

SUBJECT: Providing for local option motor fuels taxes for counties within MPOs

COMMITTEE: Transportation — committee substitute recommended

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

1 nay — Y. Davis

4 absent — Callegari, Dunnam, Harper-Brown, McClendon

SENATE VOTE: On final passage, April 14 — 21-9 (Fraser, Hegar, Huffman, Jackson, Nelson, Ogden, Patrick, Uresti, Van de Putte)

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

For — Victor Boyer, San Antonio Mobility Coalition, Inc.; Terry Brechtel, Alamo Regional Mobility Authority; Rob Franke, City of Cedar Hill, Dallas Regional Mobility Coalition; Sam Guzman, Texas Association of Mexican American Chambers of Commerce; Billy Hamilton, City of Dallas; Linda Koop, Regional Transportation Council; Russell Laughlin, Hillwood Development Corporation, 35N Coalition; Sheila McNeil, SA/Bexar County MPO, City of San Antonio; Henry Munoz, VIA Metropolitan Transit; Robert A. Parmelee, Fort Worth Transportation Authority; Richard Perez, Greater San Antonio Chamber of Commerce; Marisol Robles, San Antonio Hispanic Chamber; Michael Rollins, Metro Chambers of Commerce, Austin Chamber of Commerce; Nolan Ryan, Texas Rangers Baseball Club; Carl Sherman, City of DeSoto; Kenneth Shetter, City of Burleson, Tarrant Regional Transportation Coalition
(Registered, but did not testify: Doug Allen, Capital Metropolitan Transportation Authority; Joel Ballew, Texas Health Resources; Jay Barksdale, Dallas Regional Chamber; Charles Betts, Wade Cooper, David Bodenman, Downtown Austin Alliance; Bruce Byron, Capital Area Transportation Coalition; John Cabrales, City of Denton; John Carpenter, Dallas Regional Mobility Coalition; Paul Cauduro, Texas Association of Builders; Veronica Chidester, Travis County Commissioners Court; Jeff Coffee, Envision Central Texas, Alliance for Public Transportation; Maureen Crocker, Gulf Coast Freight Rail District; Marida Favia del Core Borromeo, Exotic Wildlife Association; Kathleen Ferrier, Real Estate Council of Austin; Glenn Gadbois, Just Transportation Alliances; Norman

Garza, Texas Farm Bureau; Rudy Garza, City of Corpus Christi; Robert Goode, Robert Spillar, City of Austin; Darrin Hall, City of Houston; Bill Hammond, Texas Association of Business; Ben Herr, Texas Transit Association; Shanna Igo, Texas Municipal League; Brandon Janes, Austin Chamber of Commerce; Dick Kallerman, Lone Star Sierra Club; Dee Leggett, Denton County Transportation Authority; Tyner Little, Nueces County; Maher Maso, City of Frisco; Gray Mayes, Texas Instruments; 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; Monique Pegues, Fort Worth Transportation Authority; Lisa Powers, City of Arlington; Jennifer Rodriguez, Lockheed Martin Aeronautics Company; Raul Salazar, League of Women Voters of Texas; Edward Smith, Jr., DFW Airport; Steve Stagner, Texas Council of Engineering Companies; Dan-O Strong, Burleson Chamber of Commerce; Vic Suhm, Tarrant Regional Transportation Coalition, North Texas Commission; Jim Walker, Envision Central Texas; Bill Whitfield, McKinney, TX; Nelson Wolff, Bexar County; David Wynn; John Langmore; Alan Nirenberg)

Against — Mel Borel; Don Dixon; Patrick Dossey; Bill Eastland, Citizens Against New Texas Transit Taxes; Terri Hall, Hank Gilbert, Texas TURF; Talmadge Heflin, James Quintero, Texas Public Policy Foundation; Keith Self, Collin County; Chris Howe; Read King; Jimmy Lamberth (*Registered, but did not testify*: Mary Anderson, Bruce Burton, Texans Against Tolls.com; Sheila Dean, 5-11 Campaign; MerryLynn Gerstenschlager, Texas Eagle Forum; Margaret Green, Blackland Coalition; Michael Sullivan, Texans for Fiscal Responsibility; Peggy Venable, Americans for Prosperity; Louise H. Whiteford, Texans for Immigration Reform, Inc.; and 27 others)

On — James LeBas, Texas Oil and Gas Association; Chris Newton, Texas Petroleum Marketers and Convenience Store Association; (*Registered, but did not testify*: James Bass, TxDOT)

(*On committee substitute for HB 9:*)

For — Rider Scott, Denton County Transportation Authority; Glen Whitley, Tarrant County; (*Registered, but did not testify*: Galt Graydon, Dallas Area Rapid Transit; Dennis Kearns, BNSF Railway)

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

On — Bill Allaway, Texas Taxpayers and Research Association; Michael Morris, North Central Texas Council of Governments

BACKGROUND: Federal law mandates that states establish metropolitan planning organizations (MPO) in urban areas larger than 50,000 to carry out required planning and other functions related to federal reimbursements for highway-related expenses. Texas has 25 MPOs with boundaries that contain or intersect with 53 counties.

