SB89

188220-1

By Senator Orr

RFD: Transportation and Energy

First Read: 09-JAN-18
SYNOPSIS: This bill would allow a county commission to call for a local referendum to authorize the commission to levy an excise tax on gasoline or diesel fuel not to exceed five cents ($0.05) per gallon for specific road and bridge projects identified by the county prior to the referendum. The resolution calling for a referendum would specify the amount of the levy and the duration of the levy which could not exceed five years. Subsequent local referendums on additional levies would be authorized under the same procedures as the original referendum.

A BILL
TO BE ENTITLED
AN ACT

Relating to gasoline and diesel fuel taxation; to authorize a county commission to call for a referendum on the levy of an excise tax on gasoline and diesel fuel not to
exceed five cents ($0.05) per gallon for specific road and
bridge projects identified by the county prior to the
referendum; to provide that the excise tax could only be in
effect for a period not to exceed five years; and to provide
for subsequent local referendums asking that new levies be
authorized.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

(1) DIESEL FUEL. Any liquid that is advertised,
offered for sale, or sold for use or used as a motor fuel in a
diesel-powered engine. Diesel fuel includes #1 and #2 fuel
oils, kerosene, special fuels, and blended fuels which contain
diesel fuel, but does not include gasoline or aviation fuel.
For the purposes of this act, the term does not include dyed
diesel fuel.

(2) DISTRIBUTOR. Any person who engages in the
selling of gasoline or diesel fuel in this state by wholesale
domestic trade.

(3) DYED DIESEL FUEL. Diesel fuel that meets the
dyeing and marking requirements of Section 4082, Title 26 of
the United States Code.

(4) GASOLINE. Any product commonly or commercially
known as gasoline, or any substitute therefor, regardless of
classification, that is advertised, offered for sale, or sold
for use or used as fuel in an internal combustion engine,
including gasohol and blended fuel which contains gasoline.
Gasoline does not include aviation gasoline sold for use in an aircraft motor.

(5) KEROSENE. All grades of kerosene including, but not limited to, the two grades of kerosene, No. 1-K and No. 2-K, commonly known as K-1 kerosene and K-2 kerosene, respectively, described in the American Society for Testing Materials Standard D-3699, in effect on January 1, 1999, and kerosene-type jet fuel described in the American Society for Testing Materials Standard D-1655 and military specifications MIL-t-5624r and MIL-t-83133d (grades jp-5 and jp-8), and any grade described as kerosene or kerosene-type jet fuel by the Internal Revenue Code and administrative guidance promulgated thereunder.

(6) PERSON. Any individual, firm, cooperative, association, corporation, limited liability corporation, trust, business trust, syndicate, partnership, limited liability partnership, joint venture, receiver, trustee in bankruptcy, club, society, or other group or combination acting as a unit.

(7) PROJECT LIST. A list of road or bridge projects, or both, designated by the county commission to be funded by the proceeds of the county excise tax on gasoline and diesel fuel authorized under this act.

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

(9) REFINERY. A facility, other than a natural gas processing or fractionation plant, used to produce taxable
motor fuel from crude oil, unfinished oils, natural gas liquids, or other hydrocarbons and from which taxable motor fuel may be removed by pipeline, by vessel, or at a rack.

(10) RETAIL DEALER. A person other than a wholesale distributor that engages in the business of selling or distributing taxable gasoline or diesel fuel to the end user within this state.

(11) SPECIAL FUEL. Any liquid, other than gasoline, used or suitable for use as motor fuel in a diesel-powered engine or motor to propel any form of vehicle, machine, or mechanical contrivance and includes products commonly known as biodiesel fuel. Special fuel does not include any petroleum product or chemical compound such as alcohol, industrial solvent, or lubricant, unless blended in or sold for use as motor fuel in a diesel-powered engine.

(12) STORER. Any person who ships or causes to be shipped or receives gasoline or diesel fuel into this state in quantities and stores the same in any manner and withdraws or uses the same for any purpose

Section 2. (a) The county commission, by resolution, may call for a local referendum on the question of whether to authorize the county commission to levy a county excise tax on gasoline and diesel fuel under the terms and conditions and for the purposes set out in this act. The resolution shall be adopted by affirmative vote of a majority of the members of the county commission at a regular meeting of the county commission, and shall include the proposed levy amount, which
may not exceed five cents ($0.05) per gallon, and the duration, which may not be for a period more than five years from the date of levy.

