

SUBJECT: Constitutional authorization for local option motor fuels and vehicle taxes

COMMITTEE: Transportation — favorable, without amendment

VOTE: 6 ayes — Pickett, Phillips, Guillen, Merritt, T. Smith, W. Smith

0 nays

5 absent — Callegari, Y. Davis, Dunnam, Harper-Brown, McClendon

SENATE VOTE: On final passage, April 16 — 22–9 (Duncan, Fraser, Harris, Hegar, Huffman, Jackson, Nelson, Ogden, Patrick)

WITNESSES: *(On House companion bill, HJR 9:)*

For —Rider Scott, Denton County Transportation Authority; *(Registered, but did not testify):* Doug Allen, Capitol Metropolitan Transportation Authority; Charles Betts, Wade Cooper, David Bodenman, Downtown Austin Alliance; John Cabrales, City of Denton; John Carpenter, Dallas Regional Mobility Coalition; Paul Cauduro, Texas Association of Builders; Jeff Coffee, Envision Central Texas, Alliance for Public Transportation; Maureen Crocker, Gulf Coast Freight Rail District; Kathleen Ferrier, Real Estate Council of Austin; Glenn Gadbois, Just Transportation Alliances; Rudy Garza, City of Corpus Christi; Bill Hammond, TX Association of Business; Ben Herr, Texas Transit Association; Shanna Igo, Texas Municipal League; Brandon Janes, Austin Chamber of Commerce; Dick Kallerman, Sierra Club, Lone Star Chapter; Tyner Little, Nueces County; Maher Maso, City of Frisco; Jennifer McEwan, Greater Houston Partnership; Mark Mendez, Tarrant County Commissioners Court; T.J. Patterson, City of Fort Worth; Brinton Payne, Fort Worth Chamber of Commerce; Lisa Powers, City of Arlington; Kenneth Shetter, City of Burleson, Tarrant Regional Transportation Coalition; Dan-O Strong, Burleson Chamber of Commerce; Vic Suhm, Tarrant Regional Transportation Coalition, North Texas Commission; Jim Walker, Envision Central Texas; David Wynn; John Langmore; Ray Marr)

Against — Terri Hall, Hank Gilbert, Texas TURF; Mel Borel *(Registered, but did not testify):* Mary Anderson, Bruce Burton, Texans Against Tolls.com; MerryLynn Gerstenschlager, Texas Eagle Forum; Talmadge

Heflin, James Quintero, Texas Public Policy Foundation; Sheila Dean, 5-11 Campaign; Michael Sullivan, Texans for Fiscal Responsibility; Louise H. Whiteford, Texans for Immigration Reform; and 14 others)

On — (*Registered, but did not testify*: James Bass, TXDOT)

(*On committee substitute for HJR 9*:)

For — Glen Whitley, Tarrant County

Against — (*Registered, but did not testify*: Pamela Dickinson, Texans Against Tolls.com; Justin Keener, Texas Public Policy Foundation)

**BACKGROUND:** Texas Constitution, Art 8. sec 7-a requires that all taxes derived from motor vehicle registration fees and motor fuels and lubricants be used for the sole purposes of acquiring rights-of-way, constructing, maintaining, and policing public roadways and for the administration of laws pertaining to the supervision of traffic and safety on public roads. It also requires that one-fourth of net revenue from the motor fuels tax be allocated to the Available School Fund.

**DIGEST:** SJR 52 would add Art. 8, sec. 7-c to the Texas Constitution to authorize the Legislature to allow a county to assess and collect a local motor fuels tax in the county and assess and collect an additional vehicle registration fee on a vehicle registered in the county. Revenue derived from the tax and fee could be used only for the specific purposes of providing mobility improvements, including public roadways, passenger rail, transit, and freight rail systems. Existing constitutional provisions requiring that one-fourth of all revenue from the state motor fuels tax and vehicle registration fees be transferred to the Available School Fund would not apply to the local option fuel tax.

The proposal would be presented to the voters at an election on Tuesday, November 3, 2009. The ballot proposal would read: “The constitutional amendment authorizing the legislature by general law to permit counties to assess and collect a local motor fuels tax and an additional vehicle registration fee to be used for mobility improvement projects.”

**SUPPORTERS SAY:** SJR 52 would provide the constitutional authorization necessary to give counties maximum flexibility to pursue measures to generate revenue for desperately needed highway and rail improvements in urban areas. The amendment would maximize revenue available to local governments by

protecting local option fuel taxes from existing constitutional provisions restricting the use of motor fuels taxes to improving and policing public roads and requiring a transfer of one-fourth of all motor fuels taxes collected to the Available School Fund. It also would add new transportation options for use of the locally raised tax, including mass transit and passenger and freight rail, that are not currently specified as uses for the state motor fuels tax. While enabling legislation could authorize a local-option motor fuels tax without a constitutional amendment, the locality would be subject to current constitutional provisions that would restrict local voters' ability to determine which projects to support and would direct a portion of the local tax to the state's treasury. Local voters electing to tax themselves should not be made to pay a portion of the revenue for statewide purposes.

The state motor fuels tax has been declining in relative value since 1991, and the original 20 cent tax per gallon is now equal to only about 13 cents in inflation-adjusted dollars. Moreover, demands on the state's transportation infrastructure have been steadily increasing. The 2030 Committee, charged by the Texas Transportation Commission (TTC) to review funding needs for highway maintenance, including bridges, for urban mobility and rural mobility and safety and for other transportation needs, reported that the state's highway network would require \$313 billion in improvements between 2009 and 2030 — or about \$14.2 billion a year.

