

1 SB79  
2 125838-2  
3 By Senator Marsh  
4 RFD: Finance and Taxation General Fund  
5 First Read: 01-MAR-11

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

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

6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

13 (2) GASOLINE. Gasoline, naphtha, and other liquid  
14 motor fuels or any device or substitute commonly used in  
15 internal combustion engines, including any other inflammable  
16 liquid or substance by whatever name it may be known and sold  
17 used as a fuel for the propulsion of motor vehicles. The term  
18 does not include biofuels, aviation fuels, or those products  
19 known commercially as kerosene oil, fuel oil, or crude oil  
20 when used for lighting, heating, or industrial purposes.

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

1           (4) PERSON. Persons, corporations, copartnerships,  
2 companies, agencies, associations, incorporated or otherwise,  
3 singular or plural.

4           (5) PROJECT LIST. A list of road or bridge projects,  
5 or both, designated by the county commission to be funded by  
6 the proceeds of the county excise tax on gasoline and motor  
7 fuels authorized under this act.

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

10          (7) STORER. Any person who ships, causes to be  
11 shipped, or receives in any quantities, stores in any manner  
12 and withdraws or uses gasoline or motor fuel for any purpose.

13          Section 2. (a) The county commission, by resolution,  
14 may call for a local referendum on the question of whether to  
15 authorize the county commission to levy a county excise tax on  
16 gasoline and motor fuels under the terms and conditions and  
17 for the purposes set out in this act. The resolution shall be  
18 adopted by affirmative vote of a majority of the members of  
19 the county commission at a regular meeting of the county  
20 commission, and shall include the proposed levy amount, which  
21 may not exceed five cents (\$.05) per gallon and, the duration,  
22 which may not be for a period more than five years from the  
23 date of levy.

24          (b) Prior to the adoption of a resolution calling  
25 for a local referendum as provided in subsection (a), the  
26 county commission shall compile a project list of the local  
27 transportation projects that will be funded with the proceeds

1 of a county excise tax on gasoline and motor fuels levied  
2 pursuant to this act. The project list may include public  
3 transportation projects and projects within the corporate  
4 limits of one or more of the municipalities within the county.  
5 The project list shall be based on an estimate of revenues  
6 anticipated from the tax levy and the estimated cost of each  
7 project considered for inclusion in the project list. The  
8 total estimated cost anticipated under the final project list  
9 shall not equal more than 120 percent of the estimated  
10 revenues anticipated from the levy. The county commission  
11 shall consider the needs of each district in the county in  
12 determining what projects to include on the project list and  
13 shall approve the project list by affirmative vote of a  
14 majority of the members of the county commission at the same  
15 time it adopts the resolution required in subsection (a).

16 (c) The project list may not be altered once  
17 adopted. No funds collected from the tax authorized herein may  
18 be allocated to projects other than those included in the  
19 project list of the county until and unless all such projects  
20 are completed. Notwithstanding the foregoing, in the event of  
21 a state of emergency declared by the Governor, funds may be  
22 utilized to repair damage to a road or bridge directly  
23 resulting from the event for which the state of emergency was  
24 declared. If the referendum passes, the project list shall be  
25 posted at all times in conspicuous places at the county  
26 courthouse, the county commission office, the county highway  
27 department, and any other places deemed appropriate by the

1 county commission. If the referendum fails, the posting  
2 requirement shall no longer apply.

3 (d) If the county commission adopts the resolution  
4 required for calling a local referendum, the resolution shall  
5 be forwarded to the judge of probate at least 60 days prior to  
6 the next primary or general election in the county with a  
7 request that the local referendum be placed on the ballot for  
8 that election. The referendum shall be held only in  
9 conjunction with a primary or general election in the county  
10 and shall be conducted in accordance with the election laws of  
11 the state. The following language shall be included on the  
12 ballot:

13 "Do you authorize the \_\_\_\_\_ County Commission to  
14 levy for a period of \_\_\_\_\_ (insert time period) a \_\_\_\_\_ cents  
15 per gallon county excise tax on gasoline and motor fuels to  
16 provide funding for road and bridge projects itemized by the  
17 county commission on a project list adopted by the \_\_\_\_\_  
18 County Commission on (insert date)?

19 "\_\_\_\_Yes \_\_\_\_No."

20 Section 3. If the voters in the county approve the  
21 local referendum authorizing the county commission to levy a  
22 county excise tax on gasoline and motor fuels as provided in  
23 Section 2, the county commission may levy an excise tax on  
24 persons selling, distributing, storing, or withdrawing from  
25 storage for any purpose whatever, gasoline or motor fuel  
26 within the county at the rate and for the time period  
27 specified in the resolution. The county commission, applying

1 all procedures set out in Section 2, may call for subsequent  
2 local referendums on the question of new levies. No levy  
3 pursuant to this act shall total in excess of five cents  
4 (\$.05) or continue more than five years from the date of the  
5 levy.

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

21 Section 5. The county commission may contract with  
22 the Department of Revenue to administer and collect the tax or  
23 it may administer and collect, or contract for the collection  
24 of the county excise tax as authorized in Section 11-3-11.2,  
25 Code of Alabama 1975, provided the tax is collected at the  
26 same time as the state tax is due to be paid to the  
27 department. Any county commission which elects to administer

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

11 Section 6. (a) The proceeds of any taxes imposed  
12 under authority of this act shall be deposited into a special  
13 local transportation safety fund to be expended for the  
14 maintenance, improvement, replacement, and construction of  
15 county-maintained roads and bridges, for public transportation  
16 purposes, or, roads and bridges maintained by a municipality  
17 with the consent of the municipality. 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 to  
23 licensed contractors authorized to work in the state for road  
24 or bridge maintenance, improvement, replacement, or  
25 construction projects. All contracts shall be bid, awarded,  
26 and executed pursuant to Title 39, Code of Alabama 1975.



1 (c) No more than 30 percent of the proceeds of the  
2 excise tax authorized in this act may be used to purchase  
3 necessary materials for projects to be performed by county  
4 work forces. The county shall not use proceeds of any excise  
5 tax levied pursuant to this act on salaries, benefits, or any  
6 other form of compensation for county employees or officials  
7 or for the purchase, lease, or maintenance of equipment.

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

20 Section 7. The county engineer shall provide to the  
21 county commission an annual report detailing expenditures made  
22 from the local transportation safety fund and the status of  
23 each project included on the project list. The written report  
24 covering the previous fiscal year shall be submitted no later  
25 than the first regular county commission meeting in January of  
26 each year and shall be made available to the public for  
27 inspection, including posting on the county's website, if

1 available. The report shall also be forwarded to the  
2 Association of County Commissions of Alabama, which shall be  
3 responsible for posting all such reports on its website.

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

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