

By: Harless

H.B. No. 399

A BILL TO BE ENTITLED

1 AN ACT
2 relating to taxes wholly or partly deposited to the credit of the
3 state highway fund; increasing the rates of the gasoline and diesel
4 fuel taxes and authorizing the increase or decrease of those rates
5 in subsequent years.

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

7 SECTION 1. (a) Section 152.122, Tax Code, is amended to read
8 as follows:

9 Sec. 152.122. ALLOCATION OF TAX. Subject to Section
10 152.1222, the ~~[The]~~ comptroller shall deposit the funds received
11 under Section 152.121 ~~[of this code]~~ as follows:

12 (1) in the state fiscal year beginning September 1,
13 2016, 25 percent to the credit of the state highway fund and 75
14 percent ~~[1/4 to the credit of the foundation school fund, and~~

15 ~~[(2) the remaining funds]~~ to the credit of the general
16 revenue fund;

17 (2) in the state fiscal year beginning September 1,
18 2017, 30 percent to the credit of the state highway fund and 70
19 percent to the credit of the general revenue fund;

20 (3) in the state fiscal year beginning September 1,
21 2018, 35 percent to the credit of the state highway fund and 65
22 percent to the credit of the general revenue fund;

23 (4) in the state fiscal year beginning September 1,
24 2019, 40 percent to the credit of the state highway fund and 60

1 percent to the credit of the general revenue fund;

2 (5) in the state fiscal year beginning September 1,
3 2020, 45 percent to the credit of the state highway fund and 55
4 percent to the credit of the general revenue fund; and

5 (6) in state fiscal years beginning on or after
6 September 1, 2021, 50 percent to the credit of the state highway
7 fund and 50 percent to the credit of the general revenue fund.

8 (b) In addition to the substantive changes made by this
9 section, this section conforms Section 152.122, Tax Code, to the
10 method of allocating motor vehicle sales and use taxes in effect
11 before the effective date of this section. Section 11.04, Chapter 4
12 (S.B. 3), Acts of the 72nd Legislature, 1st Called Session, 1991,
13 enacted former Section 403.094(h), Government Code, which
14 abolished certain state fund dedications and resulted in the
15 abolition of the allocation to the foundation school fund effective
16 August 31, 1995.

17 SECTION 2. (a) Section 162.102, Tax Code, is amended to
18 read as follows:

19 Sec. 162.102. TAX RATE. The gasoline tax rate is 25 [~~20~~]
20 cents for each net gallon or fractional part on which the tax is
21 imposed under Section 162.101.

22 (b) Effective January 1, 2018, Section 162.102, Tax Code, is
23 amended to read as follows:

24 Sec. 162.102. TAX RATE. The gasoline tax rate is 30 [~~20~~]
25 cents for each net gallon or fractional part on which the tax is
26 imposed under Section 162.101.

27 SECTION 3. (a) Effective September 1, 2018, Subchapter B,

1 Chapter 162, Tax Code, is amended by adding Section 162.1021 to read
2 as follows:

3 Sec. 162.1021. ANNUAL RATE CHANGE ACCORDING TO HIGHWAY COST
4 INDEX. (a) In this section:

5 (1) "Highway cost index" means the 12-month moving
6 average of the price of materials and labor compiled by the Texas
7 Department of Transportation and incorporated into state highway
8 projects.

9 (2) "Highway cost index percentage change" means the
10 percentage increase or decrease in the highway cost index of a given
11 state fiscal year from the highway cost index of the preceding state
12 fiscal year.

13 (b) Notwithstanding Section 162.102, on January 1 of each
14 year, the rate of the gasoline tax imposed under this subchapter is
15 increased or decreased by a percentage equal to the highway cost
16 index percentage change for the preceding state fiscal year.

17 (c) Notwithstanding Subsection (b), the percentage increase
18 or decrease may not result in an increase or decrease in the rate
19 that exceeds one cent for each net gallon or fractional gallon of
20 gasoline on which the tax is imposed under Section 162.101.

21 (d) Not later than December 1 of each year, the comptroller
22 shall:

23 (1) compute the new tax rate as provided by this
24 section;

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

27 (3) notify each license holder under this subchapter

1 of the applicable new tax rate.

2 (b) The comptroller shall compute the initial adjusted tax
3 rate as required by Section 162.1021(d), Tax Code, as added by this
4 section, not later than December 1, 2018. The initial adjusted rate
5 takes effect January 1, 2019.

