

1 HB436  
2 147521-1  
3 By Representatives Vance and Warren (N & P)  
4 RFD: Lee County Legislation  
5 First Read: 20-MAR-13

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

13 Relating to gasoline and motor fuel taxation in Lee  
14 County; to allow the Lee County Commission to call for a  
15 referendum authorizing the commission to levy an excise tax on  
16 gasoline or motor fuel not to exceed five cents per gallon for  
17 specific county road and bridge projects identified by the  
18 county prior to the referendum; and to provide that the excise  
19 tax would only be in effect for a period not to exceed five  
20 years unless a subsequent local referendum was called asking  
21 that the levy be renewed.

22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

25 (1) DISTRIBUTOR. Any person who engages in the  
26 selling of gasoline or motor fuel in this state by wholesale

1 domestic trade, but shall not apply to any transaction of the  
2 distributor in interstate commerce.

3 (2) GASOLINE. Gasoline, naphtha, and other liquid  
4 motor fuels or any device or substitute commonly used in  
5 internal combustion engines. The term does not include  
6 aviation fuels or those products known commercially as  
7 kerosene oil, fuel oil, or crude oil when used for lighting,  
8 heating, or industrial purposes.

9 (3) MOTOR FUEL. Diesel fuel, tractor fuel,  
10 distillate, kerosene, jet fuel, or any substitute therefor.  
11 The term does not include aviation fuels or those products  
12 commercially known as kerosene oil, fuel oil or crude oil,  
13 when used for lighting, heating, or commercial purposes.

14 (4) PERSON. Persons, corporations, copartnerships,  
15 companies, agencies, associations, incorporated or otherwise,  
16 singular or plural.

17 (5) PROJECT LIST. A list of county road or bridge  
18 projects, or both, designated by the Lee County Commission in  
19 order of priority to be funded by the proceeds of the county  
20 excise tax on gasoline and motor fuels authorized under this  
21 act.

22 (6) STORER. Any person who ships, causes to be  
23 shipped, or receives in any quantities, stores in any manner,  
24 and withdraws or uses gasoline or motor fuel for any purpose.

25 Section 2. (a) The Lee County Commission, by  
26 resolution, may call for a local referendum on the question of  
27 whether or not to authorize the county commission to levy a

1 county excise tax on gasoline and motor fuels under the terms  
2 and conditions and for the purposes set out in this act. The  
3 resolution shall be adopted by affirmative vote of a majority  
4 of the members of the county commission at a regular meeting  
5 of the Lee County Commission.

6 (b) Prior to the adoption of a resolution calling  
7 for a local referendum as provided in subsection (a), the Lee  
8 County Commission shall compile a project list of the county  
9 road or bridge projects, or both, that will be funded with the  
10 proceeds of a county excise tax on gasoline and motor fuels  
11 levied pursuant to this act. The county commission shall  
12 approve the project list by affirmative vote of a majority of  
13 the members of the county commission at the same time it  
14 adopts the resolution required in subsection (a). The project  
15 list cannot be altered once adopted and, subject only to  
16 adequate funding, shall be completed in order of the priority  
17 adopted. The project list shall at all times be posted in  
18 conspicuous places at the county courthouse, the county  
19 commission office, the county highway department, and any  
20 other places deemed appropriate by the county commission,  
21 except that, in the event the referendum fails, the posting  
22 requirement will no longer apply.

23 (c) If the Lee County Commission adopts the  
24 resolution required for calling a local referendum, the  
25 resolution shall be forwarded to the judge of probate at least  
26 60 days prior to the next primary or general election held for  
27 another purpose in the county with a request that the local

1 referendum be placed on the ballot for that election. The  
2 election shall be held only in conjunction with a primary or  
3 general election held for another purpose in the county and  
4 shall be conducted in accordance with the election laws of the  
5 state. The following language shall be included on the ballot:

6 "Do you authorize the Lee County Commission to levy  
7 for a period of no more than five years a county excise tax on  
8 gasoline and motor fuels in an amount not to exceed five cents  
9 (\$.05) per gallon to provide funding for county road and  
10 bridge projects itemized by the county commission on a project  
11 list adopted by the Lee County Commission on (insert date)?"

