

By: Smith of Tarrant

H.B. No. 3462

A BILL TO BE ENTITLED

AN ACT

relating to the rate of the state gasoline tax and diesel fuel taxes
and to the permissible uses of the state highway fund.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 162.102, Tax Code, is amended to read as
follows:

Sec. 162.102. TAX RATE. Except as provided by Section
162.1025, the ~~[The]~~ gasoline tax rate is 20 cents for each net
gallon or fractional part on which the tax is imposed under Section
162.101.

SECTION 2. Subchapter B, Chapter 162, Tax Code, is amended
by adding Section 162.1025 to read as follows:

Sec. 162.1025. ANNUAL RATE CHANGE ACCORDING TO PRODUCER
PRICE INDEX. (a) In this section:

(1) "Producer price index" means the producer price
index for highway and street construction published by the United
States Department of Labor.

(2) "Producer price index percentage change" means the
percentage increase or decrease, not to exceed five percent, in the
producer price index of a given state fiscal year from the producer
price index of the preceding state fiscal year.

(b) Subject to Subsection (c), on October 1 of each year,
the rate of the gasoline tax imposed under this subchapter is
increased or decreased by an amount that is equal to the producer

1 price index percentage change for the preceding fiscal year
2 multiplied by the combined rate of the state and federal gasoline
3 taxes on August 1 of that year.

4 (c) If the computation required by Subsection (b) will
5 result in a tax rate that is less than 20 cents for each net gallon
6 or fractional part on which the tax is imposed under Section
7 162.101, the comptroller shall set the tax rate at 20 cents.

8 (d) Not later than September 1 of each year, the comptroller
9 shall:

10 (1) compute the new tax rate as provided by this
11 section;

12 (2) give the new tax rate to the secretary of state for
13 publication in the Texas Register; and

14 (3) notify each license holder under this subchapter
15 of the applicable new tax rate.

16 SECTION 3. Section 162.103(a), Tax Code, is amended to read
17 as follows:

18 (a) A backup tax is imposed at the rate prescribed by
19 Sections [Section] 162.102 and 162.1025 on:

20 (1) a person who obtains a refund of tax on gasoline by
21 claiming the gasoline was used for an off-highway purpose, but
22 actually uses the gasoline to operate a motor vehicle on a public
23 highway;

24 (2) a person who operates a motor vehicle on a public
25 highway using gasoline on which tax has not been paid; and

26 (3) a person who sells to the ultimate consumer
27 gasoline on which tax has not been paid and who knew or had reason to

1 know that the gasoline would be used for a taxable purpose.

2 SECTION 4. Section 162.202, Tax Code, is amended to read as
3 follows:

4 Sec. 162.202. TAX RATE. Except as provided by Section
5 162.2025, the [The] diesel fuel tax rate is 20 cents for each net
6 gallon or fractional part on which the tax is imposed under Section
7 162.201.

8 SECTION 5. Subchapter C, Chapter 162, Tax Code, is amended
9 by adding Section 162.2025 to read as follows:

10 Sec. 162.2025. ANNUAL RATE CHANGE ACCORDING TO PRODUCER
11 PRICE INDEX. (a) In this section:

12 (1) "Producer price index" means the producer price
13 index for highway and street construction published by the United
14 States Department of Labor.

15 (2) "Producer price index percentage change" means the
16 percentage increase or decrease, not to exceed five percent, in the
17 producer price index of a given state fiscal year from the producer
18 price index of the preceding state fiscal year.

19 (b) Subject to Subsection (c), on October 1 of each year,
20 the rate of the diesel fuel tax imposed under this subchapter is
21 increased or decreased by an amount that is equal to the producer
22 price index percentage change for the preceding fiscal year
23 multiplied by the combined rate of the state and federal diesel fuel
24 taxes on August 1 of that year.

25 (c) If the computation required by Subsection (b) will
26 result in a tax rate that is less than 20 cents for each net gallon
27 or fractional part on which the tax is imposed under Section

1 162.201, the comptroller shall set the tax rate at 20 cents.

2 (d) Not later than September 1 of each year, the comptroller
3 shall:

4 (1) compute the new tax rate as provided by this
5 section;

6 (2) give the new tax rate to the secretary of state for
7 publication in the Texas Register; and

8 (3) notify each license holder under this subchapter
9 of the applicable new tax rate.

10 SECTION 6. Section 162.203(a), Tax Code, is amended to read
11 as follows:

12 (a) A backup tax is imposed at the rate prescribed by
13 Sections [Section] 162.202 and 162.2025 on:

14 (1) a person who obtains a refund of tax on diesel fuel
15 by claiming the diesel fuel was used for an off-highway purpose, but
16 actually uses the diesel fuel to operate a motor vehicle on a public
17 highway;

18 (2) a person who operates a motor vehicle on a public
19 highway using diesel fuel on which tax has not been paid; and

20 (3) a person who sells to the ultimate consumer diesel
21 fuel on which a tax has not been paid and who knew or had reason to
22 know that the diesel fuel would be used for a taxable purpose.

23 SECTION 7. Section 201.115(d), Transportation Code, is
24 amended to read as follows:

25 (d) Notwithstanding Section 222.001, money in the state
26 highway fund may be used to repay a loan under this section, if
27 permissible under the Texas Constitution and appropriated by the

1 legislature for that purpose.

2 SECTION 8. Section 222.001, Transportation Code, is amended
3 to read as follows:

4 Sec. 222.001. USE OF STATE HIGHWAY FUND. (a) Money that is
5 required to be used for public roadways by the Texas Constitution or
6 federal law and that is deposited in the state treasury to the
7 credit of the state highway fund, including money deposited to the
8 credit of the state highway fund under Title 23, United States Code,
9 may be used only:

10 (1) to improve the state highway system;

11 (2) to mitigate adverse environmental effects that
12 result directly from construction or maintenance of a state highway
13 by the department; or

14 (3) by the Department of Public Safety to ~~[police the~~
15 ~~state highway system and to]~~ administer state laws relating to
16 traffic and safety on public roads.

17 (b) Except as otherwise provided by this code, money in the
18 state highway fund that is not described by Subsection (a) may be
19 used only to improve the state highway system.

20 SECTION 9. Section 222.073, Transportation Code, is amended
21 to read as follows:

22 Sec. 222.073. PURPOSES OF INFRASTRUCTURE BANK. To the
23 extent permissible under ~~[Notwithstanding]~~ Section 222.001, the
24 commission shall use money deposited in the bank to:

25 (1) encourage public and private investment in
26 transportation facilities both within and outside of the state
27 highway system, including facilities that contribute to the

1 multimodal and intermodal transportation capabilities of the
2 state; and

3 (2) develop financing techniques designed to:

4 (A) expand the availability of funding for
5 transportation projects and to reduce direct state costs;

6 (B) maximize private and local participation in
7 financing projects; and

8 (C) improve the efficiency of the state
9 transportation system.

10 SECTION 10. Section 222.002, Transportation Code, is
11 repealed.

12 SECTION 11. This Act takes effect only if the
13 constitutional amendment proposed by the 81st Legislature, Regular
14 Session, 2009, limiting the purposes for which revenue from motor
15 vehicle registration fees, taxes on motor fuels and lubricants, and
16 certain revenues received from the federal government may be used
17 and authorizing the legislature to provide for automatic
18 adjustments of the rates of motor fuels taxes is approved by the
19 voters. If that amendment is not approved by the voters, this Act
20 has no effect.

21 SECTION 12. This Act takes effect September 1, 2011.