6 SECTION 4. Effective January 1, 2019, Section 162.103(a),
7 Tax Code, is amended to read as follows:

8 (a) A backup tax is imposed at the rate prescribed by
9 Section 162.102 or 162.1021 on:

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

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

16 (3) a person who sells to the ultimate consumer
17 gasoline on which tax has not been paid and who knew or had reason to
18 know that the gasoline would be used for a taxable purpose; and

19 (4) a person, other than a person exempted under
20 Section 162.104, who acquires gasoline on which tax has not been
21 paid from any source in this state.

22 SECTION 5. (a) Section 162.202, Tax Code, is amended to read
23 as follows:

24 Sec. 162.202. TAX RATE. The diesel fuel tax rate is 25 [~~20~~]
25 cents for each net gallon or fractional part on which the tax is
26 imposed under Section 162.201.

27 (b) Effective January 1, 2018, Section 162.202, Tax Code, is

1 amended to read as follows:

2 Sec. 162.202. TAX RATE. The diesel fuel tax rate is 30 [~~20~~]
3 cents for each net gallon or fractional part on which the tax is
4 imposed under Section [162.201](#).

5 SECTION 6. (a) Effective September 1, 2018, Subchapter C,
6 Chapter 162, Tax Code, is amended by adding Section 162.2021 to read
7 as follows:

8 Sec. 162.2021. ANNUAL RATE CHANGE ACCORDING TO HIGHWAY COST
9 INDEX. (a) In this section:

10 (1) "Highway cost index" means the 12-month moving
11 average of the price of materials and labor compiled by the Texas
12 Department of Transportation and incorporated into state highway
13 projects.

14 (2) "Highway cost index percentage change" means the
15 percentage increase or decrease in the highway cost index of a given
16 state fiscal year from the highway cost index of the preceding state
17 fiscal year.

18 (b) Notwithstanding Section [162.202](#), on January 1 of each
19 year, the rate of the diesel fuel tax imposed under this subchapter
20 is increased or decreased by a percentage equal to the highway cost
21 index percentage change for the preceding state fiscal year.

22 (c) Notwithstanding Subsection (b), the percentage increase
23 or decrease may not result in an increase or decrease in the rate
24 that exceeds one cent for each net gallon or fractional gallon of
25 diesel fuel on which the tax is imposed under Section [162.201](#).

26 (d) Not later than December 1 of each year, the comptroller
27 shall:

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

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

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

7 (b) The comptroller shall compute the initial adjusted tax
8 rate as required by Section 162.2021(d), Tax Code, as added by this
9 section, not later than December 1, 2018. The initial adjusted rate
10 takes effect January 1, 2019.

11 SECTION 7. Effective January 1, 2019, Section 162.203(a),
12 Tax Code, is amended to read as follows:

13 (a) A backup tax is imposed at the rate prescribed by
14 Section 162.202 or 162.2021 on:

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

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

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

24 (4) a person, other than a person exempted under
25 Section 162.204, who acquires diesel fuel on which tax has not been
26 paid from any source in this state.

27 SECTION 8. Subchapter A, Chapter 222, Transportation Code,

1 is amended by adding Section 222.0015 to read as follows:

2 Sec. 222.0015. USE OF CERTAIN MONEY IN STATE HIGHWAY FUND.

3 (a) This section applies only to the following money deposited to
4 the credit of the state highway fund:

5 (1) all money deposited under Section 152.122, Tax
6 Code;

7 (2) all proceeds from the collection of taxes imposed
8 by Subchapter B, Chapter 162, Tax Code, attributable to the portion
9 of the tax rate in excess of 20 cents for each net gallon or
10 fractional part of gasoline on which the tax is imposed under
11 Section 162.101, Tax Code; and

12 (3) all proceeds from the collection of taxes imposed
13 by Subchapter C, Chapter 162, Tax Code, attributable to the portion
14 of the tax rate in excess of 20 cents for each net gallon or
15 fractional part of diesel fuel on which the tax is imposed under
16 Section 162.201, Tax Code.

17 (b) Notwithstanding other law, including Sections 201.115,
18 222.001, and 222.003, money described by Subsection (a):

19 (1) may not be pledged for the repayment of bonds; and

20 (2) may be used only for acquiring rights-of-way and
21 planning, designing, constructing, and maintaining nontolled
22 public roadways.

23 SECTION 9. This Act takes effect January 1, 2016, but only
24 if the constitutional amendment proposed by the 84th Legislature,
25 Regular Session, 2015, limiting the permissible uses of the state
26 highway fund, including further limiting the use of additional tax
27 and fee revenue attributable to changes to certain state taxes and

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1 fees, to increase revenue for nontolled public highway purposes is
2 approved by the voters. If that amendment is not approved by the
3 voters, this Act has no effect.