

# HISTORY OF THE LOCAL OPTION GAS TAX LEVY IN ALACHUA COUNTY

## FIRST INTERLOCAL AGREEMENT (6/30/83) AND (7/7/83)

As of 1983, State law provided for a Local Option Gas Tax levy of up to 4¢ per gallon. However, the first ordinance and interlocal agreement between Alachua County and the City of Gainesville provided for a levy of 3¢ effective on September 1, 1983 and was originally scheduled to terminate on August 31, 1988.

The agreed upon distribution formula was as follows:

<u>Recipient</u>	<u>Share of Proceeds</u>
Alachua County	43.94%
City of Alachua	02.29%
City of Archer	01.19%
City of Gainesville	43.94%
City of Hawthorne	01.40%
City of High Springs	02.60%
Town of Lacrosse	00.52%
Town of Micanopy	01.06%
City of Newberry	01.63%
City of Waldo	01.43%

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## SECOND INTERLOCAL AGREEMENT (6/28/85)

In 1985, State law was amended to authorize counties to levy an additional 2¢ per gallon on every gallon of motor fuel and special fuel sold within the respective counties. Since the first levy by Alachua County only provided for 3 of 4 cents allowed, the second interlocal authorized the levy of the remaining 4th cent as well as the new 5<sup>th</sup> and 6<sup>th</sup> cents.

The agreed upon distribution formula for the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> cents was significantly different from the distribution formula for the first three cents. The agreed upon distribution is as follows:

<u>Recipient</u>	<u>Share of Proceeds</u>
Alachua County	60.36%
City of Alachua	01.46%
City of Archer	00.52%
City of Gainesville	33.33%
City of Hawthorne	00.72%
City of High Springs	01.62%
Town of Lacrosse	00.07%
Town of Micanopy	00.74%
City of Newberry	00.88%
City of Waldo	00.30%

The agreement further provided that "Every fifth year during the term of this agreement, 16.5673% of Alachua County's total share of 60.36% shall be considered to be subject to renegotiations between Alachua County and the City of Gainesville. It is understood that Alachua County, during the term of this agreement, shall receive at least 50.36% of the proceeds of the 4<sup>th</sup>, 5<sup>th</sup>, and 6<sup>th</sup> cents of the local option gas tax." The levy was effective on September 1, 1985 and is scheduled to terminate on August 31, 2015.

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## THIRD INTERLOCAL AGREEMENT (7/27/87)

This agreement merely extends the levy of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> cents from September 1, 1988 to August 31, 2018. It does not change the original distribution formula but does provide for a renegotiation of the formula during every fifth year of the term of the agreement.

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## ALLOCATION METHODOLOGIES

There are numerous ways in which local governments in Florida have agreed to distribute the local option gas tax proceeds. The three (3) most commonly found methodologies are: (1) percent of population; (2) percent of road miles; and (3) percent of 5-year transportation expenditures. In practice, combinations of these three methodologies are often utilized. To summarize how each methodology might affect the three elements of local governments in Alachua County, if computed as freestanding independent formulas, are as follows:

	% Population	% Road Miles	% 5 Yr. Exps.
City of Gainesville	46	25	59
Alachua County	46	63	37
Small Cities	8	12	4

The difference in the proceeds which would be made available to the City under the three (3) above different methodologies is significant. At the low end (% of Road Miles), the City would realize approximately \$1.25 M. (This is the formula that the County is proposing that we agree to utilize.) At the high end (% of 5-Year Transportation Expenditures), the City could receive approximately \$3M. (See attached Exhibits A, B and C). Back in 1983, when the first distribution formula was being negotiated between the City and County, all three (3) of these methodologies were looked at and their relevant percentages computed. It was observed by one of the County Commissioners that road miles was most favorable to the small cities (12%) and Alachua County while the other two formulae were more favorable to the City of Gainesville. As a result, he made a motion to distribute to the small cities their percentage based on their respective percentages of road miles and that the City and County would evenly split the difference. The motion passed and thus the original distribution was set in place. The second distribution was merely designed to give the City the equivalent value of 1¢ (33.3%). There was much discussion about this being dedicated solely for transit even though the actual interlocal makes no such requirements.

# HISTORY OF THE LOCAL OPTION GAS TAX LEVY IN ALACHUA COUNTY

## DEFAULT FORMULA

Florida Statutes provide that if local governments are unable to reach an interlocal agreement as to the distribution formula, then the default formula is the immediately five fiscal years proportion of the combined total of each local government's transportation expenditures. These proportions are then recalculated every ten (10) years. As a result, many counties utilize this methodology.

