

1 HB360  
2 190959-1  
3 By Representative Mooney  
4 RFD: Transportation, Utilities and Infrastructure  
5 First Read: 01-FEB-18

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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 diesel 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 diesel fuel taxation; to  
26 authorize a county commission to call for a referendum on the  
27 levy of an excise tax on gasoline and diesel fuel not to

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

7 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

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

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

23 (4) GASOLINE. Any product commonly or commercially  
24 known as gasoline, or any substitute therefor, regardless of  
25 classification, that is advertised, offered for sale, or sold  
26 for use or used as fuel in an internal combustion engine,  
27 including gasohol and blended fuel which contains gasoline.

1 Gasoline does not include aviation gasoline sold for use in an  
2 aircraft motor.

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

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

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

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

26 (9) REFINERY. A facility, other than a natural gas  
27 processing or fractionation plant, used to produce taxable

1 motor fuel from crude oil, unfinished oils, natural gas  
2 liquids, or other hydrocarbons and from which taxable motor  
3 fuel may be removed by pipeline, by vessel, or at a rack.

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

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

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

20 Section 2. (a) The county commission, by resolution,  
21 may call for a local referendum on the question of whether to  
22 authorize the county commission to levy a county excise tax on  
23 gasoline and diesel fuel under the terms and conditions and  
24 for the purposes set out in this act. The resolution shall be  
25 adopted by affirmative vote of a majority of the members of  
26 the county commission at a regular meeting of the county  
27 commission, and shall include the proposed levy amount, which

1 may not exceed five cents (\$.05) per gallon, and the duration,  
2 which may not be for a period more than five years from the  
3 date of levy.

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

24 (c) The project list may not be altered after it is  
25 adopted. No funds collected from the tax authorized herein may  
26 be allocated to projects other than those included in the  
27 project list of the county until and unless all such projects

1 are completed. Notwithstanding the foregoing, in the event of  
2 a state of emergency declared by the Governor, funds may be  
3 utilized to repair damage to a road or bridge directly  
4 resulting from the event for which the state of emergency was  
5 declared. If the referendum passes, the project list shall be  
6 posted at all times in conspicuous places at the county  
7 courthouse, the county commission office, the county highway  
8 department, and any other places deemed appropriate by the  
9 county commission. If the referendum fails, the posting  
10 requirement shall no longer apply.

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

21 "Do you authorize the \_\_\_\_\_ County Commission to  
22 levy for a period of \_\_\_\_\_ (insert time period) a \_\_\_\_\_ cents  
23 per gallon county excise tax on gasoline and diesel fuel to  
24 provide funding for road and bridge projects itemized by the  
25 county commission on a project list adopted by the \_\_\_\_\_  
26 County Commission on (insert date)?

27 "\_\_\_\_ Yes \_\_\_\_ No."

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

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

1 shall pay the tax on the basis of sales, and a storer shall  
2 pay the tax on the basis of withdrawals from storage.

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

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

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

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

24 (2) Gasoline or diesel fuel sold in interstate  
25 commerce.

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

4           (4) Aviation fuel as defined in Section 40-17-322,  
5 Code of Alabama 1975.

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

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

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

18           Section 9. (a) The county commission may adopt any  
19 rules necessary to administer and provide for the collection  
20 of the tax. The county commission may administer and collect  
21 the excise tax or contract for the collection of the tax as  
22 authorized in Section 11-3-11.2, Code of Alabama 1975. If the  
23 county commission elects to administer and collect the excise  
24 tax or contract for the collection of the excise tax, the  
25 commission shall have the same rights, remedies, power, and  
26 authority, including the right to adopt and implement the same  
27 procedures, available to the Department of Revenue if the

1 excise tax was being administered, enforced, and collected by  
2 the department.

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

14 Section 10. If any distributor, retail dealer, or  
15 storer of gasoline or diesel fuel fails to make monthly  
16 reports or fails to pay the tax imposed under this act, the  
17 tax shall be deemed delinquent and there shall be added to the  
18 amount of the tax a penalty of 25 percent. If, in the opinion  
19 of the county commission, a good and sufficient cause or  
20 reason is shown for the delinquency, the penalty may be  
21 waived. The county commission may make returns for delinquent  
22 taxpayers upon such information as it may reasonably obtain  
23 and add the penalty to the tax due. If any person is  
24 delinquent in the payment of any tax imposed pursuant to this  
25 act, the county commission may issue execution for the  
26 collection of the tax, directed to any sheriff of this state  
27 who shall proceed to collect the tax in the manner now

1 provided by law for the collection of delinquent taxes by the  
2 tax collector or revenue commissioner of the county and make  
3 return of execution to the county commission issuing the same.  
4 The tax and any penalties authorized by this act shall be a  
5 debt payable to the county by the person against whom the tax  
6 has been imposed or against whom the penalties have accrued,  
7 and all of the taxes and penalties shall be a lien upon the  
8 property in the county and elsewhere in this state of the  
9 person against whom the tax has been imposed and the penalties  
10 have accrued.

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

19 Section 12. (a) The net proceeds of any taxes  
20 imposed under authority of this act shall be deposited into a  
21 special local transportation safety fund to be expended for  
22 the maintenance, improvement, replacement, and construction of  
23 county-maintained roads and bridges, for public transportation  
24 purposes, or for roads and bridges maintained by a  
25 municipality with the consent of the municipality. All records  
26 shall be audited by the Office of Examiners of Public Accounts  
27 in the same manner as all other county funds.

1           (b) The county commission shall be the awarding  
2 authority for all projects funded by the proceeds of the tax  
3 levied pursuant to this act. All contracts shall be awarded to  
4 licensed contractors authorized to work in the state for road  
5 or bridge maintenance, improvement, replacement, or  
6 construction projects. All contracts shall be bid, awarded,  
7 and executed pursuant to Title 39, Code of Alabama 1975.

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

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

1           Section 13. The county engineer shall provide to the  
2 county commission an annual report detailing expenditures made  
3 from the local transportation safety fund and the status of  
4 each project included on the project list. The written report  
5 covering the previous fiscal year shall be submitted no later  
6 than the first regular county commission meeting in January of  
7 each year and shall be made available to the public for  
8 inspection, including posting on the county's website, if  
9 available. The report shall also be forwarded to the  
10 Association of County Commissions of Alabama, which shall be  
11 responsible for posting all such reports on its website.

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

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