

1 SB386
2 185495-1
3 By Senators Orr and Livingston
4 RFD: Governmental Affairs
5 First Read: 20-APR-17

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8 SYNOPSIS: This bill would allow a county commission to
9 call for a local referendum to authorize the
10 commission to levy an excise tax on gasoline or
11 motor fuel not to exceed five cents (\$.05) per
12 gallon for specific road and bridge projects
13 identified by the county prior to the referendum.
14 The resolution calling for a referendum would
15 specify the amount of the levy and the duration of
16 the levy which could not exceed five years.
17 Subsequent local referendums on additional levies
18 would be authorized under the same procedures as
19 the original referendum.

20
21 A BILL
22 TO BE ENTITLED
23 AN ACT

24
25 Relating to gasoline and motor fuel taxation; to
26 authorize a county commission to call for a referendum on the
27 levy of an excise tax on gasoline and motor fuel not to exceed

1 five cents (\$.05) per gallon for specific road and bridge
2 projects identified by the county prior to the referendum; to
3 provide that the excise tax could only be in effect for a
4 period not to exceed five years; and to provide for subsequent
5 local referendums asking that new levies be authorized.

6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

7 Section 1. For the purposes of this act, the
8 following terms shall have the following meanings:

9 (1) DISTRIBUTOR. The term as defined in Section
10 40-17-322, Code of Alabama 1975.

11 (2) MOTOR FUEL. Gasoline, blended fuel, and diesel
12 fuel as those terms are defined in Section 40-17-322, Code of
13 Alabama 1975.

14 (3) PERSON. Any individual, corporation,
15 partnership, or other entity.

16 (4) PROJECT LIST. A list of road or bridge projects,
17 or both, designated by the county commission to be funded by
18 the proceeds of the county excise tax on gasoline and motor
19 fuels authorized under this act.

20 (5) PUBLIC TRANSPORTATION. Public transit using
21 roads, rail, high speed rail, airports, or waterways.

22 (6) STORER. Any person who ships, causes to be
23 shipped, or receives in any quantities, stores in any manner
24 and withdraws or uses gasoline or motor fuel for any purpose.

25 Section 2. (a) The county commission, by resolution,
26 may call for a local referendum on the question of whether to
27 authorize the county commission to levy a county excise tax on

1 gasoline and motor fuels under the terms and conditions and
2 for the purposes set out in this act. The resolution shall be
3 adopted by affirmative vote of a majority of the members of
4 the county commission at a regular meeting of the county
5 commission, and shall include the proposed levy amount, which
6 may not exceed five cents (\$.05) per gallon and, the duration,
7 which may not be for a period more than five years from the
8 date of levy.

9 (b) Prior to the adoption of a resolution calling
10 for a local referendum as provided in subsection (a), the
11 county commission shall compile a project list of the local
12 transportation projects that will be funded with the proceeds
13 of a county excise tax on gasoline and motor fuels levied
14 pursuant to this act. The project list may include public
15 transportation projects and projects within the corporate
16 limits of one or more of the municipalities within the county.
17 The project list shall be based on an estimate of revenues
18 anticipated from the tax levy and the estimated cost of each
19 project considered for inclusion in the project list. The
20 total estimated cost anticipated under the final project list
21 shall not equal more than 120 percent of the estimated
22 revenues anticipated from the levy. The county commission
23 shall consider the needs of each district in the county in
24 determining what projects to include on the project list and
25 shall approve the project list by affirmative vote of a
26 majority of the members of the county commission at the same
27 time it adopts the resolution required in subsection (a).

1 (c) The project list may not be altered after it is
2 adopted. No funds collected from the tax authorized herein may
3 be allocated to projects other than those included in the
4 project list of the county until and unless all such projects
5 are completed. Notwithstanding the foregoing, in the event of
6 a state of emergency declared by the Governor, funds may be
7 utilized to repair damage to a road or bridge directly
8 resulting from the event for which the state of emergency was
9 declared. If the referendum passes, the project list shall be
10 posted at all times in conspicuous places at the county
11 courthouse, the county commission office, the county highway
12 department, and any other places deemed appropriate by the
13 county commission. If the referendum fails, the posting
14 requirement shall no longer apply.

15 (d) If the county commission adopts the resolution
16 required for calling a local referendum, the resolution shall
17 be forwarded to the judge of probate at least 60 days prior to
18 the next primary or general election in the county with a
19 request that the local referendum be placed on the ballot for
20 that election. The referendum shall be held only in
21 conjunction with a primary or general election in the county
22 and shall be conducted in accordance with the election laws of
23 the state. The following language shall be included on the
24 ballot:

25 "Do you authorize the _____ County Commission to
26 levy for a period of _____ (insert time period) a _____ cents
27 per gallon county excise tax on gasoline and motor fuels to

1 provide funding for road and bridge projects itemized by the
2 county commission on a project list adopted by the _____
3 County Commission on (insert date)?

4 " ____Yes ____No."

5 Section 3. If the voters in the county approve the
6 local referendum authorizing the county commission to levy a
7 county excise tax on gasoline and motor fuels as provided in
8 Section 2, the county commission may levy an excise tax on
9 persons selling, distributing, storing, or withdrawing from
10 storage for any purpose whatever, gasoline or motor fuel
11 within the county at the rate and for the time period
12 specified in the resolution. The county commission, applying
13 all procedures set out in Section 2, may call for subsequent
14 local referendums on the question of new levies. No levy
15 pursuant to this act shall total in excess of five cents
16 (\$.05) or continue more than five years from the date of the
17 levy.

