section 40-13-57, shall be remitted quarterly to the governing  
6 body of the county from which the severed material was severed  
7 within 60 days following the end of a calendar quarter along  
8 with a report detailing how the amount remitted was  
9 determined. Notwithstanding the above, the aggregate amount  
10 retained by the department to defray the expenses described  
11 herein shall not exceed 1.5 percent of the total revenues  
12 collected during such calendar quarter and shall be credited  
13 to its current service revenue.

14           "(b) The revenues remitted to a county as provided  
15 in subsection (a) shall be deposited into a fund held and  
16 dispensed by the county commission and designated as the  
17 severed material severance tax fund. At least 75 percent of  
18 such funds shall be allocated and utilized by the county for  
19 the construction, maintenance, and repair of the county's road  
20 system or, if provided by local legislation, for a local  
21 economic development authority, public transit, construction  
22 and maintenance of county roads and bridges, or the  
23 reclamation of lands where natural materials have been  
24 severed. Notwithstanding the foregoing, revenues distributed  
25 to Franklin County as provided in subsection (a) shall be  
26 allocated and utilized exclusively for economic development.  
27 Twenty-five percent of the funds distributed to a county as a



1 result of the severance of materials from within the corporate  
2 limits of a municipality in the county shall be expended by  
3 the county on county roads or other projects authorized by  
4 this article within the corporate limits of that municipality.

5 "(c) Revenues collected by the tax imposed by this  
6 article shall be remitted back to the county from which the  
7 severed material was originally produced based on total tons  
8 severed in such county subject to the severance tax multiplied  
9 by the rate of tax, less sums due the department, as provided  
10 in subsection (a), based on forms submitted to the department  
11 from the operator or producer.

12 "(d) Any adjustment of taxes, interest, or penalties  
13 which is necessary to adjust any error in the calculation,  
14 collection, or disbursement may be made at a subsequent  
15 collection or disbursement provided the department provides  
16 the county commission a detailed explanation of the reasons  
17 for the adjustment.

18 "§40-13-61.

19 "(a) Any person required by this article to make a  
20 return, pay a tax, keep records, or furnish information deemed  
21 necessary by the commissioner or the computation, assessment,  
22 or collection of the tax imposed by this article, who fails to  
23 make the return, pay the tax, keep the records, or furnish the  
24 information at the time required by law or regulation, ~~in~~  
25 ~~addition to other penalties provided by law, shall be guilty~~  
26 ~~of a Class C misdemeanor and, upon conviction, shall be~~  
27 ~~punished as provided by law~~ shall be subject to civil

1 penalties in the amount of one thousand dollars (\$1,000) for  
2 each separate offense. Each required procedure and each  
3 required record shall constitute a separate offense.

4 "(b) Any person who willfully or fraudulently makes  
5 and signs a return, not believing the return to be true and  
6 correct as to every material fact, shall be guilty of a Class  
7 C felony, and upon conviction, shall be punished as provided  
8 by law. Each return shall constitute a separate offense.  
9 Additionally, any person who willfully or fraudulently makes  
10 and signs a return shall be subject to the penalties  
11 prescribed for perjury under the laws of the state.

12 "(c) If noncompliance with any provision of this  
13 article is due to any intent to evade payment, the person  
14 liable for the payment may be restrained and enjoined from  
15 severing severed material from any production unit from which  
16 severed material may be severed and sold and upon which the  
17 tax is due.

18 "(d) The department shall conduct periodic audits of  
19 producers subject to the tax levied in this chapter under its  
20 rules regarding audits. All audits shall be conducted in  
21 compliance with the Alabama Taxpayers' Bill of Rights and  
22 Uniform Revenue Procedures Act. The county commission in any  
23 county entitled to proceeds from the tax levied in this  
24 chapter may request that the department conduct an audit of a  
25 certain producer subject to this tax, except no request for an  
26 audit may be made if an audit has been conducted within the  
27 previous three-year period. The county commission shall

1 reimburse the department the reasonable costs associated with  
2 the audit if the audit results in a finding that all taxes had  
3 been properly paid and the department does not receive any  
4 payment for expenses or interest and penalties pursuant to  
5 Section 40-13-58. Proceedings to enforce this article ~~shall~~  
6 may be instituted in the name of the state by the Attorney  
7 General upon the request of the commissioner or the department  
8 may authorize the county commission to institute proceedings  
9 if determined appropriate by the department.

10 " (e) ~~The~~ Except as otherwise provided herein, the  
11 assessment and collection of any tax imposed hereunder shall  
12 be governed by the Alabama Taxpayers' Bill of Rights and  
13 Uniform Revenue Procedures Act, as amended.

14 "(f) Any county commission that receives tax  
15 information released to the county commission by the  
16 department pursuant to this article shall be subject to the  
17 confidentiality provisions set out in Section 40-2A-10, and  
18 may not release any confidential information except as  
19 specifically authorized in that section.

20 "~~(f)~~ (g) For purposes of this section, in addition to  
21 its ordinary legal meaning and its defined meaning under this  
22 article, "person" includes an officer or employee of a  
23 corporation or a partner, member or employee of a partnership  
24 or limited liability entity that is under a duty to perform  
25 the act in respect to which the violation occurs."

1                   Section 2. This act shall become effective on the  
2 first day of the third month following its passage and  
3 approval by the Governor, or its otherwise becoming law.