

1 HB362  
2 181277-1  
3 By Representative Beech (N & P)  
4 RFD: Local Legislation  
5 First Read: 07-MAR-17

2  
3  
4  
5  
6  
7  
8  
9 A BILL  
10 TO BE ENTITLED  
11 AN ACT  
12

13 Relating to Washington County; to authorize the  
14 county commission to levy an excise tax on the selling,  
15 distributing, storing, or withdrawing from storage gasoline  
16 and diesel fuel in the county; to provide exemptions; to  
17 provide for the collection of the gas tax; to provide for the  
18 distribution of the proceeds of the gas tax; to authorize the  
19 county commission to make reasonable rules for the collection  
20 of the gas tax; to provide for the enforcement of this act and  
21 the penalties for violations; to authorize the county  
22 commission to levy a sales and use tax and a leasing tax; to  
23 provide for the collection, distribution, and use of the  
24 proceeds of the taxes; and to provide for a referendum.

25 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

26 Section 1. This act shall only apply in Washington  
27 County.

1           Section 2. (a) For the purposes of this section, the  
2 following words have the following meanings:

3           (1) AVIATION FUEL. As defined in Section 40-17-322,  
4 Code of Alabama 1975.

5           (2) COUNTY COMMISSION. The Washington County  
6 Commission.

7           (3) DIESEL FUEL. As defined in Section 40-17-322,  
8 Code of Alabama 1975.

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

12           (5) DYED DIESEL FUEL. As defined in Section  
13 40-17-322, Code of Alabama 1975.

14           (6) GASOLINE. As defined in Section 40-17-322, Code  
15 of Alabama 1975.

16           (7) KEROSENE. As defined in Section 40-17-322, Code  
17 of Alabama 1975.

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

24           (9) REFINERY. As defined in Section 40-17-322, Code  
25 of Alabama 1975.

26           (10) RETAIL DEALER. A person other than a wholesale  
27 distributor who engages in the business of selling or

1 distributing taxable gasoline or diesel fuel to the end user  
2 within this state.

3 (11) SPECIAL FUEL. As defined in Section 40-17-322,  
4 Code of Alabama 1975.

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

9 (b) (1) Commencing January 1 following the election  
10 held pursuant to Section 4 of this act, the county commission  
11 may levy an excise tax on the distribution, retail sale, or  
12 withdrawal from storage of gasoline or diesel fuel within the  
13 county at the rate not to exceed two cents (\$0.02) per gallon.  
14 The county commission shall require every distributor, retail  
15 dealer, or storer of gasoline or diesel fuel to pay the tax on  
16 the selling, distributing, or withdrawing from storage  
17 gasoline and diesel fuel in the county for any purpose or use.

18 (2) It is the intent of this section that the tax be  
19 collected and paid by the distributor. The distributor shall  
20 collect and pay the tax on the basis of distributions. If the  
21 tax levied under this section has been collected by a  
22 distributor, that payment shall be sufficient, the intention  
23 being that the tax shall be paid once. If the tax has not been  
24 collected and paid by the distributor, the retail dealer or  
25 storer shall be liable for the tax if gasoline or diesel fuel  
26 is sold or withdrawn from storage in the county. A retail  
27 dealer paying the tax herein provided shall pay the tax on the

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

3 (3) The tax provided for by this section shall be in  
4 addition to any and all excise or other taxes imposed on  
5 gasoline or diesel fuel or on the business of selling,  
6 distributing, storing, or withdrawing from storage, for any  
7 purpose, gasoline or diesel fuel as herein defined.

8 (c) The following shall be exempt from the excise  
9 tax levied under this section:

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

15 (2) Dyed diesel fuel.

16 (3) The sale of gasoline and diesel fuel in  
17 interstate commerce.

18 (4) Aviation fuel.

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

21 (6) A person who holds a federal permit to blend  
22 motor fuels under federal law who pays the federal excise tax  
23 on motor fuels directly to the federal government when the  
24 person uses gasoline in the state in the blending process.

25 (d) Every person upon whom the excise tax is levied  
26 shall submit to the county commission on forms prescribed by  
27 the county commission a true and correct statement of all

1 distributions, sales, or withdrawals of gasoline or diesel  
2 fuel made during the previous month, any additional  
3 documentation the county commission may require, and payment  
4 of the excise tax due on or before the day of each calendar  
5 month for the preceding month as set by the county commission.