## LOCAL OPTION GAS TAX DISTRIBUTION METHODOLOGIES

## (A) POPULATION BASED METHOD:

AREA	(1) 2000 ESTIMATE	% OF TOTAL	MOTOR FUEL DISTRIBUTION PER .05 TAX
ALACHUA	6,519	2.95%	\$148,767
ARCHER	1,468	0.66%	\$33,501
GAINESVILLE	101,872	46.04%	\$2,324,773
HAWTHORNE	1,402	0.63%	\$31,994
HIGH SPRINGS	4,065	1.84%	\$92,765
LACROSSE	152	0.07%	\$3,469
MICANOPY	640	0.29%	\$14,605
NEWBERRY	2,623	1.19%	\$59,858
WALDO	1,064	0.48%	\$24,281
UNINCORPORATED	101,487	45.86%	\$2,315,987
<b>TOTAL</b>	<b>221,292</b>	<b>100.00%</b>	<b>\$5,050,000</b>

## NOTES:

(1) Source: Bureau of Economic Business & Research, as of April 1, 2000

(2) The FY 2002 Motor Fuel Tax projection is based on 102.16% of the State's estimate for FY 2001 provided in the 2000 Local Government Financial Information Handbook. The Handbook is published by the Florida Legislative Committee on Intergovernmental Relations with assistance from the Florida Department of Revenue. The 2.16% growth assumption is based on average annual growth in the City's Local Option Fuel Tax revenues from FY 1996 to FY 2000.

LOCAL OPTION GAS TAX DISTRIBUTION METHODOLOGIES

(B) ROAD MILES BASED METHOD:

AREA	(1) ROAD MILES	% OF TOTAL	MOTOR FUEL DISTRIBUTION PER .05 TAX
ALACHUA	30.3	2.27%	\$114,670
ARCHER	13.1	0.98%	\$49,577
GAINESVILLE	340.6	25.52%	\$1,288,991
HAWTHORNE	14.8	1.11%	\$56,010
HIGH SPRINGS	43.7	3.27%	\$165,381
LACROSSE	1.7	0.13%	\$6,434
MICANOPY	14.8	1.11%	\$56,010
NEWBERRY	27.3	2.05%	\$103,316
WALDO	9.4	0.70%	\$35,574
ALACHUA COUNTY	838.7	62.85%	\$3,174,037
TOTAL	<u>1,334.4</u>	<u>100.00%</u>	<u>\$5,050,000</u>

NOTES:

- (1) The road mileage data was provided by the Alachua County Public Works Department in FY 1999.
- (2) The FY 2002 Motor Fuel Tax projection is based on 102.16% of the State's estimate for FY 2001 provided in the 2000 Local Government Financial Information Handbook. The Handbook is published by the Florida Legislative Committee on Intergovernmental Relations with assistance from the Florida Department of Revenue. The 2.16% growth assumption is based on average annual growth in the City's Local Option Fuel Tax revenues from FY 1996 to FY 2000.

## LOCAL OPTION GAS TAX DISTRIBUTION METHODOLOGIES

### (C) TRANSPORTATION EXPENDITURES BASED METHOD:

AREA	(1) EXPENDITURES	% OF TOTAL	MOTOR FUEL DISTRIBUTION PER .05 TAX
ALACHUA	\$2,411,274	1.77%	\$89,557
ARCHER	\$358,401	0.26%	\$13,311
GAINESVILLE	\$79,826,676	58.71%	\$2,964,832
HAWTHORNE	\$768,585	0.57%	\$28,546
HIGH SPRINGS	\$819,149	0.60%	\$30,424
LACROSSE	\$70,620	0.05%	\$2,623
MICANOPY	\$473,841	0.35%	\$17,599
NEWBERRY	\$995,382	0.73%	\$36,969
WALDO	\$415,879	0.31%	\$15,446
UNINCORPORATED	\$49,829,030	36.65%	\$1,850,693
TOTAL	<u>\$135,968,837</u>	<u>100.00%</u>	<u>\$5,050,000</u>

## NOTES:

- (1) The Transportation expenditure amounts were downloaded by the City Finance staff from the State website containing the Local Government Annual Financial Reports. The amount represent total expenditures for the five year period From FY 1995 through FY 1999.
- (2) The FY 2002 Motor Fuel Tax projection is based on 102.16% of the State's estimate for FY 2001 provided in the 2000 Local Government Financial Information Handbook. The Handbook is published by the Florida Legislative Committee on Intergovernmental Relations with assistance from the Florida Department of Revenue. The 2.16% growth assumption is based on average annual growth in the City's Local Option Fuel Tax revenues from FY 1996 to FY 2000.