Transportation Code, ch. 162 establishes the state motor fuels tax, including procedures for administering and collecting state gasoline and diesel taxes. The code establishes the point of collection as the fuel delivery terminal.

DIGEST: CSSB 855 would allow a county to impose and collect a tax of 10 cents per gallon on the sale of gasoline and diesel fuel if such a measure was approved by a majority of voters in the county. The tax would be added to the sales price of the fuel and would be part of the total fuel price. The tax would be in addition to current motor fuels taxes and would be collected when the fuel was removed from a terminal to be delivered in a county with the local option fuel tax. A county would discontinue collecting the local option tax if all mobility projects were accepted by the entity contracting for the projects, all issued bonds were paid in full, and additional revenue was not necessary for ongoing maintenance and operation of mobility improvement projects.

Election. County commissioners' courts that were in total or in part covered by a single metropolitan planning organization (MPO) would order an election for a local option fuel tax on a uniform election date in November if:

- the commissioners courts of the counties representing two-thirds of the total population adopted a resolution calling for an election; or
- at least 10 percent of registered voters in the counties submitted a petition requesting an election.

Elections in multiple counties covered by one MPO would be held on the same date. A commissioners court could call another election after two years following the first election.

The election ballot would contain prescribed language and would list and describe the nature and scope of mobility projects to be constructed, along with estimated cost and completion dates. A transit authority proposing to use funds for a rail-related project would have to include an estimate of any increased cost of service resulting from the improvement. Proposed projects could include improvements to an existing or proposed mobility project or the retirement of existing debt of a transit agency related to a mobility project. A commissioners court would determine which projects to submit for election in a public hearing based on information provided by the MPO.

County mobility improvement fund. The commissioners court of each county that imposed a local option fuel tax would establish a county mobility improvement fund separate from the county's general revenue account. A county could use money in the mobility improvement fund to:

- reimburse or pay the costs of mobility improvement projects approved at an election;
- pay the principal or interest on bonds or other obligations the county issued for the purpose of financing approved mobility improvement projects;
- pay amounts due to a transit authority or transportation authority under an agreement for passenger rail facilities and services or to issue bonds and other obligations secured by amounts due from the county under the agreement for the purpose of financing the capital costs of the approved facilities;
- pay amounts due a municipality under an agreement in which the municipality agreed to provide, develop, or construct mobility improvement projects located inside the municipality;
- pay amounts owed to a transit agency to speed the retirement of outstanding debt; and
- reimburse or pay the actual and customary costs of financial administration of the fund.

The county would deposit to the fund the monthly distribution of local option taxes received from the comptroller. The county could use mobility improvement funds to pay bonds or other obligations. A county could not

use money in the fund to finance a mobility project not approved by voters and could not use funds approved for a particular mobility project to fund another project.

The county would deposit tax revenue into the fund, which would be segregated into accounts for each approved mobility improvement project and for funds collected in the jurisdiction of a transit authority funded through a dedicated sales tax and that operated under Transportation Code, subch. O, ch. 452 or ch. 460, if applicable. All funds used would have to be consistent with transportation plans adopted by the governing MPO.

Administration. The comptroller would administer, collect, and enforce the local option fuel tax. Provisions governing the collection of the state motor fuels tax codified in current law would apply equally to the local option fuel tax. A tax approved by voters would take effect on the first new quarter following an election that authorized the local option tax. The comptroller could delay the effective date of the tax if necessary to prepare for collecting the tax and could deduct any costs incurred for administering the tax. Prior to adopting rules on administering the tax, the comptroller would consult with entities required to collect and remit the motor fuels tax and the counties subject to the tax. The rules would be restricted by specific provisions in code. The comptroller would deposit the collected taxes into a trust account and would distribute to counties their share monthly. Earned interest would remain in the account.

A county would adopt rules to collect a local option fuel tax and could establish penalties for failing to keep required records or pay the tax when due. The county commissioners court would have to submit a report with information on the collection and destination of the local tax revenue to TxDOT and the state auditor. A county attorney or district attorney could bring suit to enforce collection of the tax.