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

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

17 (g) (1) The county commission may adopt any rules  
18 necessary to administer and provide for the collection of the  
19 tax. The county commission may administer and collect the  
20 excise tax or contract for the collection of the tax as  
21 authorized in Section 11-3-11.2, Code of Alabama 1975. If the  
22 county commission elects to administer and collect the excise  
23 tax or contract for the collection of the excise tax, the  
24 county commission shall have the same rights, remedies, power,  
25 and authority, including the right to adopt and implement the  
26 same procedures, available to the Department of Revenue if the

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

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

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

1 for the collection of delinquent taxes by the tax collector or  
2 revenue commissioner of the county and make return of  
3 execution to the county commission issuing the same. The tax  
4 and any penalties authorized by this section shall be a debt  
5 payable to the county by the person against whom the tax has  
6 been imposed or against whom the penalties have accrued, and  
7 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 (i) Any distributor, retail dealer, or storer who  
12 violates this section or fails to comply with any reasonable  
13 rule adopted, may be restrained, and proper prosecution  
14 instituted in the county by the Attorney General, or by  
15 counsel as the county commission of the county appoints, from  
16 distributing, selling, storing, or withdrawing from storage  
17 any taxable gasoline or diesel fuel until the person complies  
18 with this section.

19 (j) The net proceeds of any tax levied pursuant to  
20 this section shall be paid into a county special revenue fund  
21 to be expended only for the maintenance, repair, replacement,  
22 or construction of roads and bridges in Washington County.

23 Section 3. (a) For the purposes of this section, the  
24 following words have the following meanings:

25 (1) COUNTY COMMISSION. The Washington County  
26 Commission.



1           (2) EQUIPMENT. Machinery or tools employed for  
2 agriculture, horticulture, livestock, grazing, lawn and  
3 garden, construction, industrial, maritime, mining, or  
4 forestry usage, including tractors.

5           (3) LEASING TAX. A tax paralleling the tax imposed  
6 by the state on the leasing or renting of tangible personal  
7 property statutes, including, but not limited to, Title 40,  
8 Chapter 12, Article 4, Code of Alabama 1975.

9           (4) SALES AND USE TAX. A tax paralleling the tax  
10 imposed by the state sales and use tax laws, including, but  
11 not limited to, Title 40, Chapter 23, Code of Alabama 1975.

12           (b) (1) Commencing January 1 following the election  
13 held pursuant to Section 4 of this act, the county commission  
14 may levy the following in addition to all other previously  
15 authorized taxes:

16           a. A one percent sales and use tax on gross sales;  
17 provided, however, the rate shall be one-half percent on the  
18 sale or use of any automotive vehicle, motorboat, truck  
19 trailer, trailer, semitrailer, or travel trailer required to  
20 be registered or licensed with the judge of probate.

21           b. A one percent leasing tax on the gross proceeds  
22 derived from the leasing or rental of any equipment or  
23 passenger automotive vehicle.

24           (2) The gross proceeds of all sales presently exempt  
25 under the state sales and use tax statutes are exempt from the  
26 taxes authorized by this section.

1 (c) The taxes levied by this section shall be  
2 collected by the Department of Revenue at the same time and in  
3 the same manner as state sales and use tax and leasing tax are  
4 collected. On or prior to the date the tax is due, each person  
5 subject to the tax shall file with the department a report in  
6 the form prescribed by the department. The report shall set  
7 forth, with respect to all sales and business transactions  
8 that are required to be used as a measure of the tax levied, a  
9 correct statement of the gross proceeds of all the sales and  
10 gross receipts of all business transactions. The report shall  
11 also include items of information pertinent to the tax as the  
12 department may require. Any person subject to a tax levied by  
13 this section may defer reporting credit sales until after  
14 their collection, and in the event the person defers reporting  
15 them, the person shall thereafter include in each monthly  
16 report all credit collections made during the preceding month,  
17 and shall pay the tax due at the time of filing the report.  
18 All reports filed with the department under this section shall  
19 be available for inspection by the county commission, or its  
20 designee.

21 (d) Each person engaging or continuing in a business  
22 subject to a tax levied by this section shall add to the sales  
23 price or leasing price, as applicable, and collect from the  
24 purchaser or leasor the amount due by the taxpayer because of  
25 the sale or lease. It shall be unlawful for any person subject  
26 to a tax levied by this section to fail or refuse to add to  
27 the sales price or lease price and to collect from the

1 purchaser or leasor the amount required to be added to the  
2 sale or lease price. It shall be unlawful for any person  
3 subject to the tax levied by this section to refund or offer  
4 to refund all or any part of the amount collected or to absorb  
5 or advertise directly or indirectly the absorption or refund  
6 of any portion of the tax.

