

SUBJECT: Dedicating motor fuels taxes to roads and rainy day funds to schools

COMMITTEE: Appropriations — committee substitute recommended

VOTE: 22 ayes — Pitts, Sylvester Turner, Ashby, Bell, G. Bonnen, Crownover, Darby, S. Davis, Dukes, Giddings, Howard, Hughes, S. King, Márquez, McClendon, Muñoz, Orr, Otto, Perry, Raney, Ratliff, Zerwas

0 nays

4 absent — Gonzales, Longoria, Patrick, Price

1 present not voting — Carter

WITNESSES: For — (*Registered, but did not testify*: Les Findeisen, Texas Motor Transportation Association; Terri Hall, Texas TURF; Scott Norman, Texas Association of Builders; Brian O'Reilly, Alamo RMA, Cameron County RMA, Camino Real RMA, Central Texas RMA, North East Texas RMA; TJ Patterson, City of Fort Worth; Beth Ann Ray, Austin Chamber of Commerce; Marc Rodriguez, City of San Antonio; Vic Suhm, Tarrant Regional Transportation Coalition; Don Dixon)

Against — None

On — (*Registered, but did not testify*: John Barton, Texas Department of Transportation; Rob Coleman, Texas Comptroller)

BACKGROUND: **Fund 6.** The State Highway Fund (Fund 6) is the state's primary highway funding mechanism, collecting the vast majority of highway-related revenue from federal reimbursements, state motor fuels taxes, motor vehicle registrations, and various fees. The Legislature may appropriate funds from Fund 6 for various highway-related purposes in accord with constitutionally and statutorily established limits.

The state imposes a motor fuels tax of 20 cents per gallon on diesel and gasoline and 15 cents per gallon on liquefied gas. Texas Constitution, Art. 8, sec. 7-a, dedicates one-fourth of state motor fuels tax revenue to the Available School Fund, with the remaining three-fourths dedicated to highway-related purposes, including constructing, maintaining, and

policing public roadways.

**Rainy Day Fund.** Art. 3, sec. 49-g of the Texas Constitution establishes the Economic Stabilization Fund, which was ratified by voters in 1988. The fund, also known as the Rainy Day Fund, receives general revenue equivalent to 75 percent of any oil or natural gas production tax revenue that exceeds the amount collected in fiscal 1987. Additionally, the comptroller must transfer one-half of any unencumbered balance remaining in the General Revenue Fund at the end of a fiscal biennium to the Rainy Day Fund.

**DIGEST:**

CSHJR 2 would amend the Texas Constitution to dedicate to acquiring rights-of-way and to constructing and maintaining public roadways, other than toll roads, the 25 percent of motor fuels taxes currently allocated to the Available School Fund.

CSHJR 2 also would direct the comptroller to allocate certain general revenue funds to the Available School Fund that otherwise would be transferred to the Rainy Day Fund. The amount allocated to the Available School Fund would be equal to the lesser of:

- 25 percent of net motor fuels tax revenue (with the remainder transferred to the Rainy Day Fund as provided for in current law);  
or
- the total amount the comptroller is required to transfer to the Rainy Day Fund under current law.

The proposal would be presented to the voters at an election on Tuesday, November 5, 2013. The ballot proposal would read: “The constitutional amendment to provide for certain revenue from motor fuel taxes to be used solely for constructing, maintaining, and acquiring rights-of-way for certain public roadways and to provide for the transfer of certain general revenue to the economic stabilization fund and the available school fund.”

If approved by voters, the amendment would take effect immediately following the final canvass of votes, except that the provision dedicating State Highway Fund money to transportation-related purposes would take effect January 1, 2014.

**SUPPORTERS  
SAY:**

CSHJR 2 would take a key step toward securing critical funding for transportation projects in Texas while reducing the amount of revenue

from transportation-related taxes and fees that is currently diverted to other purposes. While far from a cure-all, the proposed amendment, in combination with its enabling legislation (HB 16 by Pickett, et al), would present a politically viable means to secure a portion of the funding Texas needs to maintain roadway congestion at current levels, given population and economic growth. Although many options for highway funding have been discussed in the past three legislative sessions, these have not proved politically feasible.

CSHJR 2 would generate an estimated \$820 million for public highways in fiscal 2015, increasing to \$860 million in fiscal 2018. This steady revenue stream would send a message to citizens, crediting bureaus, and businesses that the state is serious about financing critical transportation infrastructure.

**Dedicated funding stream for public roads.** CSHJR 2 would dedicate an additional, much-needed funding stream to constructing and maintaining public roads. If approved, the amendment would represent a sharp departure from relying on debt and toll roads as primary mechanisms for funding highways. The amendment would make use of expected increases in oil and gas severance tax remissions to offset any loss to the Available School Fund.

