

- SUBJECT:** Waiver to allow state withdrawal from federal aid highway program
- COMMITTEE:** Transportation — favorable, without amendment
- VOTE:** 6 ayes — Phillips, Darby, Bonnen, Fletcher, Lavender, Martinez  
0 nays  
1 present, not voting — McClendon  
4 absent — Y. Davis, Harper-Brown, Pickett, Rodriguez
- WITNESSES:** For — Terri Hall, Texas TURF, Texans for Accountable Government, Central Texas Republican Liberty Caucus; Don Dixon  
Against — None  
On — Amadeo Saenz, Texas Department of Transportation
- BACKGROUND:** Transportation Code, ch. 222, subch. B governs federal aid highway funding for Texas. Federal appropriations for public road construction in this state may be spent only by and under the supervision of the Texas Department of Transportation (TxDOT).
- DIGEST:** HB 3390 would allow the governor, to the extent permitted by federal law, to waive the state's right to receive federal appropriations under the federal-aid highway program and instead opt to receive federal taxes attributable to highway users in the state. A waiver would have to comply with all applicable federal requirements.
- The comptroller would have to conduct a study of how the state could benefit from withdrawing from the federal-aid highway program. The study would identify and analyze methods by which the state could withdraw from the federal-aid highway program and the costs and benefits associated with each method. The comptroller would have to submit the report by January 1, 2013.
- The bill would take effect September 1, 2011.

**SUPPORTERS  
SAY:**

HB 3390 would allow the state of Texas to pursue possible avenues for maximizing federal highway funding. Texas is a donor state to the federal Highway Trust Fund (HTF), which means that the state contributes more from the federal motor fuels tax of 18.4 cents per gallon than it receives back from federal-aid highway program. While current federal legislation guarantees to states a certain minimum rate of return based on each state's share of federal motor fuels tax revenue collected and transferred to the HTF, the actual rate or return for Texas is much lower than the 92 percent minimum specified in federal law.

The Texas Department of Transportation (TxDOT) estimated that, since only certain funds are taken into account when the rate of return is applied, the true rate of return that applies to redistributing highway funds is about 85 percent. When this is multiplied by the percent of motor fuels tax that goes to the highway fund from Texas, the state receives only a 70 percent return on their contribution for highway programs.

Texas cannot afford to continue sacrificing almost a third of its federal highway taxes to other states. HB 3390 would allow the governor to pursue a possible federal waiver process to secure the highway-related taxes paid in the state before they are carved up and re-administered. The bill would grant this authority subject to applicable federal regulations and would commission a study to determine the best methods to employ in pursuing the request. The comptroller has estimated that any costs for conducting a study could be absorbed by existing resources.

**OPPONENTS  
SAY:**

HB 3390 would sanction an ill-advised use of state resources to pursue a potential waiver process that surely would not be granted. Obligating the comptroller to devote scarce resources to a study charged with making unfeasible recommendations would not be a good use of staff time and money. Texas has long been a donor state to the highway trust fund, remitting more federal highway taxes than it receives. While this is unfortunate, it is part of the obligation of participating in the federal-aid highway program. A portion of federal taxes collected in Texas goes to states that would otherwise have insufficient allocations to meet their road construction and maintenance needs, such as Alaska, Montana, and the District of Columbia.

Enacting the bill could compromise the state's bargaining position in current negotiations over federal highway funding reauthorization legislation. The Texas Congressional delegation has had success in the

past increasing the minimum rate of return guaranteed to Texas in federal law. The best approach would be to ensure that elected leaders work with the delegation to ensure that future reauthorizations of laws governing federal highway funds improve Texas' rate of return.

NOTES:

The Legislative Budget Board estimates the bill could have a fiscal impact, but that this impact cannot be determined.