A county or other entity that received transportation funds could not be penalized with a reduction in state or federal transportation funding due to the imposition of a local option fuel tax. Before January 1, 2012, the comptroller could enter into an agreement with a local government to administer a local option fuel tax.

The comptroller's administrative duties with respect to the local option fuel tax would be contingent specifically on the receipt of sufficient funding in advance adequate to cover any necessary implementation costs.

If the Texas Constitution required that one-fourth of the local option fuel taxes collected be dedicated to the Available School Fund, then the county would deposit the funds into a separate account for allocation to the comptroller for the purposes required.

General provisions. A county could not use revenue from a local option fuel tax to:

- acquire, construct, maintain, or otherwise directly fund a toll project;
- fund an approved mobility improvement if the revenue was used to reallocate other revenue for a toll project;
- directly or indirectly hold, promote, or oppose an election for a local option fuel tax; or
- pay a registered lobbyist.

In a county or municipality located in a region that served two adjacent counties, each with a population of one million or more, a commissioners court would use its best efforts to ensure that funding benefitted each municipality and unincorporated area in proportion to the amount of tax revenue generated in those areas.

A county could not operate or provide directly passenger rail or other services reserved by a transit authority. A local option fuel tax could not be used to establish or fund a transit authority created after January 1, 2009.

The bill would make conforming changes to Tax Code, ch. 162, which establishes the state motor fuels tax, to implement provisions related to administration of the local option fuel tax. A local option fuel tax would be imposed on the delivery of gasoline into the taxing county. The distributor would collect the tax imposed.

Provisions governing the assessment of a local option fuel tax would expire January 1, 2019. No additional elections could be held after that date, but the expiration would not effect the collection of a tax authorized before that date or other functions related to the tax.

Except as otherwise provided, the bill would take effect September 1, 2009.

SUPPORTERS
SAY:

CSSB 855 would give counties that were covered by or intersected a metropolitan planning organization (MPO) the opportunity to pursue measures to generate revenue for desperately-needed highway and rail improvements in urban areas. 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 would instead be concentrated for transportation improvements in and around urban areas.

SB 855 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 enacted, the bill would 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 bill 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 tax would be dedicated to paying for the listed projects.

The bill would not be a perfect solution to long-term transportation shortfalls facing the state, but instead represent an emergency measure that 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, and therefore would not be affected by the bill. However, the bill would be sufficiently broad to allow many urban areas in the state to vote for an increase in the near

future should local support for infrastructure projects grow. The bill 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 sufficiently congested 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 will ensure Texas remains a business leader into the future.

OPPONENTS
SAY:

SB 855 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 an increase in the motor fuels tax in major metropolitan areas 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.

Allowing selective increases in municipal areas 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 bill 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. SB 855 would set a strong precedent for local transportation funding that could, if continued, effectively undermine the state's role in funding transportation projects.

There are currently other avenues for transportation funding 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 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.

OTHER
OPPONENTS
SAY:

SB 855 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 in the bill 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.

SB 855 is too broad in its scope of the 53 counties covered by metropolitan planning organizations. The bill would include many counties and regions that have not expressed a strong interest in initiating a local option fuel tax. The Senate-passed version of the bill would apply to only a limited number of counties, many of these at the specific requests of area Senators. Broadening the bill to include all local entities covered by MPOs would be an unnecessary expansion of the local option tax authority to regions that have not experienced the severe congestion that has frozen some of the larger metropolitan regions.

NOTES:

The Legislative Budget Board estimates that revenue gain to the state and units of local government is indeterminate, as it depends on the number of

counties that elected to impose a local option fuel tax. The LBB estimates the bill could impose costs on the comptroller of \$17.6 million for fiscal 2010-11, but that these costs would be contingent to an agreement that the comptroller receive sufficient funding in advance of the effective date of any motor fuels tax to cover any costs.

The Senate-passed version of the bill would have allowed local entities the option of holding an election to decide on various fees for transportation projects, including:

- a tax on the retail sale of gasoline or diesel fuel in the county;
- a mobility improvement fee, imposed on a person registering a motor vehicle in the county at the time of registration;
- a parking management fee;
- an annual motor vehicle emissions fee on vehicles registered in the county;
- a fee for the renewal of a driver's license issued to a county resident; and
- a Texas new resident roadway impact fee, imposed on each person registering a motor vehicle previously registered in another state or country.

The Senate-passed version of the bill would have applied to specific regions identified in the bill and contained specific provisions applying to each of those regions.