Simultaneously, political support for a statewide increase in the motor fuels tax, including an increase limited to annual inflation, has flagged. Despite multiple attempts since 2001, no legislation supporting an increase in the statewide motor fuels tax has mustered the votes to pass a house of the Legislature. Some of the opposition to a statewide increase is derived from concerns that additional motor fuels tax revenue would not be distributed evenly around the state, but instead would be concentrated to transportation improvements in and around urban areas.

SJR 52 culminates from many years of discussion of the dire state of transportation funding in the state and the limited funding options available to finance critical transportation infrastructure. If approved, the amendment would help avoid a statewide increase in the motor fuels tax while allowing congested urban areas to propose an increase in local taxes for voter approval. The accompanying legislation for the amendment, SB 855 by Truitt, would not allow any increase in local motor fuels taxes

without an election and would require the ballot initiative to include specific projects as well as associated cost estimates. Funds derived from the local option fuel tax would be dedicated to paying for the listed projects.

The amendment would not be a perfect solution to long-term transportation shortfalls facing the state, but would instead represent an emergency measure that, together with the enabling legislation, would allow the most severely congested municipalities and counties to take decisive actions to provide critical infrastructure. Counties that were not experiencing severe congestion would not be able to marshal the necessary votes to pass the local option fuel tax contained in the enabling legislation, and therefore would not be affected. However, the amendment would be sufficiently broad to allow urban areas in the state flexibility to choose projects to fund with a local option tax in the near future should local support for infrastructure projects grow. The amendment is a direct response to a continued lack of decisive action on transportation funding on the state level.

Urban transportation systems in some metropolitan areas in the state, such as the Dallas-Fort Worth region, have become so congested and inadequate as to have a demonstrable affect on residents' quality of life, health, and ability to conduct business. Texas is a major domestic and international trade hub and a national center of commerce. Maintaining safe and reliable transportation is critical to the long-term economic vitality of the state. Sustained and improved mobility would ensure that Texas remains a business leader into the future.

**OPPONENTS  
SAY:**

SJR 52 could result in an increase of taxes on vital sectors of the economy when those sectors are least able to absorb additional hardships imposed by the government. The midst of a recession is not time for government tax-and-spend policies — in fact, just the opposite. When businesses are reducing operations and laying off employees, and when people are reducing consumption, the government should be following suit by cutting non-essential programs and reducing tax burdens. Money retained by businesses and consumers would be reinvested in the economy and would promote a quicker economic recovery. Allowing for a county-wide increase in the motor fuels tax could have a significant impact on the price of goods and could worsen the recession in consumption and production and slow the pace of recovery.

Encouraging selective increases in motor fuels taxes county by county would be a patchwork approach to transportation funding shortfalls that could have serious long-term implications on statewide connectivity. If metropolitan areas were allowed to establish local sources of revenue for transportation projects, it essentially could localize funding for transportation improvements. Without pressure to secure statewide sources of funding, transportation infrastructure outside of metropolitan areas could deteriorate considerably. The long-term implications of the local option approach for statewide connectivity are troubling, since the state is a major source and destination of freight that depends on quality highways throughout the state.

The amendment would represent one more step in the direction of localizing transportation funding in the state, a notion that has received support in recent years from an enhanced range of funding options for local governments, such as pass-through tolling agreements and transportation reinvestment zones. The responsibility for expanding and maintaining state highways rests with the state and should not devolve to local entities which, by nature, are not focused on statewide concerns. SJR 52 would set a strong precedent for local transportation funding that could, if continued, effectively undermine the state's role in funding transportation projects.

Other avenues for transportation funding currently are available to the state. The recent federal Recovery Act included about \$2.7 billion in appropriations for a variety of transportation projects in the state. This funding, which included funds for public transportation, has offset the need for any immediate increase in the motor fuels tax. There also are many options available to pursue private-public partnerships for the development of toll projects. Toll roads are an ideal solution to transportation financing shortfalls, since they impose a direct user fee only on those that use them and secure financing, and thus initiate construction, much faster than conventional transportation projects.

Current constitutional provisions restrict the uses of motor fuels taxes and vehicle registration fees to improving and policing public roadways. This is an important restriction that ties the collection of the revenue to the purposes for which it is spent. Motor fuels taxes should not be used to pay for initiatives that have no direct relation to the collection of the tax, such as passenger and freight rail.

OTHER  
OPPONENTS  
SAY:

SJR 52 would continue the state's piecemeal approach to providing transportation funding without addressing the core issue facing the state — a motor fuels tax that has been declining in relative value since 1991. The local option tax authorized and promoted by the amendment and its enabling legislation would not address statewide highway funding shortfalls, which represent the most significant obstacle to adequate highway construction and maintenance. The state needs to address the core issue facing highway funding and increase or index to inflation the motor fuels tax, preferably both. Creating additional transportation funding options for local projects without a dedicated source of revenue would represent another diversion from this necessary step.

NOTES:

The accompanying legislation for SJR 52, SB 855 by Carona, which would authorize counties covered or intersected by a metropolitan planning organization to hold an election for a local option fuel tax of 10 cents, was placed on the May 21 General State Calendar.

The House companion joint resolution, HJR 9 by Truitt, was reported favorably, as substituted, by the Transportation Committee on May 11.