(b) Prior to the adoption of a resolution calling for a local referendum as provided in subsection (a), the county commission shall compile a project list of the local transportation projects that will be funded with the proceeds of a county excise tax on gasoline and diesel fuel levied pursuant to this act. The project list may include public transportation projects and projects within the corporate limits of one or more of the municipalities within the county. The project list shall be based on an estimate of revenues anticipated from the tax levy and the estimated cost of each project considered for inclusion in the project list. The total estimated cost anticipated under the final project list shall not equal more than 120 percent of the estimated revenues anticipated from the levy. The county commission shall consider the needs of each district in the county in determining what projects to include on the project list and shall approve the project list by affirmative vote of a majority of the members of the county commission at the same time the commission adopts the resolution required in subsection (a).

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

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

"Do you authorize the _______ County Commission to levy for a period of _____ (insert time period) a ____ cents per gallon county excise tax on gasoline and diesel fuel to provide funding for road and bridge projects itemized by the county commission on a project list adopted by the _______ County Commission on (insert date)?

"____Yes ____No."
Section 3. If the voters in the county approve the local referendum authorizing the county commission to levy a county excise tax on gasoline and diesel fuel as provided in Section 2, the county commission may levy an excise tax on persons selling, distributing, storing, or withdrawing from storage for any purpose gasoline or diesel fuel within the county at the rate and for the time period specified in the resolution. The county commission, applying all procedures set out in Section 2, may call for subsequent local referendums on the question of new levies. No levy pursuant to this act shall total in excess of five cents ($0.05) or continue for more than five years from the date of the levy.

Section 4. The county commission shall require every distributor, retail dealer, or storer of gasoline or diesel fuel to pay the tax on the selling, distributing, or withdrawing from storage gasoline and diesel fuel in the county for any purpose or use. It is the intent of this act that the tax be collected by the distributor. The distributor shall collect and pay the tax on the basis of distributions. If the tax levied under this act has been collected and paid by a distributor, that payment shall be sufficient, the intention being that the tax shall be paid only once. If the tax has not been collected and paid by the distributor, the retail dealer or storer shall be liable for the tax if gasoline or diesel fuel is sold or withdrawn from storage in the county. A retail dealer paying the tax herein provided
shall pay the tax on the basis of sales, and a storer shall pay the tax on the basis of withdrawals from storage.

Section 5. Every person upon whom the excise tax is levied shall submit to the county commission on forms prescribed by the county commission a true and correct statement of all distributions, sales, or withdrawals of gasoline or diesel fuel made during the previous month, any additional documentation the county commission may require, and payment of the excise tax due on or before the 20th day of each calendar month for the preceding month.

Section 6. Each distributor, retail dealer, or storer shall keep for not less than three years within this state at some certain place or office the books, documents, or papers which show the amount of distributions, sales, or withdrawals of gasoline and diesel fuel made in the county and taxed under this act.

Section 7. The following shall be exempt from the tax:

(1) Gasoline and diesel fuel used in governmental functions by the federal government or any agency of the federal government, the state or any agency of the state, county governing agencies, municipalities, and boards of education.

(2) Gasoline or diesel fuel sold in interstate commerce.
(3) Dyed diesel fuel as defined in Section 40-17-322, Code of Alabama 1975, except dyed diesel fuel used to operate a highway vehicle by a nonexempt person or entity.


(5) A refinery that uses gasoline or diesel fuel in the refinery process.

(6) A person who holds a federal permit to blend gasoline or diesel fuel under federal law who pays a federal excise tax on gasoline or diesel fuel directly to the federal government when the person uses gasoline in this state in the blending process.

Section 8. The county commission shall enforce this act and shall have the right for its agents to examine the books, reports, and accounts of every distributor, retail dealer, or storer of gasoline or diesel fuel on which the tax has been imposed.

