

## **BILL ANALYSIS**

Senate Research Center  
81R2275 JTS-D

S.B. 942  
By: Wentworth  
Transportation & Homeland Security  
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As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The transportation infrastructure of Texas is in need of improvement. Currently, counties have limited options for funding and implementing transportation and infrastructure services programs. This bill provides counties with the tools necessary to fund transportation and infrastructure services improvements and set forth the implementation of taxes and the permitted uses of the funds collected.

As proposed, S.B. 942 authorizes counties to impose a gasoline and diesel fuel tax, motor vehicle sales tax, additional county sales and use tax, real estate transfer fees, additional vehicle registration fees, passenger motor vehicle sales fees, and other miscellaneous fees, including road impact fees, nonresident commuter fees, and road user fees for purposes of funding transportation infrastructure services. S.B. 942 sets forth limits on the amount of tax a county can impose, and the procedure for implementing and collecting the revenue, and authorizes the commissioners court of a county, to exercise a funding option if they impose the option by order or call an election to be held for the purpose of imposition of the option and the option is approved by a majority of the voters of the county.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Department of Transportation in SECTION 3 (Section 442.157, Transportation Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends the heading to Title 6, Transportation Code, to read as follows:

#### TITLE 6. ROADWAYS AND OTHER TRANSPORTATION INFRASTRUCTURE

SECTION 2. Amends the heading to Subtitle J, Title 6, Transportation Code, to read as follows:

#### SUBTITLE J. LOCAL TRANSPORTATION INFRASTRUCTURE FUNDING OPTIONS

SECTION 3. Amends Subtitle J, Title 6, Transportation Code, by adding Chapter 442, as follows:

#### CHAPTER 442. COUNTY OPTIONS FOR FUNDING TRANSPORTATION INFRASTRUCTURE SERVICES

##### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 442.001. DEFINITION. Defines "funding option."

Sec. 442.002. IMPLEMENTATION OF OPTION BY GOVERNING BODY OR VOTER APPROVAL. Authorizes a county to exercise a funding option under this chapter if the commissioners court of the county by order imposes the option or the commissioner's court by order calls an election to be held in the county for that purpose and the imposition of the option is approved by a majority of the voters of the county voting at that election.

Sec. 442.003. CONTENTS OF ORDER; BALLOT LANGUAGE. (a) Requires that an order imposing one or more funding options or calling an election to approve the imposition of one or more funding options, at a minimum, designate each funding option; specify the rate or amount of each funding option, the effective date of the imposition of each funding option, and the manner in which each funding option will be administered, collected, and enforced; and allow the voters, for an order to call an election, to vote for or against each funding option separately.

(b) Authorizes the order calling the election to specify one or more county transportation projects or services to which revenue from a proposed funding option will be dedicated or provide that a funding option will expire when the associated transportation project is completed.

(c) Requires that the ballot proposition, at an election to impose a proposed funding option under Section 442.002(2), specify the rate of the tax or amount of the fee, as applicable.

Sec. 442.004. ABOLITION OF FUNDING OPTION, CHANGE IN RATE OR AMOUNT, OR CHANGE IN DEDICATION. (a) Authorizes a commissioners court by order to abolish one or more funding options previously imposed by order under Section 442.002(1); increase or decrease the rate or amount of one or more funding options previously imposed under that section; decrease the rate or amount of one or more funding options previously approved at an election; or call an election on the issue of abolishing one or more funding options previously approved at an election, increasing or decreasing the maximum rate or amount of one or more funding options previously approved at an election or changing the dedication of one or more funding options approved at an election.

(b) Requires a commissioners court to call an election under Subsection (a)(4) if the commissioners court receives a petition requesting the election signed by a number of registered voters of the county equal to at least 10 percent of the total votes cast in the county by all candidates for governor in the most recent gubernatorial election.

(c) Authorizes a county, notwithstanding any other provision of the section, to abolish, decrease the rate of, or change the dedication of a funding option only if the abolition, decrease, or change will not violate, impair, or be inconsistent with a bond resolution, trust agreement, or indenture governing the use of the revenue attributable to the funding option.

