

1 HB28  
2 171756-1  
3 By Representative McCutcheon  
4 RFD: Transportation, Utilities and Infrastructure  
5 First Read: 08-SEP-15

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8 SYNOPSIS: This bill would amend the existing gasoline  
9 and diesel fuel tax by providing for the indexing  
10 of five cents per gallon of gasoline and diesel  
11 fuel with an additional indexing of two cents per  
12 gallon annually in the event certain criteria are  
13 satisfied.

14  
15 A BILL  
16 TO BE ENTITLED  
17 AN ACT

18  
19 To add Article 13 to Chapter 17 of Title 40, Code of  
20 Alabama 1975, relating to the taxation of gasoline and diesel  
21 fuel, to provide for the indexing of five cents per gallon of  
22 gasoline and diesel fuel with an additional indexing of two  
23 cents per gallon annually in the event certain criteria are  
24 satisfied; and to amend Section 40-17-325, Code of Alabama  
25 1975, as last amended by Act 2015-54, 2015 Regular Session, to  
26 make conforming changes.

27 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1           Section 1. Article 13 is added to Chapter 17 of  
2 Title 40, Code of Alabama 1975, to read as follows:

3           Article 13.

4           §40-17-370.

5           This article shall be known and may be cited as the  
6 Funding Alabama's Infrastructure Responsibly (FAIR) Act.

7           §40-17-371.

8           For the purposes of this article, the following  
9 terms shall have the following meanings:

10           (1) BASE DIESEL PRICE. The original amount of three  
11 dollars and forty-seven cents (\$3.47) per gallon of diesel  
12 fuel, which is the CPI adjusted average of the calendar year  
13 average annual retail prices of diesel (On-Highway) - All  
14 Types for the Gulf Coast Region for the period from January  
15 2005 through December 2014 as published by the U.S. Energy  
16 Information Administration, adjusted annually by the CPI.

17           (2) BASE GASOLINE PRICE. The original amount of  
18 three dollars and nine cents (\$3.09) per gallon of gasoline,  
19 which is the CPI adjusted average of the calendar year average  
20 annual retail prices of regular gasoline for the Gulf Coast  
21 Region for the period from January 2005 through December 2014  
22 as published by the U.S. Energy Information Administration,  
23 adjusted annually by the CPI.

24           (3) COST OF COLLECTION. The amounts from the  
25 proceeds of the index diesel tax and index gasoline tax that  
26 may be appropriated by the Legislature to the Department of

1 Revenue for its cost of implementing and administering this  
2 article.

3 (4) CPI. The sum of the Percent Change from Year to  
4 Year of the Consumer Price Index for All Urban Consumers  
5 (CPI-U): U.S. City Average for All Items as reported in the  
6 CPI Detailed Report and published by the U.S. Department of  
7 Labor Bureau of Labor Statistics calculated from calendar year  
8 2014 to the most recent available calendar year.

9 (5) CURRENT YEAR DIESEL PRICE. The most recent  
10 calendar year average annual retail price of diesel  
11 (On-Highway) - All Types for the Gulf Coast Region as  
12 published by the U.S. Energy Information Administration, or  
13 its replacement.

14 (6) CURRENT YEAR GASOLINE PRICE. The most recent  
15 calendar year average annual retail price of regular gasoline  
16 (On-Highway) - All Types for the Gulf Coast Region as  
17 published by the U.S. Energy Information Administration, or  
18 its replacement.

19 (7) DIESEL FUEL. As defined in Section  
20 40-17-322(19).

21 (8) INDEX DIESEL TAX. The total of the indexed  
22 annual taxes imposed by this article on diesel fuel.

23 (9) INDEX GASOLINE TAX. The total of the indexed  
24 annual taxes imposed by this article on gasoline.

25 (10) FISCAL YEAR. A 12-month period commencing  
26 October 1 of one calendar year and ending September 30 of the  
27 succeeding calendar year.

1 (11) GASOLINE. As defined in Section 40-17-322(25).

2 (12) MOTOR FUEL. As defined in Section  
3 40-17-322(37).

4 (13) NET ADDITIONAL DIESEL TAX PROCEEDS. The entire  
5 proceeds from the index diesel tax less the cost of collection  
6 and less any refunds pursuant to Article 12, Chapter 17 of  
7 this title.

8 (14) NET ADDITIONAL GASOLINE TAX PROCEEDS. The  
9 entire proceeds from the index gasoline tax less the cost of  
10 collection and less any refunds pursuant to Article 12,  
11 Chapter 17, of this title.

12 (15) NET GALLONS. As defined in Section  
13 40-17-322(40).

14 §40-17-372.

15 Notwithstanding any other law and subject to the  
16 exemptions provided for in Article 12 of Chapter 17 of this  
17 title:

18 (1) Effective January 1, 2016, an additional excise  
19 tax of five cents (\$0.05) is imposed on each net gallon of  
20 gasoline and diesel. This additional excise tax shall be the  
21 index gasoline tax and the index diesel tax.