12 Section 3. If the voters in the county approve the  
13 local referendum authorizing the Lee County Commission to levy  
14 a county excise tax on gasoline and motor fuels as provided in  
15 Section 2, the county commission may levy an excise tax on  
16 persons selling, distributing, storing, or withdrawing from  
17 storage for any purpose whatever gasoline or motor fuel within  
18 the county at a rate not to exceed five cents (\$.05) per  
19 gallon. The levy shall state the period of time in which the  
20 tax shall remain in effect, but shall not continue more than a  
21 period of five years from the effective date of the initial  
22 levy. The Lee County Commission may call for a local  
23 referendum asking for renewal of the levy for an additional  
24 period not to exceed five years, but only by following the  
25 procedures for calling a referendum as set out in Section 2.

26 Section 4. Except as otherwise specifically provided  
27 in this act, the excise tax shall be collected in the same

1 manner and at the same time as the state excise tax on  
2 gasoline, shall parallel the corresponding state tax levy,  
3 except for the rate of tax, and shall be subject to all  
4 definitions, exceptions, exemptions, proceedings,  
5 requirements, provisions, rules, direct pay permits and  
6 drive-out certificate procedures, statutes of limitation,  
7 penalties, fines, punishments, and deductions as applicable to  
8 the corresponding state tax, including provisions for the  
9 enforcement and collection of taxes. The tax shall not be  
10 levied by the county commission upon any gasoline or motor  
11 fuel when used in governmental functions by the State of  
12 Alabama or an agency of the state, county governing agencies,  
13 municipalities, and boards of education.

14 Section 5. The Lee County Commission may contract  
15 with the Department of Revenue to administer and collect the  
16 tax or it may administer and collect, or contract for the  
17 collection of the county excise tax as authorized in Section  
18 11-3-11.2, Code of Alabama 1975, provided that the collection  
19 shall occur at the same time as the state tax is due to be  
20 paid to the Department of Revenue. The county commission which  
21 elects to administer and collect, or contract for the  
22 collection of, the excise tax shall have the same rights,  
23 remedies, power, and authority, including the right to adopt  
24 and implement the same procedures, as would be available to  
25 the Department of Revenue if the tax or taxes were being  
26 administered, enforced, and collected by the Department of  
27 Revenue. Any rules adopted or utilized by the county or its

1       designee shall be consistent with the rules adopted through  
2       the provisions of the Alabama Administrative Procedure Act by  
3       the Department of Revenue for the corresponding state tax.

4               Section 6. (a) The proceeds of any taxes imposed  
5       under authority of this act shall be deposited into a special  
6       county road and bridge safety fund to be expended for the  
7       maintenance, improvement, replacement, and construction of  
8       county maintained roads and bridges pursuant to the project  
9       list as provided in subsection (b) of Section 2. All records  
10      shall be audited by the Department of Examiners of Public  
11      Accounts in the same manner as all other county funds.

12              (b) The Lee County Commission shall be the awarding  
13      authority for all projects funded by the proceeds of the tax  
14      levied pursuant to this act. All contracts shall be awarded to  
15      licensed contractors authorized to work in the State of  
16      Alabama for the road or bridge maintenance, improvement,  
17      replacement, or construction projects. All contracts shall be  
18      bid, awarded, and executed pursuant to Title 39, Code of  
19      Alabama 1975.

20              (c) The proceeds of any excise tax levied pursuant  
21      to this act shall not be expended on salaries, benefits, or  
22      any other form of compensation for county employees or  
23      officials and shall not be expended for the purchase, lease,  
24      or maintenance of equipment or real property.

25              (d) All projects funded from the proceeds of the  
26      excise tax authorized herein for road or bridge maintenance,  
27      improvement, replacement, or construction on roads or bridges

1 with less than 2,500 average daily traffic shall meet the  
2 applicable minimum design standards for low volume roads as  
3 established in the County Road Design Policy for Low Volume  
4 Roads adopted by the state Department of Transportation. All  
5 projects for roads and bridges which have greater than 2,500  
6 average daily traffic shall comply with the most current  
7 edition of the state Department of Transportation Standards  
8 and Specifications for Roadway Constructions.

9 Section 7. The county engineer shall provide to the  
10 county commission a written summary regarding the expenditures  
11 made from the special county road and bridge safety fund  
12 during the previous fiscal year. The written report shall be  
13 submitted no later than the first regular county commission  
14 meeting of each year and shall be made available to the public  
15 for inspection, including posting on the county's website, if  
16 available.

17 Section 8. All laws or parts of laws which conflict  
18 with this act are repealed.

19 Section 9. This act shall become effective  
20 immediately following its passage and approval by the  
21 Governor, or its otherwise becoming law.