Sec. 442.005. USE OF REVENUE; USE BY OTHER TRANSPORTATION ENTITY. (a) Requires a county to deposit money collected under this chapter in a special account in the county general fund. Authorizes money in the account, subject to Section 442.006, to be used only for county transportation purposes.

(b) Authorizes a county to use the money for payment under a contract for county transportation needs entered into with another governmental entity for transportation services or infrastructure provided to the county, including certain districts, authorities, and entities.

(c) Authorizes a county to contract with another governmental entity under Subsection (b) only if the county finds that the primary purpose of the contract is to promote a public purpose of the county.

Sec. 442.006. CONSTITUTIONAL LIMITATION ON USE OF CERTAIN REVENUE. (a) Authorizes money collected from a county gasoline and diesel fuel tax under Subchapter B or an additional vehicle registration fee under Subchapter F, unless otherwise authorized by the constitution of this state, to be used only for acquiring rights-of-way, constructing, maintaining, and policing public roadways, and administering laws related to the supervision of traffic and safety on those roads.

(b) Requires the county, if the constitution of this state does not authorize the use of money collected under Subchapter B or F for transportation uses other than those described by Subsection (a), to deposit that money into an account separate from the money collected under the remainder of this chapter and authorizes the county to use the money only for the purposes described by Subsection (b).

(c) Requires the county, if the constitution of this state requires that one-fourth of the county gasoline and diesel fuel tax collected under Subchapter B be allocated to the available school fund, to deposit that money into an account separate from the money collected under the remainder of this chapter and requires the county to allocate the money as required by the constitution of this state.

[Reserves Sections 442.007-442.030 for expansion.]

## SUBCHAPTER B. COUNTY GASOLINE AND DIESEL FUEL TAX

Sec. 442.031. DEFINITIONS. Defines "dealer," "diesel fuel," "gasoline," "jobber," "motor vehicle," "net gallon," "public highway," and "sale."

Sec. 442.032. TAX ON SALE OF GASOLINE AND DIESEL FUEL AUTHORIZED. Authorizes a county to impose a tax on the sale of gasoline or diesel fuel sold in the county to propel a motor vehicle on the public highways of this state.

Sec. 442.033. RATE OF TAX. Authorizes the tax authorized by this subchapter to be imposed in increments of one cent for each net gallon of gasoline or diesel fuel sold in the county to propel a motor vehicle on the public highways of this state, with a maximum rate of four cents for each net gallon.

Sec. 442.034. COMPUTATION OF TAX. (a) Requires a person, including a dealer or jobber, who makes a sale of gasoline or diesel fuel in a county authorized to impose the tax to a person who uses the gasoline or diesel fuel to propel a motor vehicle on the public highways of this state to collect the tax authorized by this subchapter for the benefit of the county.

(b) Requires the seller to add the amount of the tax authorized by this subchapter to the selling price of gasoline or diesel fuel, and the tax is a part of the gasoline or diesel fuel price, is a debt owed to the seller, and is recoverable at law in the same manner as the fuel charge for gasoline or diesel fuel.

(c) Provides that the tax authorized by this subchapter is in addition to the tax imposed by Chapter 162 (Motor Fuel Taxes), Tax Code.

Sec. 442.035. EXEMPTIONS APPLICABLE. Provides that the exemptions provided by Sections 162.104 (Exemptions) and 162.204 (Exemptions), Tax Code, apply to the tax authorized by this subsection.

Sec. 442.036. COLLECTION AND ENFORCEMENT OF TAX. (a) Requires a person, including a dealer or jobber, required to collect the tax authorized by this subchapter to report and send the taxes to the county as provided by the county.

(b) Authorizes the county to prescribe monetary penalties, including interest charges, for failure to keep records required by this subchapter, to report when required, or to pay the tax when due.

(c) Authorizes the county to permit a person who is required to collect the tax authorized by this subchapter to retain a percentage of the amount collected and required to be reported as reimbursement to the person for the costs of collecting the tax. Authorizes the county to provide that the person is authorized to retain the amount only if the person pays the tax and files reports as required by the county.

(d) Authorizes the county attorney to bring suit against a person who violates this subchapter.