22 (2)a. No later than March 31, 2016, and no later  
23 than March 31 of each calendar year thereafter, the Department  
24 of Revenue shall determine and calculate the current year  
25 gasoline price and the current year diesel price. Thereafter,  
26 the Department of Revenue shall calculate the base gasoline  
27 price, the base diesel price, the sum of the current year

1 gasoline price plus two cents (\$0.02) and the sum of the  
2 current year diesel price plus two cents (\$0.02). If the sum  
3 of the current year gasoline price plus two cents (\$0.02) is  
4 less than or equal to the base gasoline price, subject to  
5 subdivision (3), an additional two cents (\$0.02) per gallon  
6 tax shall be imposed on each net gallon of gasoline. If the  
7 sum of the current year diesel price plus two cents (\$0.02) is  
8 less than or equal to the base diesel price, subject to  
9 subdivision (3), an additional two cents (\$0.02) per gallon  
10 tax shall be imposed on each net gallon of diesel fuel. If the  
11 current year gasoline price is more than the base gasoline  
12 price, subject to subdivision (3), the additional excise tax  
13 imposed by this section shall be reduced by two cents (\$0.02)  
14 per net gallon of gasoline. If the current year diesel price  
15 is more than the base diesel price, subject to subdivision  
16 (3), the additional excise tax imposed by this section shall  
17 be reduced by two cents (\$0.02) per each net gallon of diesel  
18 fuel.

19 b. In no event shall the index gasoline tax or the  
20 index diesel tax be increased if the cumulative annual  
21 increases in the index gasoline tax or the index diesel tax  
22 under paragraph a. exceed 15 percent of the current year  
23 gasoline price or current year diesel price as reported for  
24 the calendar year. This paragraph does not prohibit a decrease  
25 in the index gasoline tax or the index diesel tax as provided  
26 in paragraph a.

1                   (3) No later than May 31, 2016, and no later than  
2 May 31 of each calendar year thereafter, the Commissioner of  
3 the Department of Revenue shall post the results of the  
4 calculations of subdivision (2) on the department's website.  
5 The results shall then be added or reduced to the index  
6 gasoline tax and index diesel tax from the previous fiscal  
7 year respectively to become the new index gasoline tax and  
8 index diesel tax. The Department of Revenue shall notify  
9 current taxpayers of the index annual excise tax rates and  
10 shall promptly produce and provide all necessary forms,  
11 reports, and instructions for use in connection with the  
12 calculation, reporting, and payment of tax based on such  
13 additional annual excise rates. Any and all indexed annual  
14 excise taxes shall be effective September 1 of each calendar  
15 year.

16                   §40-17-373.

17                   The proceeds of the index diesel tax and index  
18 gasoline tax imposed by this article, when collected, shall be  
19 applied for the payment of the cost of collection and then net  
20 proceeds allocated as follows:

21                   (1) Thirteen-nineteenths of the net index diesel tax  
22 proceeds distributed in accordance with Section 40-17-361(a).

23                   (2) Six-nineteenths of the net index diesel tax  
24 proceeds distributed in accordance with Section 40-17-361(b).

25                   (3) Seven-eighteenthths of the net index gasoline tax  
26 proceeds distributed in accordance with Section  
27 40-17-359(b) (1) and (2), with forty-five percent of the

1 remainder distributed in accordance with Section 40-17-359(c),  
2 and fifty-five percent of the remainder distributed in  
3 accordance with Section 40-17-359(d) and (e).

4 (4) Five-eighteenths of the net index gasoline tax  
5 proceeds distributed in accordance with Section  
6 40-17-359(b) (1) and (2), with the remainder distributed in  
7 accordance with Section 40-17-359(f).

8 (5) Four-eighteenths of the net index gasoline tax  
9 proceeds distributed in accordance with Section 40-17-359(o).

10 (6) Two-eighteenths of the net index gasoline tax  
11 proceeds distributed in accordance with Section 8-17-91.

12 Section 2. Section 40-17-325, Code of Alabama 1975,  
13 as last amended by Act 2015-54, 2015 Regular Session, is  
14 amended to read as follows:

15 "§40-17-325.

16 "(a) Subject to the exemptions provided for in this  
17 article, the tax is imposed on net gallons of motor fuel  
18 according to Section 40-17-326 at the following rates:

19 "(1) Eighteen cents (\$.18) per gallon on gasoline,  
20 which is comprised of a seven cents (\$.07) excise tax, a  
21 supplemental five cents (\$.05) excise tax, and an additional  
22 six cent (\$.06) excise tax, and any index gasoline tax levied  
23 under Article 13 of this title.

24 "(2) Nineteen cents (\$.19) per gallon on diesel  
25 fuel, comprised of a thirteen cents (\$.13) excise tax and an  
26 additional six cents (\$.06) excise tax, and any index diesel  
27 tax levied under Article 13 of this title.



1           "(3) Nine and one-half cents per gallon (\$.095) on  
2 aviation gasoline and three and one-half cents per gallon  
3 (\$.035) on aviation jet fuel when the aviation fuel is sold to  
4 a licensed aviation fuel purchaser. Aviation gasoline is to be  
5 taxed as gasoline and aviation jet fuel is to be taxed as  
6 diesel fuel when not sold to a licensed aviation fuel  
7 purchaser.

8           "(b) The motor fuel subject to the excise tax levied  
9 by this section shall not be subject to any other excise tax  
10 levied by this state.

11           "However, the payment of the motor fuel excise tax  
12 levied by this section shall not exempt the seller or importer  
13 of fuel from the license fees levied by Section 40-17-174."

14           Section 3. All laws or parts of laws which conflict  
15 with this act are repealed.

16           Section 4. The provisions of this act are severable.  
17 If any part of this act is declared invalid or  
18 unconstitutional, that declaration shall not affect the part  
19 which remains.

20           Section 5. Section 2 of the act is effective October  
21 1, 2016. The remaining portions of the act shall become  
22 effective immediately following its passage and approval by  
23 the Governor, or its otherwise becoming law.