## LOCAL OPTION FUEL TAXES

Sections 206.41(1)(d) and (e), 206.87(1)(b) and (c), 336.021, and 336.025, *Florida Statutes*

### Brief Overview

Local governments are authorized to levy up to 12 cents of local option fuel taxes in the form of three separate levies. The first is a tax of 1 to 6 cents on every net gallon of motor and diesel fuel sold within a county. This tax may be authorized by an ordinance adopted by a majority vote of the governing body or voter approval in a county-wide referendum. Generally, the proceeds may be used to fund transportation expenditures.

The second tax is a 1 to 5 cents levy upon every net gallon of motor fuel sold within a county. Diesel fuel is not subject to this tax. This additional tax shall be levied by an ordinance adopted by a majority plus one vote of the membership of the governing body or voter approval in a county-wide referendum. Proceeds received from this additional tax may be used for transportation expenditures needed to meet the requirements of the capital improvements element of an adopted local government comprehensive plan.

The third is a tax of 1 cent on every net gallon of motor and diesel fuel sold within a county. This tax is referred to as the Ninth-Cent Fuel Tax. The tax may be authorized by an ordinance adopted by an extraordinary vote of the governing body or voter approval in a county-wide referendum. Generally, the proceeds may be used to fund transportation expenditures.

As a result of statewide equalization, the full 6 cents of the 1 to 6 cents fuel tax as well as the Ninth-Cent Fuel Tax are levied on diesel fuel even though the county may not have imposed a levy on motor fuel at all or may not be levying either tax on motor fuel at the maximum rate. The county receives 7 cents worth of tax revenue on diesel fuel, regardless of whether or not the county is levying the tax on motor fuel at all or at the maximum rate.

### 2000 General Law Amendments

Chapter 2000-266, *Laws of Florida*, (CS/SB 772)

authorized additional uses of the 1 to 5 cents local option fuel tax. The tax proceeds may be used for the paving of existing graded roads when undertaken in part to relieve or mitigate existing or potential adverse environmental impacts. This change is effective as of July 1, 2000.

### Administrative Procedures

The 1 to 6 cents of optional fuel tax shall be collected and remitted in the same manner provided by ss. 206.41(1)(e) and 206.87(1)(c), F.S. The 1 to 5 cents of optional fuel tax shall be collected and

remitted in the same manner provided by s. 206.41(1)(e), F.S. The remitted taxes shall be transferred to the Local Option Fuel Tax Trust Fund which was created for distribution of the proceeds to the eligible local governments. The Ninth-Cent Fuel Tax shall be transferred to the Ninth-Cent Fuel Tax Trust Fund.

The Department of Revenue administers these taxes and has the authority to deduct its administrative costs incurred in collecting, administering, enforcing, and distributing the proceeds to the counties. Such administrative costs may not exceed 2 percent of collections.

The total administrative costs shall be prorated among those counties levying the tax according to formula which shall be revised on July 1<sup>st</sup> of each year. Two-thirds of the amount deducted shall be based on the county's proportional share of the number of dealers who are registered for purposes of Chapter 212, F.S., on June 30<sup>th</sup> of the preceding state fiscal year. One-third of the amount deducted shall be based on the county's share of the total amount of tax collected during the preceding state fiscal year. The Department has the authority to promulgate rules necessary to enforce these taxes, and these rules shall have the full force and effect of law.

Several deductions from one or more of the local option fuel tax collections are statutorily authorized: These include the General Revenue Service Charge, collection allowances, and refunds.

### **Reporting Requirements**

By July 1st of each year, the county must notify the Department of the respective tax rates for both the 1 to 6 cents and 1 to 5 cents fuel taxes. In addition, the county must provide the Department with a certified copy of the interlocal agreement listing the distribution proportions established by such agreement or pursuant to the transportation expenditures methodology, if applicable.

