

1 SB229
2 115902-2
3 By Senator Marsh
4 RFD: Finance and Taxation General Fund
5 First Read: 14-JAN-10

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8 SYNOPSIS: This bill would allow a county commission
9 to call for a local referendum to authorize the
10 county commission to levy an excise tax on gasoline
11 or motor fuel not to exceed five cents (\$.05) per
12 gallon for specific county road and bridge projects
13 identified by the county prior to the referendum.
14 This bill would also provide that the excise tax
15 would only be in effect for a period not to exceed
16 five years, unless a subsequent local referendum
17 were called asking that the levy be renewed.

18
19 A BILL
20 TO BE ENTITLED
21 AN ACT

22
23 Relating to gasoline and motor fuel taxation; to
24 allow a county commission to call for a referendum authorizing
25 it to levy an excise tax on gasoline or motor fuel not to
26 exceed five cents (\$.05) per gallon for specific county road
27 and bridge projects identified by the county prior to the

1 referendum, and to provide that the excise tax would only be
2 in effect for a period not to exceed five years, unless a
3 subsequent local referendum were called asking that the levy
4 be renewed.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

8 (1) DISTRIBUTOR. Any person who engages in the
9 selling of gasoline or motor fuel in this state by wholesale
10 domestic trade, but shall not apply to any transaction of the
11 distributor in interstate commerce.

12 (2) GASOLINE. Gasoline, naphtha, and other liquid
13 motor fuels or any device or substitute commonly used in
14 internal combustion engines. The term does not include
15 aviation fuels or those products known commercially as
16 "kerosene oil," "fuel oil," or "crude oil" when used for
17 lighting, heating, or industrial purposes.

18 (3) MOTOR FUEL. Diesel fuel, tractor fuel,
19 distillate, kerosene, jet fuel, or any substitute therefor.
20 The term does not include aviation fuels or those products
21 commercially known as "kerosene oil," "fuel oil," or "crude
22 oil," when used for lighting, heating or commercial purposes.

23 (4) PERSON. Persons, corporations, copartnerships,
24 companies, agencies, associations, incorporated or otherwise,
25 singular or plural.

26 (5) PROJECT LIST. A list of county road and/or
27 bridge projects designated by the county commission in order

1 of priority to be funded by the proceeds of the county excise
2 tax on gasoline and motor fuels authorized under this act.

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

6 Section 2. (a) The county commission may, by
7 resolution, call for a local referendum on the question of
8 whether or not to authorize the county commission to levy a
9 county excise tax on gasoline and motor fuels under the terms
10 and conditions and for the purposes set out in this act. The
11 resolution shall be adopted by affirmative vote of a majority
12 of the members of the county commission at a regular meeting
13 of the county commission.

14 (b) Prior to the adoption of a resolution calling
15 for a local referendum as provided in subsection (a), the
16 county commission shall compile a project list of the county
17 road and/or bridge projects that will be funded with the
18 proceeds of a county excise tax on gasoline and motor fuels
19 levied pursuant to this act. The county commission shall
20 approve the project list by affirmative vote of a majority of
21 the members of the county commission at the same time it
22 adopts the resolution required in subsection (a). The project
23 list cannot be altered once adopted and, subject only to
24 adequate funding, shall be completed in order of the priority
25 adopted. The project list shall at all times be posted in
26 conspicuous places at the county courthouse, the county
27 commission office, the county highway department, and any

1 other places deemed appropriate by the county commission,
2 except that, in the event the referendum fails, the posting
3 requirement will no longer apply.

4 (c) If the county commission adopts the resolution
5 required for calling a local referendum, the resolution shall
6 be forwarded to the probate judge at least sixty days prior to
7 the next primary or general election held for another purpose
8 in the county with a request that the local referendum be
9 placed on the ballot for that election. The election shall be
10 held only in conjunction with a primary or general election
11 held for another purpose in the county and shall be conducted
12 in accordance with the election laws of the state. The
13 following language shall be included on the ballot:

14 "Do you authorize the _____ County Commission to
15 levy for a period of no more than five years a county excise
16 tax on gasoline and motor fuels in an amount not to exceed
17 five cents (\$.05) per gallon to provide funding for county
18 road and/bridge projects itemized by the county commission on
19 a project list adopted by the _____ County Commission on
20 (insert date)?"

