

SUBJECT: Dedication of state highway funds only for construction and maintenance

COMMITTEE: Transportation — favorable, without amendment

VOTE: 7 ayes — Pickett, Phillips, Callegari, Y. Davis, Guillen, McClendon,
Merritt

0 nays

4 absent — Dunnam, Harper-Brown, T. Smith, W. Smith

SENATE VOTE: On final passage, April 20 — 30–0

WITNESSES: No public hearing

BACKGROUND: Texas Constitution, Art 8. secs. 7-a and 7-b require 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 such roads. All revenues received from the federal government as reimbursement for state expenditures of funds that are dedicated for acquiring rights-of-way and constructing, maintaining, and policing public roadways also are constitutionally dedicated only for those purposes.

DIGEST: SJR 9 would amend the Texas Constitution to strike existing provisions that allow revenue from state motor fuels taxes and vehicle registration fees to be used for policing public roads and for supervision of traffic and safety by a state agency that was not also responsible for the construction and maintenance of state highways. Similar requirements would apply to federal reimbursements for qualified state expenditures.

The bill would include a temporary provision providing that no motor fuels tax or vehicle registration funds could be appropriated or otherwise allocated for an unauthorized purpose after September 1, 2018. After September 1, 2011, the Legislature would proportionally decrease the revenue dedicated to purposes not specifically named. The agency responsible for construction and maintenance of state highways would

ensure that revenue appropriated to it would reflect the required proportional decrease.

The proposal would be presented to the voters at an election on Tuesday, November 3, 2009. The ballot proposal would read: “The constitutional amendment prescribing the purposes for which revenue from motor vehicle registration fees and taxes on motor fuels and lubricants and certain revenues received from the federal government may be used.”

**SUPPORTERS
SAY:**

SJR 9 would provide a gradual but decisive long-term approach to ending diversions of motor fuels and registration fee revenue from highways. Ending the practice of diverting motor fuels and vehicle registration revenue to purposes not directly related to building roads is essential in light of dire existing and projected transportation funding shortfalls. 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.

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. In the absence of a plausible route for raising the statewide motor fuels tax, it is necessary to locate other means of securing funding for highways, including ensuring that funds that should be dedicated to those purposes are appropriated accordingly. The current diversion of state highway funds (Fund 6) to the Department of Public Safety (DPS) originated when there was much more correspondence between the highway and safety functions in the state. The original justification for highway funds for DPS has grown less relevant as the separation between these functions has become more defined.

SJR 9 would clearly and decisively phase out appropriations of revenue collected for activities that have an impact on the state’s highway system — the use of fuel and vehicle registrations — to DPS and other purposes not related to highway construction and maintenance. DPS serves critical state functions that should be funded out of general revenue, which is

appropriate for an agency that serves a statewide need and contributes funds to general revenue but does not have dedicated revenue sources sufficient to pay its costs. The amendment would not prescribe immediate suspension of the transfers, which could have a major cost to general revenue and could create instability in funding critical services if done suddenly, but would instead create a transition period for legislators to gradually fund an increasing share of DPS operations from sources besides the state motor fuels tax and registration fees.

Enacting a constitutional amendment, as opposed to a change in statute or change in appropriations practice, is necessary in light of the Legislature's demonstrated and continuous inability to exercise restraint in diverting funds away from state highways. The certainty and durability offered by a constitutional amendment is necessary to ensure a clear, enduring end to diversions. Definitively restricting state motor fuel and vehicle registration tax revenue to highways could assist in building support for tax increases in the future by addressing concerns that an increase in the motor fuels tax would not be destined to fund its stated purpose.

**OPPONENTS
SAY:**

SJR 9 would create instabilities in funding that ensures safe transportation on the state's roads. Constitutional and statutory provisions authorizing the use of the motor fuels tax and vehicle registration fees have long-standing features in state law, the constitutional provision having been added in 1946. Similarly, appropriations practices have followed the legal authority to allocate transportation-related taxes to police public roads in recent history. The long-standing practice of appropriating state highway funds for public safety stems from a long-standing precedent that funding for public safety on state highways is in keeping with the intended purposes of motor fuels and vehicle registration taxes. Ensuring the safety of travelers on state highways is an equally valid use of motor fuels tax revenue as is maintaining and improving the quality of those roads.

The proposed constitutional amendment would primarily represent an attempt to gain more funding for transportation projects in the state, and would have little to do with so-called "diversions." Making DPS ineligible to receive revenue from motor fuels taxes, however, would not resolve ongoing transportation shortfalls and would place the agency in competition with other state needs for limited resources. TxDOT recently estimated that without additional appropriations, it would have insufficient resources to fund any transportation expansion projects in fiscal 2010-11. Transportation construction appropriations for the agency totaled about

\$5.3 billion for fiscal 2008-09. TxDOT had a total budget of \$17.4 billion in that time. Ending transfers to DPS from Fund 6, which amounted to about \$1 billion in fiscal 2008-09, would not solve rapidly growing statewide transportation shortfalls. Also, the general revenue necessary to fund DPS would have to be shifted not only from other state priorities but also from TxDOT, which increasingly will rely on general revenue for debt service on general obligation bonds.

SJR 9 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. Prohibiting appropriations of motor fuels tax and registration fees to DPS would not address long-term 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 a prohibition on transferring relatively small appropriations to DPS would represent another distraction from this necessary step.

OTHER
OPPONENTS
SAY:

SJR 9 would make use of a constitutional amendment to accomplish something that is best left to a statutory change. DPS provides absolutely essential services that must be fully funded. The amendment would allow no appropriations for DPS whatever the circumstances, which would place the agency in competition with other essential public services for scarce general revenue. Eliminating from the Constitution the option of using state highway funds for public safety purposes would be too rigid and could have unintended consequences in the future — for instance, in the event of a recession causing a shortfall in general revenue.

SJR 9 would create a far too distant time horizon on prohibiting diversions of state highway funds to DPS. The state is experiencing a crisis in transportation funding now, and waiting up to nine years to definitively end diversions of highway funds would be too long a transition.

NOTES:

A related bill, HB 1047 by Deshotel, which would have stripped statutory provisions allowing revenue from the State Highway Fund (Fund 6) to be used by DPS to police the state highway system and to administer state laws relating to traffic and safety on public roads, was reported favorably by the Transportation Committee on March 31.