7 (e) The taxes levied by this section shall  
8 constitute a debt due Washington County. The tax, together  
9 with any interest and penalties, shall constitute and be  
10 secured by a lien upon the property of any person from whom  
11 the tax is due or who is required to collect the tax. The  
12 Department of Revenue shall collect the tax, enforce this  
13 section, and have and exercise all rights and remedies that  
14 the state or the department has for collection of the state  
15 sales and use tax and state leasing tax. The department may  
16 employ special counsel as is necessary to enforce collection  
17 of a tax levied by this section and to enforce this section.  
18 The department shall pay the special counsel any fees it deems  
19 necessary and proper from the proceeds of the taxes collected  
20 by it for the county.

21 (f) All provisions of state law with respect to the  
22 payment, assessment, and collection of the state sales and use  
23 tax and the state leasing tax, making of reports, keeping and  
24 preserving records, penalties for failure to pay the tax,  
25 promulgating rules with respect to state sales and use tax and  
26 state leasing tax, and the administration and enforcement of  
27 state sales and use tax and state leasing tax law that are not

1 inconsistent with this section shall apply to the taxes levied  
2 under this section. The Commissioner of Revenue and the  
3 department shall have and exercise the same powers, duties,  
4 and obligations with respect to the tax levied under this  
5 section that are imposed on the commissioner and department by  
6 state sales and use tax and state leasing tax law. All  
7 provisions of the state sales and use tax and state leasing  
8 tax laws made applicable by this section to the tax levied  
9 under this section, and to the administration and enforcement  
10 of this section, are incorporated by reference and made a part  
11 of this section as if fully set forth herein.

12 (g) The Department of Revenue shall charge  
13 Washington County for collecting any tax levied under this  
14 section in an amount or percentage of total collections as may  
15 be agreed upon by the commissioner and the Washington County  
16 Commission. The charge shall not exceed five percent of the  
17 total amount of the tax collected in the county. The charge  
18 may be deducted each month from the gross revenues from the  
19 tax before certification of the amount of the proceeds due  
20 Washington County for that month. The Commissioner of Revenue  
21 shall pay into the State Treasury all amounts collected under  
22 this section as the tax is received by the department on or  
23 before the first day of each successive month. The  
24 commissioner shall certify to the state Comptroller the amount  
25 collected and paid into the State Treasury for the benefit of  
26 Washington County during the month immediately preceding the  
27 certification. The state Comptroller shall issue a warrant

1 each month payable to the County Treasurer of Washington  
2 County in an amount equal to the certified amount which shall  
3 be paid into the county general fund.

4 (h) The proceeds of any tax levied under this  
5 section shall be deposited in a county special revenue fund to  
6 be expended only for the maintenance, repair, replacement, or  
7 construction of roads and bridges in Washington County, and  
8 may not be used for administrative purposes of any kind.

9 Section 4. Sections 2 and 3 shall become operative  
10 only if approved by a majority of the qualified electors of  
11 Washington County who vote in an election to be held in  
12 conjunction with the next general or special election held in  
13 the county. The notice of the election shall be given by the  
14 judge of probate and the election shall be held, conducted,  
15 and the results canvassed in the manner as other county  
16 elections. The question shall be, "Do you favor the adoption  
17 of Act \_\_ of the 2017 Regular Session of the Legislature  
18 authorizing the county commission to levy a one-half percent  
19 sales tax on the sale of motor vehicles, a sales tax of one  
20 percent on all sales in the county except for motor vehicles,  
21 to levy a one percent leasing tax on the leasing of all heavy  
22 equipment and motor vehicles, and to levy an additional tax  
23 not to exceed two cents per gallon on gasoline and diesel  
24 fuels, with proceeds of the taxes to be used on road and  
25 bridge construction and maintenance in the county? Yes ( ) No  
26 ( )." The county shall pay any costs and expenses not  
27 otherwise reimbursed by a governmental agency which are

1 incidental to the election. If a majority of the votes cast in  
2 the election are "Yes," Sections 2 and 3 shall become  
3 operative immediately. If the majority of the votes are "No,"  
4 this act shall be repealed and shall have no further effect.  
5 The judge of probate shall certify the results of the election  
6 to the Secretary of State.

7 Section 5. This act shall become effective  
8 immediately following its passage and approval by the  
9 Governor, or its otherwise becoming law.