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Roads debate about conservative principles

August 4, 2013

Chris Tomlinson

Associated Press

AUSTIN, Texas (AP) — Gov. Rick Perry has called the Legislature back for a third special session to approve more money for roads, but the main sticking point centers on what is the most conservative way to fund them without raising taxes.

No one doubts Texas needs more money for roads. City freeways are jammed with traffic and rural roads near oil and gas fields are turning to dust under heavy trucks.

Experts at the Texas Department of Transportation say they need an extra \$4 billion a year just to maintain their road network. Business-friendly politicians openly worry that if the Legislature doesn't act soon, businesses will stop moving to Texas due to bad roads.

The problem is where to find the money. The motor fuels tax is supposed to help pay the bills, but with cars becoming more fuel efficient and the tax unchanged since 1991, revenue is not keeping up.

Lawmakers last raised the gasoline tax in 1991 to 20 cents a gallon, with 15 cents going for roads and 5 cents spent on public schools. Texas ranks 29th in the nation in fuel tax rates. While lawmakers have floated the idea of raising the tax, the Republican majority has firmly rejected that option.

One way to avoid paying for new highways is to allow private companies to build and operate them as toll roads. But that option has proven unpopular. Unwilling to raise taxes or privatize anymore highways, lawmakers have gone searching for existing revenue, a journey that led them to the Rainy Day Fund.

Lawmakers created the state savings account in 1987 and the constitution requires that 75 percent of oil and gas revenues above what was collected in 1987 should automatically flow into it. A two-thirds vote by both chambers of the Legislature is the only way to take money out.

The Great Recession prompted lawmakers to tap the fund in 2011 and 2013 to balance the budget, the fund's intended purpose. But with oil and gas drilling booming, the fund has at least \$1.7 billion a year flowing into it.

Sen. Robert Nichols, R-Jacksonville, authored a proposed constitutional amendment and accompanying bill that would take 50 percent of the money flowing into the fund and divert it for roads and bridges. It's not quite the \$4 billion the state needs, but \$840 million a year is better than nothing, he said. And if oil and gas revenues keep rising, that amount could grow.

Fiscal conservatives, though, worry about what will happen to the fund with only half the deposits. Oil and gas prices are notoriously unstable. Sen. Dan Patrick, a Houston Republican running for lieutenant governor, wants a safeguard written into the constitution that would automatically cut funding for roads if the balance of the Rainy Day Fund drops below a certain level.

Several minimum balances have been proposed ranging from a percentage of the state budget to a flat \$6 billion, the amount the fund is forecast to hold at the end of the fiscal year.

Other lawmakers don't want to lose the authority to tap the Rainy Day Fund as needed. They float scenarios such as a hurricane hitting the Houston Ship Channel or another recession. Nichols says the two-thirds vote requirement to spend the fund is protection enough.

Instead, his proposed law would require the 10-member Legislative Budget Board to set a minimum balance for the Rainy Day Fund every two years and give them the authority to shut off the flow of funds to transportation. He wants a lawmaker-controlled spigot versus a constitutional minimum fund balance.

Nichols easily won two-thirds support in the Senate for his plan on the first day of the third special session, but Rep. Joe Pickett, D-El Paso, says he doesn't have the two-thirds needed in the House to send the question to voters for final approval in November 2014.

Tea party conservatives in the House want a constitutional minimum balance and Democrats don't want to empower the Republican-dominated Legislative Budget Board. The spigot approach only received 84 votes out of the 100 needed to pass when the House voted last week.

The House meets again Monday to see if a compromise is possible. If not, the Legislature could spend most of August trying to hammer out a new deal.

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