Texas since 2001 has relied on enhanced authority to issue bonds, borrowing from public and private interests, and on concessions payments from private comprehensive development agreements (CDAs) to build and maintain toll roads. These approaches, while an important part of the highway funding mix, will not by themselves meet the growing demands the state is placing on transportation infrastructure.

As of fiscal 2013, TxDOT had used a total of \$13 billion in bond authorization, with \$4.9 billion in authorized bonds yet to be used. Issuing these bonds will cost the state \$32.5 billion in total debt service. The agency's main bond programs — State Highway Fund bonds, Texas Mobility Fund bonds, and general obligation highway bonds — are, for all intents and purposes, exhausted.

The approaching crisis in highway funding in Texas has been delayed several years — first by federal American Revitalization Act funds, and second by general obligation bond appropriations made in fiscal 2009 and 2011 totaling \$5 billion. These infusions may have helped put off the

transportation funding crisis a few years, but one-time measures are no remedy for terminal ills. One-time infusions do little to instill confidence that the Legislature is willing and able to make tough policy decisions to provide the infrastructure necessary for vibrant business activity, national and international trade, and a superior quality of life. CSHJR 2 would enable voters to show that Texas was serious about increasing funding for critical infrastructure.

**Reducing highway funding diversions.** In the last few regular legislative sessions, the Legislature has made a concerted effort to reduce so-called highway funding “diversions” — the use of transportation-related revenue to finance purposes unrelated to roads. The diversion of 25 percent of motor fuels taxes to the Available School Fund is among the largest and longest-standing diversion of highway funds that has yet to be addressed. CSHJR 2 appropriately would dedicate this substantial amount to maintaining and developing public, non-tolled roads, a purpose directly related to the chief source of motor fuels taxes. Using taxpayer dollars for purposes as closely related to the reason for their collection as possible is both a matter of good practice and honesty in appropriations.

**Public approval.** If CSHJR 2 were enacted by the Legislature, it still would need to be approved by a majority of voters in November. This would provide a valuable opportunity to educate the public about the conditions of the state’s roads and the need for enhanced funding for transportation infrastructure. Given that those who would be involved in promoting the initiative would be supporters of transportation funding, they would have a vested interest in ensuring that the public did not get the false impression that the measure would wholly satisfy the state’s transportation funding needs.

OPPONENTS  
SAY:

CSHJR 2, while an interesting concept, would not provide a solution to the state’s serious, ongoing highway funding shortage.

**No additional revenue.** Because the proposed amendment would not authorize the collection of any additional revenue, it would amount to taking money out of one fiscal pocket and moving it to another. The amendment would, in effect, dedicate to roads more than \$800 million per year that is currently available for general-purpose spending through the Rainy Day Fund — funds that are now available to support core priorities such as public education and health and human services. While this might not cause problems in times of plenty, it could create some difficult

choices in trying fiscal times.

In addition, the dedication to transportation would reduce the likelihood of the state reaching the Rainy Day Fund ceiling of 10 percent of the total amount of general revenue deposited during the preceding fiscal biennium, after which that revenue otherwise would be made available for general-purpose spending.

**False impressions.** CSHJR 2, which would have to be approved by voters, could create the impression among the general public that this measure would be a remedy for the state's transportation funding woes. Because the measure would require a statewide vote, there likely would be a lot of campaigning about the need to fund transportation. It would be difficult to campaign to achieve success for the measure at the polls without also spreading the false notion that this measure would cure the state's transportation funding ills. If CSHJR 2 were to pass, it would risk creating the same false expectations for transportation funding as the Texas Lottery did for funding public education.

**NOTES:**

The Legislative Budget Board (LBB) estimates CSHJR 2 would have a positive impact to general revenue funds of \$306.2 million in fiscal 2014-15. This initial increase is due to the fact that while the initial transfer of motor fuels taxes from the Available School Fund to Fund 6 would not take place until almost halfway through fiscal 2014, the transfer of general revenue to the Available School Fund would be based on the entire year of motor fuels tax collections.

The LBB estimates the amendment would result in a gain to Fund 6 of about \$1.7 billion in fiscal 2016-17 and a \$1.8 billion loss to the Rainy Day Fund during the same period.

According to the LBB, the cost to the state of publishing the resolution would be about \$109,000.

The committee substitute for HJR 2 added language that would direct the comptroller to allocate to the Available School Fund the lesser of 25 percent of net motor fuels tax revenue or the amount the comptroller is required to transfer to the Rainy Day Fund under current law.

The enabling legislation, HB 16 by Pickett, et al., is set for second-reading consideration on today's Major State Calendar.