Any dispute as to the determination by the county of distribution proportions for these two taxes shall be resolved through an appeal to the Administration Commission in accordance with procedures developed by the Commission. The Administration Commission is made up of the Governor and the Cabinet and is housed within the Executive Office of the Governor. Pending final disposition of such proceedings, the tax shall be collected, and such funds shall be held in escrow by the Clerk of the Circuit Court of the respective county.

A certified copy of the ordinance proposing the levy of the Ninth-Cent Fuel Tax pursuant to referendum shall be furnished to the Department by the county within 10 days after approval of such ordinance. In addition, the county levying the tax pursuant to referendum shall notify the Department within 10 days after passage of the referendum of such passage and the time period during which the tax will be levied. The failure to furnish the certified copy will not invalidate the passage of the ordinance.

A county levying the Ninth-Cent Fuel Tax pursuant to ordinance shall notify the Department within 10 days after the governing body adopts the ordinance. At the same time, the county shall furnish the Department with a certified copy of the ordinance.

A decision to rescind any of these local option fuel taxes must be reported to the Department; however, no decision to rescind the tax shall take effect until at least 60 days after the county notifies the Department of such decision.

### **Distribution of Proceeds**

The local option fuel taxes shall be distributed monthly by the Department in the same manner as s. 336.021(1)(c) and (d), F.S. The tax on motor fuel shall be distributed monthly by the Department to the county reported by the terminal suppliers and importers for retail sale or use.

The local option taxes collected on sales or use of diesel fuel shall be distributed as follows:

1. The 1995-96 state fiscal year shall be the base year for all distributions.
2. The tax collected each year, less the service and administrative charges enumerated in s. 215.20, F.S., and the allowances allowed under s. 206.91, F.S., on the number of gallons reported, up to the total number of gallons reported in the base year, shall be distributed to each county using the distribution percentage calculated for the base year.
3. After the distribution in #2, additional taxes shall be distributed in the following manner. A distribution shall be made to each county in which a qualified new retail station is located. A qualified new retail station is one that began operation after June 30, 1996, and that has sales of diesel fuel exceeding 50 percent of the sales of diesel fuel reported in the county in which it is located during the 1995-96 state fiscal year. The amount distributed to each county shall equal the local option fuel taxes due on the gallons of diesel fuel sold by the new retail station during the year ending March 31st, less the service charges enumerated in s. 215.20, F.S., and the dealer allowance provided for by s. 206.91, F.S. Gallons of diesel fuel sold at the qualified new retail station shall be certified to the Department by the county requesting the additional distribution by June 15, 1997, and by May 1st in each subsequent year. When more than one county qualifies for a distribution and the requested distributions exceed the total taxes available for distribution, each county shall receive a prorated share on the monies available for distribution.
4. After the distribution in #3, all additional taxes shall be distributed based on vehicular diesel fuel storage capacities in each county as determined by the

Department of Environmental Protection as required by s. 376.303, F.S., for particular facility types. Each county shall receive a share of the total taxes available for distribution equal to a fraction, the numerator of which is the storage capacity located within the county for vehicular diesel fuel in the particular facility types and the denominator of which is the total statewide storage capacity for vehicular diesel fuel in those same facility types. The vehicular diesel fuel storage capacity for each county and facility type shall be established by the Department of Environment Protection by June 1, 1997, for the 1996-97 fiscal year, and by January 31st for each succeeding fiscal year. The storage capacity for any new retail station for which a county receives a distribution pursuant to #3 above shall not be included in the calculation for this distribution.

The county's proceeds from the 1 to 6 cents and 1 to 5 cents fuel taxes shall be distributed by the Department according to the distribution factors determined at the local level by interlocal agreement between the county and municipalities within the county's boundaries. If no interlocal agreement is established, then the distribution shall be based on the transportation expenditures of each local government for the immediately preceding 5 fiscal years, as a proportion of the total of such expenditures for the county and all municipalities within the county. These proportions shall be recalculated every 10 years based on the transportation expenditures of the immediately preceding 5 years.

This recalculation shall under no circumstances materially or adversely affect the rights of holders of bonds outstanding on July 1, 1986 which are backed by proceeds of the 1 to 6 cents fuel tax. The amounts distributed to the county government and each municipality shall not be reduced below the amount necessary for the payment of principal and interest and reserves for principal and interest as required under the covenants of any bond resolution outstanding on the date of the recalculation.

