

1 SB89
2 188220-1
3 By Senator Orr
4 RFD: Transportation and Energy
5 First Read: 09-JAN-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.