Sec. 442.037. REFUND. (a) Authorizes a person who has paid a tax authorized by this subchapter on gasoline or diesel fuel used by the person for the purpose other than to propel a motor vehicle on the public highways of this state or for a use exempted under Section 442.035 to file a claim for a refund.

(b) Requires a county to prescribe the procedures a person is required to use to obtain a refund under this section.

Sec. 442.038. REQUIRED PERMIT. Authorizes the county to require a dealer, jobber, or other person required to collect, report, and pay the tax authorized by this subchapter to obtain a permit from the county.

[Reserves Sections 442.039-442.060 for expansion.]

#### SUBCHAPTER C. COUNTY MOTOR VEHICLE SALES TAX

Sec. 442.061. DEFINITIONS. Defines "motor vehicle," "retail sale," and "total consideration."

Sec. 442.062. RATE OF TAX. Authorizes the tax authorized by this subchapter to be imposed at a rate not to exceed 1.75 percent of the total consideration.

Sec. 442.063. APPLICABILITY OF STATE MOTOR VEHICLE SALES TAX PROVISIONS. (a) Provides that the tax authorized by this subchapter is in addition to the tax imposed by Chapter 152 (Taxes on Sale, Rental, and Use of Motor Vehicle), Tax Code.

(b) Provides that the exemptions provided by Subchapter E (Exemptions), Chapter 152, Tax Code, apply to the tax authorized by this subchapter.

Sec. 442.064. ADMINISTRATION BY COUNTY. (a) Requires a person required to collect the tax authorized by this subchapter to report and send the tax to the county as required by the county.

(b) Authorizes the county to prescribe monetary penalties, including interest charges, for failure to keep records required by this subchapter, to report when required, or to pay the tax when due.

(c) Authorizes the county to permit a person who is required to collect the tax authorized by this subchapter to retain a percentage of the amount collected and required to be reported as reimbursement to the person for the costs of collecting the tax. Authorizes the county to provide that the person is authorized to retain the amount only if the person pays the tax and files reports as required by the county.

(d) Authorizes the county attorney to bring suit against a person who violates this subchapter.

[Reserves Sections 442.065-442.090 for expansion.]

#### SUBCHAPTER D. ADDITIONAL COUNTY SALES AND USE TAX

Sec. 442.091. ADDITIONAL SALES AND USE TAX. Authorizes a county to impose a sales and use tax under this subchapter.

Sec. 442.092. TAX RATE. Requires that the rate of a tax authorized by this subchapter must be one-eighth, one-fourth, three-eighths, or one-half of one percent.

Sec. 442.093. APPLICABILITY OF TAX CODE. (a) Provides that Chapter 323 (County Sales and Use Tax Act), Tax Code, governs the imposition, computation, administration, collection, and remittance of a tax authorized by this subchapter except as inconsistent with this subchapter.

(b) Provides that Section 323.101 (Tax Authorized), Tax Code, does not apply to the tax authorized by this subchapter.

(c) Provides that the tax authorized in this subchapter is in addition to a tax imposed under other law, including Chapter 323, Tax Code.

Sec. 442.094. EFFECT ON COMBINED LOCAL TAX RATE. Prohibits the rate of a tax authorized by this subchapter from being considered in determining the combined or overlapping rate in any area of local sales and use taxes imposed under this code or another law, including the Health and Safety Code, the Local Government Code, or the Special District Local Laws Code.

Sec. 442.095. RATE INCREASE. Authorizes the rate of the tax authorized by this subchapter to be increased in one or more increments of one-eighth of one percent to a maximum of one-half of one percent.

Sec. 442.096. EFFECTIVE DATE OF TAX. Provides that the imposition of the tax or the change in the tax rate takes effect on the first day of the first calendar quarter occurring after the expiration of the first complete quarter occurring after the date the comptroller of public accounts (comptroller) receives a notice of the order or the results of the election, as applicable, imposing, increasing, or decreasing the tax.

Sec. 442.097. ABOLITION OF TAX. (a) Prohibits the tax authorized by this subchapter, notwithstanding Section 442.004(c), from being collected after the last day of the first calendar quarter occurring after notification to the comptroller by the county that the county has abolished the tax.

(b) Requires the county to notify the comptroller of the abolition of the tax not later than the 60th day before the abolition date.