In addition, any inland county with a population greater than 500,000 as of July 1, 1996, having an interlocal agreement with one or more of the incorporated areas within the county must utilize the population estimates of local government units as of April 1st of each year for dividing the proceeds of the 1 to 6 cents fuel tax. This provision applies only to Orange County.

Any newly incorporated municipality, eligible for participation in the distribution of monies under the Local Government Half-Cent Sales Tax and Municipal Revenue Sharing Programs and located in a county levying the 1 to 6 cents or 1 to 5 cents fuel tax, is entitled to receive a share of the tax revenues. Distribution of such revenues to a newly incorporated municipality shall begin in the first full fiscal year following incorporation. The distribution to a newly incorporated municipality shall be:

1. Equal to the county's per lane mile expenditure in the previous year times the number of lane miles within the municipality's jurisdiction or scope of responsibility, in which case the county's share would be reduced proportionately; or
2. Determined by the local act incorporating the municipality.

Such distribution shall under no circumstances materially or adversely affect the rights of holders of outstanding bonds which are backed by these taxes. The amounts distributed to the county government and each municipality shall not be reduced below the amount necessary for the payment of principal and interest and reserves for principal and interest as required under the covenants of any bond resolution outstanding on the date of redistribution.

With regard to the Ninth-Cent Fuel Tax, the governing body of the county may, by joint agreement with one or more municipalities located within the county, provide for the authorized transportation purposes, and the distribution of the tax proceeds within both the incorporated and unincorporated areas of the county. However, the county is not required to share the proceeds of this tax with municipalities.

#### Estimated Surtax Proceeds for the Upcoming Fiscal Year

**Table 1** provides a county-by-county listing of the estimated federal, state, and local fuel tax rates for the 2000 calendar year. The table is divided into two sections for the purpose of illustrating the tax rates for both motor and diesel fuels.

**Table 2** lists estimated motor fuel gallons sold for each county and provides estimated distributions for the Ninth-Cent Fuel Tax, after deducting for the collection allowance and refunds. These estimates can be used by counties without further adjustment since the tax is not subject to the 7.3 percent General Revenue Service Charge. As the result of statewide equalization, all counties levy the tax on diesel fuel. Therefore, a county will receive a distribution based on the diesel fuel portion even if the county does not levy the tax on motor fuel.

**Table 3** provides estimated proceeds per penny of tax for both the 1 to 6 cents and 1 to 5 cents local option fuel taxes. These estimates have been adjusted for all applicable deductions and are based on 2000-01 fiscal year distribution percentages.

The directions for calculating a correct estimate for the 1 to 6 cents tax are as follows. If a county imposes this tax on motor fuel at the maximum rate of six cents, simply multiply the total fuel distribution per penny of tax by six.

If a county imposes this tax on motor fuel at a rate of less than six cents, then the calculation is different. To determine the amount of the total estimate based on diesel fuel, multiply the diesel fuel

distribution per penny of tax by six. To determine the amount of the total estimate based on motor fuel, multiply the motor fuel distribution per penny of tax by the number of cents levied on motor fuel in the particular county. Sum the two products to determine the total estimated distribution for the fiscal year.

Since the 1 to 5 cents local option fuel tax is not subject to a dealer collection allowance, a separate listing is provided for those counties levying this tax. To determine the estimated fiscal year distribution, simply multiply the motor fuel distribution per penny of tax by the number of cents levied on motor fuel.

When estimating first time revenues, please note that monies will not be available for distribution until the month after imposition. Inquiries regarding the Department's estimation of these proceeds should be addressed to the Office of Research and Analysis at (850) 488-2900 or Suncom 278-2900.

### **Summaries of Prior Years' Distributions**

Several additional tables summarizing prior years' distributions to counties and municipalities are available via the LCIR's website (refer to <http://fcn.state.fl.us/lcir/databank/revenues.html>).