21 Section 3. If the voters in the county approve the
22 local referendum authorizing the county commission to levy a
23 county excise tax on gasoline and motor fuels as provided in
24 Section 2, the county commission may levy an excise tax on
25 persons selling, distributing, storing, or withdrawing from
26 storage for any purpose whatever, gasoline or motor fuel
27 within the county at a rate not to exceed five cents (\$.05)

1 per gallon. The levy shall state the period of time in which
2 it shall remain in effect, but shall not continue more than a
3 period of five years from the effective date of the initial
4 levy. The county commission may call for a local referendum
5 asking for renewal of the levy for an additional period not to
6 exceed five years, but only by following the procedures for
7 calling a referendum as set out in Section 2.

8 Section 4. Except as otherwise specifically provided
9 in this act, the excise tax shall be collected in the same
10 manner and at the same time as the state excise tax on
11 gasoline, shall parallel the corresponding state tax levy,
12 except for the rate of tax, and shall be subject to all
13 definitions, exceptions, exemptions, proceedings,
14 requirements, provisions, rules, regulations, direct pay
15 permits and drive-out certificate procedures, statutes of
16 limitation, penalties, fines, punishments, and deductions as
17 applicable to the corresponding state tax, including
18 provisions for the enforcement and collection of taxes. The
19 tax shall not be levied by the county commission upon any
20 gasoline or motor fuel when used in governmental functions by
21 the State of Alabama or an agency of the state, county
22 governing agencies, municipalities, and boards of education.

23 Section 5. The county commission may contract with
24 the Department of Revenue to administer and collect the tax or
25 it may administer and collect, or contract for the collection
26 of the county excise tax as authorized in Section 11-3-11.2
27 provided that said collection shall occur at the same time as

1 the state tax is due to be paid to the Department of Revenue.
2 Any county commission which elects to administer and collect,
3 or contract for the collection of, the excise tax shall have
4 the same rights, remedies, power and authority, including the
5 right to adopt and implement the same procedures, as would be
6 available to the Department of Revenue if the tax or taxes
7 were being administered, enforced, and collected by the
8 Department of Revenue. Any rules and regulations adopted or
9 utilized by the county or its designee shall be consistent
10 with the rules and regulations adopted through the provisions
11 of the Alabama Administrative Procedure Act by the Department
12 of Revenue for the corresponding state tax.

13 Section 6. The proceeds of any taxes imposed under
14 authority of this act shall be deposited into a special county
15 road and bridge safety fund to be expended for the
16 maintenance, improvement, replacement, and construction of
17 county-maintained roads and bridges. All records shall be
18 audited by the Office of Examiners of Public Accounts in the
19 same manner as all other county funds.

20 (b) The county commission shall be the awarding
21 authority for all projects funded by the proceeds of the tax
22 levied pursuant to this act. All contracts shall be awarded
23 to licensed contractors authorized to work in the State of
24 Alabama for the road or bridge maintenance, improvement,
25 replacement, or construction projects. All contracts shall be
26 bid, awarded, and executed pursuant to Title 39, Code of
27 Alabama 1975.

1 (c) The county may use no more than 20 percent of
2 the proceeds of the tax authorized herein to purchase
3 materials necessary for road or bridge maintenance,
4 improvement, replacement, or construction projects to be
5 performed by county work forces. The proceeds of any excise
6 tax levied pursuant to this act shall not be expended on
7 salaries, benefits, or any other form of compensation for
8 county employees or officials and shall not be expended for
9 the purchase, lease, or maintenance of equipment or real
10 property.

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

22 Section 7. The county engineer shall provide to the
23 county commission a written summary regarding the expenditures
24 made from the special county road and bridge safety fund
25 during the previous fiscal year. The written report shall be
26 submitted no later than the first regular county commission
27 meeting of each year and shall be made available to the public

1 for inspection, including posting on the county's website, if
2 available. The report shall also be made available on the
3 website maintained by the Association of County Commissions of
4 Alabama.

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

11 Section 9. This act shall become effective
12 immediately following its passage and approval by the
13 Governor, or its otherwise becoming law.