Section 9. (a) The county commission may adopt any rules necessary to administer and provide for the collection of the tax. The county commission may administer and collect the excise tax or contract for the collection of the tax as authorized in Section 11-3-11.2, Code of Alabama 1975. If the county commission elects to administer and collect the excise tax or contract for the collection of the excise tax, the commission shall have the same rights, remedies, power, and authority, including the right to adopt and implement the same procedures, available to the Department of Revenue if the
excise tax was being administered, enforced, and collected by the department.

(b) Upon resolution of the county commission, the county may contract with the Department of Revenue to collect all taxes levied by the county pursuant to this act. All persons subject to and owing the tax shall pay the tax to the department, and the payment shall be a full and complete discharge of all liability therefor to the county. The department may adopt reasonable rules to facilitate the collection of the tax. The department may recover all costs of collecting the tax in accordance with Section 11-3-11.3, Code of Alabama 1975, from the proceeds and shall pay the net amount remaining to the county.

Section 10. If any distributor, retail dealer, or storer of gasoline or diesel fuel fails to make monthly reports or fails to pay the tax imposed under this act, the tax shall be deemed delinquent and there shall be added to the amount of the tax a penalty of 25 percent. If, in the opinion of the county commission, a good and sufficient cause or reason is shown for the delinquency, the penalty may be waived. The county commission may make returns for delinquent taxpayers upon such information as it may reasonably obtain and add the penalty to the tax due. If any person is delinquent in the payment of any tax imposed pursuant to this act, the county commission may issue execution for the collection of the tax, directed to any sheriff of this state who shall proceed to collect the tax in the manner now
provided by law for the collection of delinquent taxes by the
tax collector or revenue commissioner of the county and make
return of execution to the county commission issuing the same.
The tax and any penalties authorized by this act shall be a
debt payable to the county by the person against whom the tax
has been imposed or against whom the penalties have accrued,
and all of the taxes and penalties shall be a lien upon the
property in the county and elsewhere in this state of the
person against whom the tax has been imposed and the penalties
have accrued.

Section 11. Any distributor, retail dealer, or
storer who violates this act or fails to comply with any
reasonable rule adopted may be restrained, and proper
prosecution instituted in the county by the Attorney General
or by counsel as the county commission appoints, from
distributing, selling, storing, or withdrawing from storage
any taxable gasoline or diesel fuel until the person complies
with this act.

Section 12. (a) The net proceeds of any taxes
imposed under authority of this act shall be deposited into a
special local transportation safety fund to be expended for
the maintenance, improvement, replacement, and construction of
county-maintained roads and bridges, for public transportation
purposes, or for roads and bridges maintained by a
municipality with the consent of the municipality. All records
shall be audited by the Office of Examiners of Public Accounts
in the same manner as all other county funds.
(b) The county commission shall be the awarding authority for all projects funded by the proceeds of the tax levied pursuant to this act. All contracts shall be awarded to licensed contractors authorized to work in the state for road or bridge maintenance, improvement, replacement, or construction projects. All contracts shall be bid, awarded, and executed pursuant to Title 39, Code of Alabama 1975.

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

(d) All projects funded from the proceeds of the excise tax authorized in this act for road or bridge maintenance, improvement, replacement, or construction on roads or bridges with less than 2,500 average daily traffic shall be designed in a manner consistent with the standards for low volume roads as established in the County Road Design Policy for Low Volume Roads adopted by the Department of Transportation. All projects for roads and bridges which have greater than 2,500 average daily traffic shall be designed in a manner consistent with the most current edition of the Department of Transportation Standards and Specifications for Roadway Constructions.
Section 13. The county engineer shall provide to the county commission an annual report detailing expenditures made from the local transportation safety fund and the status of each project included on the project list. The written report covering the previous fiscal year shall be submitted no later than the first regular county commission meeting in January of each year and shall be made available to the public for inspection, including posting on the county's website, if available. The report shall also be forwarded to the Association of County Commissions of Alabama, which shall be responsible for posting all such reports on its website.

Section 14. All laws or parts of laws which conflict with this act are repealed to the extent of the conflict; provided, however, that nothing in this act shall be construed to repeal, modify, or supersede any other provisions of general or local law providing county funding for county road and bridge projects.

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