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Table 1

Estimated 2000 Federal, State, and Local Fuel Tax Rates in Florida's Counties

County	Motor Fuel Tax Rates (# of Cents Per Gallon)							Diesel Fuel Tax Rates (# of Cents Per Gallon)						
	Federal Tax	State-Imposed Taxes			Locally-Imposed Taxes			Federal Tax	State-Imposed Taxes			Locally-Imposed Taxes		
		State Taxes	SCETS Tax	Other Fuel Taxes/Fees	Ninth Cent	1st Local Option	2nd Local Option		State Taxes	SCETS Tax	Other Fuel Taxes/Fees	Ninth Cent	1st Local Option	
Alachua	18.4	13.3	5.1	2.2	1.0	6.0	24.4	13.3	5.1	2.2	1.0	6.0	52.0	
Baker	18.4	13.3	5.1	2.2	1.0	6.0	24.4	13.3	5.1	2.2	1.0	6.0	52.0	
Bay	18.4	13.3	5.1	2.2	6.0		24.4	13.3	5.1	2.2	1.0	6.0	52.0	
Bradford	18.4	13.3	5.1	2.2	6.0		24.4	13.3	5.1	2.2	1.0	6.0	52.0	
Brevard	18.4	13.3	5.1	2.2	6.0		24.4	13.3	5.1	2.2	1.0	6.0	52.0	
Broward	18.4	13.3	5.1	2.2	1.0	4.0	24.4	13.3	5.1	2.2	1.0	6.0	52.0	
Calhoun	18.4	13.3	5.1	2.2	6.0		24.4	13.3	5.1	2.2	1.0	6.0	52.0	
Charlotte	18.4	13.3	5.1	2.2	6.0	5.0	24.4	13.3	5.1	2.2	1.0	6.0	52.0	
Citrus	18.4	13.3	5.1	2.2	6.0		24.4	13.3	5.1	2.2	1.0	6.0	52.0	
Clay	18.4	13.3	5.1	2.2	1.0		24.4	13.3	5.1	2.2	1.0	6.0	52.0	
Collier	18.4	13.3	5.1	2.2	1.0	5.0	24.4	13.3	5.1	2.2	1.0	6.0	52.0	
Columbia	18.4	13.3	5.1	2.2	1.0		24.4	13.3	5.1	2.2	1.0	6.0	52.0	
DeSoto	18.4	13.3	5.1	2.2	1.0	5.0	24.4	13.3	5.1	2.2	1.0	6.0	52.0	
Dixie	18.4	13.3	5.1	2.2	6.0		24.4	13.3	5.1	2.2	1.0	6.0	52.0	
Duval	18.4	13.3	5.1	2.2	6.0		24.4	13.3	5.1	2.2	1.0	6.0	52.0	
Escambia	18.4	13.3	5.1	2.2	1.0		24.4	13.3	5.1	2.2	1.0	6.0	52.0	
Flagler	18.4	13.3	5.1	2.2	1.0		24.4	13.3	5.1	2.2	1.0	6.0	52.0	
Franklin	18.4	13.3	4.3	2.2	5.0		24.4	13.3	5.1	2.2	1.0	6.0	52.0	
Gadsden	18.4	13.3	5.1	2.2	6.0		24.4	13.3	5.1	2.2	1.0	6.0	52.0	
Gilchrist	18.4	13.3	5.1	2.2	6.0		24.4	13.3	5.1	2.2	1.0	6.0	52.0	
Glades	18.4	13.3	5.1	2.2	1.0		24.4	13.3	5.1	2.2	1.0	6.0	52.0	
Gulf	18.4	13.3	5.1	2.2	6.0		24.4	13.3	5.1	2.2	1.0	6.0	52.0	
Hamilton	18.4	13.3	2.6	2.2	3.0		24.4	13.3	5.1	2.2	1.0	6.0	52.0	
Hardee	18.4	13.3	5.1	2.2	1.0		24.4	13.3	5.1	2.2	1.0	6.0	52.0	
Hendry	18.4	13.3	5.1	2.2	1.0		24.4	13.3	5.1	2.2	1.0	6.0	52.0	
Hernando	18.4	13.3	5.1	2.2	1.0		24.4	13.3	5.1	2.2	1.0	6.0	52.0	
Highlands	18.4	13.3	5.1	2.2	1.0	3.0	24.4	13.3	5.1	2.2	1.0	6.0	52.0	
Hillsborough	18.4	13.3	5.1	2.2	1.0		24.4	13.3	5.1	2.2	1.0	6.0	52.0	
Holmes	18.4	13.3	5.1	2.2	6.0		24.4	13.3	5.1	2.2	1.0	6.0	52.0	
Indian River	18.4	13.3	5.1	2.2	6.0		24.4	13.3	5.1	2.2	1.0	6.0	52.0	
Jackson	18.4	13.3	5.1	2.2	1.0		24.4	13.3	5.1	2.2	1.0	6.0	52.0	
Jefferson	18.4	13.3	5.1	2.2	1.0		24.4	13.3	5.1	2.2	1.0	6.0	52.0	
Lafayette	18.4	13.3	5.1	2.2	6.0		24.4	13.3	5.1	2.2	1.0	6.0	52.0	
Lake	18.4	13.3	5.1	2.2	1.0		24.4	13.3	5.1	2.2	1.0	6.0	52.0	
Lee	18.4	13.3	5.1	2.2	1.0	5.0	24.4	13.3	5.1	2.2	1.0	6.0	52.0	
Leon	18.4	13.3	5.1	2.2	6.0		24.4	13.3	5.1	2.2	1.0	6.0	52.0	
Levy	18.4	13.3	5.1	2.2	6.0		24.4	13.3	5.1	2.2	1.0	6.0	52.0	
Liberty	18.4	13.3	5.1	2.2	1.0		24.4	13.3	5.1	2.2	1.0	6.0	52.0	
Madison	18.4	13.3	5.1	2.2	6.0		24.4	13.3	5.1	2.2	1.0	6.0	52.0	
Manatee	18.4	13.3	5.1	2.2	1.0		24.4	13.3	5.1	2.2	1.0	6.0	52.0	
Marion	18.4	13.3	5.1	2.2	1.0		24.4	13.3	5.1	2.2	1.0	6.0	52.0	
Marin	18.4	13.3	5.1	2.2	6.0	2.0	24.4	13.3	5.1	2.2	1.0	6.0	52.0	