[Reserves Sections 442.098-442.120 for expansion.]

#### SUBCHAPTER E. REAL ESTATE TRANSFER FEE

Sec. 442.121. DEFINITIONS. Defines "consideration," "interest in real property," and "real estate."

Sec. 442.122. FEE IMPOSED. (a) Authorizes a county to impose a real estate transfer fee authorized by this subchapter if the court develops a proposal for the imposition of the fee that specifies the amount of the fee to be imposed, either as a set amount for a transfer of real estate or as a rate to be multiplied by the total consideration given for the transfer; any transfers of real estate that will be excluded from the fee and any exemptions, including a homestead exemption, that will be allowed; subject to the requirements of this subchapter, procedures for the administration of the fee; and provisions for the enforcement of the fee, including any penalty to be imposed if the fee is not paid as required by Section 442.124 and the fee is imposed under Section 442.002(1) or (2), as applicable.

(b) Provides that the fee authorized by this subchapter is imposed on the voluntary transfer consideration for real estate located in the county.

Sec. 442.123. JOINT AFFIDAVIT. (a) Requires each party to a transfer of real estate to execute an affidavit, executed by each other party to the transfer, stating the names of the parties, a description of the property transferred, a description of the total consideration for the transfer, and a statement of an amount that is equal to or exceeds the total present value of that consideration.

(b) Requires that the affidavit, if any portion of the consideration for the transfer of real estate consists of other real estate, contain a valuation of each piece of real estate involved in the transaction.

Sec. 442.124. WHEN FEE DUE; PAYMENT. (a) Requires that a fee authorized by this subchapter be paid not later than the 30th day after the date the transfer occurs.

(b) Requires that the fee be paid to the county clerk of the county in which the real estate is located, subject to Subsection (c).

(c) Provides that if real estate is located in more than one county, the imposition of a fee for the transfer of that real estate is governed by orders adopted by the commissioners court of the county in which the majority of the real estate is located. Requires that the fee, if a fee is imposed in that county, be paid to the county clerk of that county.

(d) Prohibits a county clerk from accepting for recording a deed, a deed of trust, or any other written instrument showing or evidencing a transfer of real estate unless the person offering the instrument for filing submits the joint affidavit required by Section 442.183 and pays the amount of the fee shown to be due on the transfer of the real estate, subject to Subsection (c).

(e) Provides that a joint affidavit submitted under Subsection (d) is for the confidential use of the county. Prohibits the affidavit from being shown, or the contents revealed, to any person other than a party to the transfer.

Sec. 442.125. PARTIES LIABLE FOR FEE. Provides that each party to an agreement for the transfer of real estate and each party to a conveyance, including a grantor, purchaser, seller, mortgagor, mortgagee, trustee, or other party, is jointly and severally liable for the payment of the fee authorized by this subchapter.

Sec. 442.126. RECEIPT. (a) Requires the county clerk to whom the fee is paid, at the time the fee authorized by this subchapter is paid, to issue a receipt showing the amount of the fee paid, a description of the real estate transferred, the date of the transfer, and the date of the fee payment.

(b) Requires the county clerk, if the transfer is fully excluded or exempted as provided by the commissioners court in the proposal adopted under Section 442.122, to issue a certificate showing the exclusion or exemption and stating that no fee is due on the transfer.

(c) Authorizes a receipt or a certificate issued under this section to be filed in the deed records of any county with or as a part of a deed or other instrument recorded.

[Reserves Sections 442.127-442.150 for expansion.]

#### SUBCHAPTER F. ADDITIONAL VEHICLE REGISTRATION FEE

Sec. 442.151. OPTIONAL COUNTY FEE FOR TRANSPORTATION PROJECTS. Authorizes a county to impose an additional fee, not to exceed \$10, for registering a vehicle in the county.

Sec. 442.152. EXEMPTION. Authorizes a vehicle that is authorized to be registered under Chapter 502 (Registration of Vehicles) or 504 (Specialty License Plates) without payment of a registration fee to be registered in a county imposing a fee authorized by this subchapter without payment of the additional fee.

