

## **BILL ANALYSIS**

C.S.H.B. 2312  
By: Krusee  
Transportation  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The creation of regional mobility authorities (RMAs) was authorized during the 77<sup>th</sup> Legislative session. RMAs are authorized to plan, develop and operate turnpike projects. RMAs, which are formed at the request of one or more counties and upon the approval of the Texas Transportation Commission, are intended to promote transportation planning and development at a regional level. Given the existing constraints on transportation funding, it is important to give both RMAs and existing toll authorities options to raise funds at the local level to further critically needed transportation projects. This legislation enables RMAs and existing toll authorities to do so through a local option fuel sales tax and a local sales and use tax. Approval of the voters is required to implement this optional tax.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 2312 amends the Transportation Code to add a new chapter regarding the financing of transportation projects by Regional Mobility Authorities, counties operating a toll project under Chapter 284 and toll authorities operating under Chapter 366 (henceforth, "authorities"), and the imposition and collection of a local fuel sales tax and local sales and use tax by authorities.

The bill sets forth definitions and authorizes an authority's board to, by resolution, adopt a transportation improvement plan providing for the construction, maintenance, and operation of one or more transportation projects. (Secs. 368.001 and 368.002). Such a resolution must designate each project and the method of financing to be used; more than one method of financing may be employed for a single project. (Sec. 368.002). To proceed with an election calling for the imposition of a fuel sales tax, TxDOT must approve the transportation improvement plan. (Sec. 368.003). The transportation improvement plan must be included in the transportation plan approved by the metropolitan planning authority (MPO), if it includes projects subject to MPO planning. (Sec. 368.002). If an authority, or any part of that authority, is part of a non-attainment or near non-attainment area, then the entire non-attainment area must be included within the authority for purposes of imposing the fuel sales tax. (Sec. 368.003). An authority desiring to finance a transportation project through a fuel sales tax must order an election on the implementation of the transportation improvement plan. (Sec. 368.004). C.S.H.B. 2312 sets forth the requirements for such an election, including required information designating the project and financing methods. (Sec. 368.004). The bill clarifies that the Texas Transportation Commission must still approve a turnpike project before such a project may be undertaken by an authority.

C.S.H.B. 2312 allows an authority to impose a tax on gasoline and diesel fuel sold within the territory of the authority to propel a motor vehicle on public highways. The tax is meant to supplement and not supplant other state funding for transportation projects in the affected region. (Sec. 368.006). An authority may impose such a tax by order and only if the tax is approved by the voters, and the tax is in addition to a tax imposed by Chapter 153 of the Tax Code. (Secs. 368.052 and 368.055). The bill establishes that certain definitions have the same meaning assigned by Section 153.001 of the Tax Code. (Sec. 368.051). The rate of a local fuel sales tax may be imposed in increments of one-eighth

percent, up to a maximum of 8-1/4 percent. (Sec. 368.053). The bill provides that the tax must be collected by the person who makes the sale of gasoline or diesel fuel, and establishes that the tax may be added to the sales price of the fuel, and is part of the sales charge and recoverable in the same manner. (Sec. 368.055).

C.S.H.B. 2312 sets forth additional requirements for motor fuel tax collection, including collection and permitting procedures, record requirements, and procedures and penalties for enforcement. (Sec. 368.058 and 368.060). The bill provides for certain exemptions, and requires an authority to prescribe procedures for issuing refunds to persons who paid the tax, but used fuel for a purpose other than propelling a motor vehicle on public highways. (Secs. 368.056 and 368.059). The authority is required to remit, on a quarterly basis, to the state comptroller one-fourth of the taxes collected, and the comptroller is required to deposit the money to the available school fund. (Sec. 368.061). The authority is allowed to use the remaining net tax revenue only to provide funding for an approved transportation improvement plan. (Sec. 368.062).

In addition, C.S.H.B. 2312 allows an authority to impose a local sales and use tax to the extent the combined rate of all sales and use taxes imposed by the authority and other political subdivisions does not exceed two percent. (Sec. 368.101). The authority may impose such a tax only if the tax is approved by the voters. (Secs. 368.101). The local sales and use tax may be imposed in increments of one-eighth of one percent up to a maximum of one percent. (Sec. 368.103). Chapter 323 applies to this tax but section 323.101(b) does not. (Sec. 368.102). An authority may use this tax revenue for a transportation improvement plan approved at an election. (Sec. 368.106).

C.S.H.B. 2312 allows subsequent elections for either the local fuel tax or the local sales and use tax to either abolish a tax or change a tax rate. The bill contains required specific ballot language. (Secs. 368.054 and 368.104). For the fuel sales tax, the effective date of a tax or tax change is the date prescribed by the order imposing or abolishing the tax or changing the rate. (Secs. 368.057). For the local sales and use tax, the effective date is the first day of the first calendar quarter occurring after the date on which the comptroller receives a notice of the results of the election. (Sec. 368.105).

C.S.H.B. 2312 amends Section 153.015 of the Tax Code to create an exemption to the general prohibition on other motor fuel taxes for a motor fuel tax imposed by an authority under the provisions of this new Transportation Code Chapter 368.

Finally, no tax authorized pursuant to this bill may be imposed before September 1, 2004.

#### **EFFECTIVE DATE**

September 1, 2003.

#### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

C.S.H.B. 2312 differs from the original bill in a number of ways. First, it expands the ability to access this funding source beyond RMAs to include a county that operates a tollway project under Chapter 284 and a tollway authority organized under Chapter 366.

CSHB 2312 also removes the previous tax allowed on transportation goods and services. It now allows an additional local sales and use tax up to one percent to be authorized if the total sales and use tax in the region does not exceed two percent.

If an authority is part of a non-attainment or near non-attainment area, CSHB 2312 requires the entire non-attainment area to be included within the authority for purposes of imposing the fuel sales tax.

CSHB 2312 makes clear that any revenue raised by these taxes cannot be used to displace other state funding to the region imposing the tax.

CSHB 2312 ensures that any transportation improvement plan forming the basis for a tax under the bill must be tied to a metropolitan planning organization's transportation plan if it covers the type of projects covered by MPOs.

CSHB 2312 allows the local fuel sales tax to be raised to 8-1/4 percent.

Finally, CSHB 2312 requires TxDOT to approve any transportation improvement plan before it is taken to voters and allows TxDOT to consider the extent that plan addresses regional transportation needs in approving or disapproving the plan.