18 Section 4. The county commission shall require every
19 distributor, retail dealer, or storer of gasoline or diesel
20 fuel to pay the tax on the selling, distributing, or
21 withdrawing from storage gasoline and diesel fuel in the
22 county for any purpose or use. It is the intent of this act
23 that the tax be collected by the distributor. The distributor
24 shall collect and pay the tax on the basis of distributions.
25 If the tax levied under this act has been collected and paid
26 by a distributor, that payment shall be sufficient, the
27 intention being that the tax shall be paid once. If the tax

1 has not been collected and paid by the distributor, the retail
2 dealer or storer shall be liable for the tax if gasoline or
3 diesel fuel is sold or withdrawn from storage in the county. A
4 retail dealer paying the tax herein provided shall pay the tax
5 on the basis of sales and a storer shall pay the tax on the
6 basis of withdrawals from storage.

7 Section 5. The county commission shall provide for
8 the administration and collection of the tax subject to the
9 provisions of this act. The county commission may establish
10 civil penalties for failure to comply with this act and
11 otherwise provide for the enforcement of this act.

12 Section 6. The following shall be exempt from the
13 tax:

14 (1) Motor fuel used in governmental functions by the
15 federal government or any agency of the federal government,
16 the state or any agency of the state, county governing
17 agencies, municipalities, and boards of education.

18 (2) Motor fuel sold in interstate commerce.

19 (3) Dyed diesel fuel as defined in Section
20 40-17-332, Code of Alabama 1975, except dyed diesel fuel used
21 to operate a highway vehicle by a nonexempt person or entity.

22 (4) Aviation fuel.

23 (5) A refinery that uses motor fuel in the refinery
24 process.

25 (6) A person who holds a federal permit to blend
26 motor fuels under federal law who pays a federal excise tax on

1 motor fuels directly to the federal government when the person
2 uses gasoline in this state in the blending process.

3 Section 7. The county commission may administer and
4 collect the tax; contract for the collection of the tax as
5 authorized in Section 11-3-11.2, Code of Alabama 1975; or
6 contract with the Department of Revenue to administer and
7 collect the excise tax pursuant to Section 11-3-11.3, Code of
8 Alabama 1975. Any county commission that elects to administer
9 and collect, or contract for the collection of, the excise tax
10 shall have the same rights, remedies, power, and authority,
11 including the right to adopt and implement the same
12 procedures, as would be available to the Department of Revenue
13 if the excise tax was being administered, enforced, and
14 collected by the department.

15 Section 8. (a) The proceeds of any taxes imposed
16 under authority of this act shall be deposited into a special
17 local transportation safety fund to be expended for the
18 maintenance, improvement, replacement, and construction of
19 county-maintained roads and bridges, for public transportation
20 purposes, or, roads and bridges maintained by a municipality
21 with the consent of the municipality. All records shall be
22 audited by the Office of Examiners of Public Accounts in the
23 same manner as all other county funds.

24 (b) The county commission shall be the awarding
25 authority for all projects funded by the proceeds of the tax
26 levied pursuant to this act. All contracts shall be awarded to
27 licensed contractors authorized to work in the state for road

1 or bridge maintenance, improvement, replacement, or
2 construction projects. All contracts shall be bid, awarded,
3 and executed pursuant to Title 39, Code of Alabama 1975.

4 (c) No more than 30 percent of the proceeds of the
5 excise tax authorized in this act may be used to purchase
6 necessary materials for projects to be performed by county
7 work forces. The county shall not use proceeds of any excise
8 tax levied pursuant to this act on salaries, benefits, or any
9 other form of compensation for county employees or officials
10 or for the purchase, lease, or maintenance of equipment.

11 (d) All projects funded from the proceeds of the
12 excise tax authorized in this act for road or bridge
13 maintenance, improvement, replacement, or construction on
14 roads or bridges with less than 2,500 average daily traffic
15 shall be designed in a manner consistent with the standards
16 for low volume roads as established in the County Road Design
17 Policy for Low Volume Roads adopted by the Department of
18 Transportation. All projects for roads and bridges which have
19 greater than 2,500 average daily traffic shall be designed in
20 a manner consistent with the most current edition of the
21 Department of Transportation Standards and Specifications for
22 Roadway Constructions.

23 Section 9. The county engineer shall provide to the
24 county commission an annual report detailing expenditures made
25 from the local transportation safety fund and the status of
26 each project included on the project list. The written report
27 covering the previous fiscal year shall be submitted no later

1 than the first regular county commission meeting in January of
2 each year and shall be made available to the public for
3 inspection, including posting on the county's website, if
4 available. The report shall also be forwarded to the
5 Association of County Commissions of Alabama, which shall be
6 responsible for posting all such reports on its website.

7 Section 10. All laws or parts of laws which conflict
8 with this act are repealed to the extent of the conflict;
9 provided, however, that nothing in this act shall be construed
10 to repeal, modify, or supersede any other provisions of
11 general or local law providing county funding for county road
12 and bridge projects.

13 Section 11. This act shall become effective
14 immediately following its passage and approval by the
15 Governor, or its otherwise becoming law.