Sec. 442.153. EFFECTIVE DATE. Authorizes a fee authorized by this subchapter to take effect only on January 1 of a year. Requires the county to notify the Texas

Department of Transportation (TxDOT) not later than September 1 of the year preceding the year in which the fee takes effect.

Sec. 442.154. ABOLITION OF FEE. Authorizes a fee authorized by this subchapter to be abolished under Section 442.004. Authorizes the abolition to take effect only on January 1 of a year. Requires a county to notify TxDOT not later than September 1 of the year preceding the year in which the abolition takes effect.

Sec. 442.155. COLLECTION OF FEE. Requires the county assessor-collector of a county imposing a fee authorized by this subchapter to collect the fee for a vehicle when other fees imposed under Chapter 502 and 504 are collected.

Sec. 442.156. VEHICLES REGISTERED DIRECTLY WITH DEPARTMENT. Requires TxDOT to collect the additional fee on a vehicle that is owned by a resident of a county imposing a fee authorized by this subchapter and that, under Chapter 502 and 504, is required to be registered directly with TxDOT. Requires TxDOT to send all fees collected for the county under this section to the county for deposit as provided by Section 442.005.

Sec. 442.157. DEPARTMENT RULES. Requires TxDOT to adopt rules and develop forms necessary to administer registration by mail for a vehicle being registered in a county imposing a fee authorized by this subchapter or a vehicle that is owned by a resident of such a county.

[Reserves Sections 442.158-442.180 for expansion.]

#### SUBCHAPTER G. PASSENGER MOTOR VEHICLE SALES FEE

Sec. 442.181. DEFINITIONS. Defines "motor vehicle," "retail sale," "passenger motor vehicle," and "total consideration."

Sec. 442.182. AMOUNT OF FEE. Authorizes the fee authorized by this subchapter to be imposed as a set amount for the retail sale of a passenger motor vehicle.

Sec. 442.183. APPLICABILITY OF MOTOR VEHICLE SALES TAXES. Provides that the fee authorized by this subchapter is in addition to the tax imposed by Chapter 152, Tax Code, and a tax imposed by any other law, including Subchapter C.

Sec. 442.184. ADMINISTRATION BY COUNTY. (a) Authorizes the commissioners court of a county to provide exemptions to the imposition of the fee.

(b) Requires a person required to collect the fee authorized by this subchapter to report and send the fee to the county as required by the county.

(c) Authorizes the county to prescribe monetary penalties, including interest charges, for failure to keep records required by this subchapter, to report when required, or to pay the fee when due.

(d) Authorizes the county to permit a person who is required to collect the fee authorized by this subchapter to retain a percentage of the amount collected and required to be reported as reimbursement to the person for the costs of collecting the fee. Authorizes the county to provide that the person is authorized to retain the amount only if the person pays the fee and files reports as required by the county.

(e) Authorizes the county attorney to bring suit against a person who violates this subchapter.

[Reserves Sections 442.185-442.210 for expansion.]

#### SUBCHAPTER H. MISCELLANEOUS FEES

Sec. 442.211. ROAD IMPACT FEE. Authorizes a county to impose a fee, not to exceed \$100, to each new resident of the county.

Sec. 442.212. NONRESIDENT COMMUTER FEE. Authorizes a county to impose a nonresident commuter fee on nonresidents who commute into the county.

Sec. 442.213. MILEAGE-BASED ROAD USER FEE. Authorizes a county to impose a fee based on the number of miles traveled by a motor vehicle registered to a resident of the county.

Sec. 442.214. ADDITIONAL INSPECTION FEE. Authorizes a county to impose a fee not to exceed \$10 to be imposed for each motor vehicle inspected in the county under Chapter 548 (Compulsory Inspection of Vehicles).

Sec. 442.215. CONGESTION FEES. (a) Authorizes a county to designate certain areas of the county as high congestion areas and charge a fee to enter those areas during peak traffic times.

(b) Requires the county, if any part of an area to be designated as a high congestion area under this section is in the boundaries of a municipality, to obtain the consent of the municipality before designating the area as a high congestion area.

SECTION 4. Repealer: Section 502.1725 (Optional County Fee for Transportation Projects), Transportation Code.

SECTION 5. Effective date: September 1, 2009.