Table 1

## Estimated 2000 Federal, State, and Local Fuel Tax Rates in Florida's Counties

County	Motor Fuel Tax Rates (# of Cents Per Gallon)							Diesel Fuel Tax Rates (# of Cents Per Gallon)							
	Federal Tax	State-Imposed Taxes			Locally-Imposed Taxes			Federal Tax	State-Imposed Taxes			Locally-Imposed Taxes			
		State Taxes	SCETS Tax	Other Fuel Taxes/Fees	Ninth Cent	1st Local Option	2nd Local Option		State Taxes	SCETS Tax	Other Fuel Taxes/Fees	Ninth Cent	1st Local Option	Total Tax	
Miami-Dade	18.4	13.3	5.1	2.2	1.0	6.0	3.0	49.0	24.4	13.3	5.1	2.2	1.0	6.0	52.0
Monroe	18.4	13.3	5.1	2.2		6.0		45.0	24.4	13.3	5.1	2.2	1.0	6.0	52.0
Nassau	18.4	13.3	5.1	2.2	1.0	6.0		46.0	24.4	13.3	5.1	2.2	1.0	6.0	52.0
Okaloosa	18.4	13.3	4.3	2.2		5.0		43.2	24.4	13.3	5.1	2.2	1.0	6.0	52.0
Okeechobee	18.4	13.3	5.1	2.2	1.0	6.0		46.0	24.4	13.3	5.1	2.2	1.0	6.0	52.0
Orange	18.4	13.3	5.1	2.2		6.0		45.0	24.4	13.3	5.1	2.2	1.0	6.0	52.0
Osceola	18.4	13.3	5.1	2.2	1.0	6.0		46.0	24.4	13.3	5.1	2.2	1.0	6.0	52.0
Palm Beach	18.4	13.3	5.1	2.2	1.0	6.0	5.0	51.0	24.4	13.3	5.1	2.2	1.0	6.0	52.0
Pasco	18.4	13.3	5.1	2.2		6.0		45.0	24.4	13.3	5.1	2.2	1.0	6.0	52.0
Pinellas	18.4	13.3	5.1	2.2		6.0		45.0	24.4	13.3	5.1	2.2	1.0	6.0	52.0
Polk	18.4	13.3	5.1	2.2	1.0	6.0	5.0	51.0	24.4	13.3	5.1	2.2	1.0	6.0	52.0
Putnam	18.4	13.3	5.1	2.2		6.0		45.0	24.4	13.3	5.1	2.2	1.0	6.0	52.0
Saint Johns	18.4	13.3	5.1	2.2		6.0		45.0	24.4	13.3	5.1	2.2	1.0	6.0	52.0
Saint Lucie	18.4	13.3	5.1	2.2	1.0	6.0	5.0	51.0	24.4	13.3	5.1	2.2	1.0	6.0	52.0
Santa Rosa	18.4	13.3	5.1	2.2		6.0		45.0	24.4	13.3	5.1	2.2	1.0	6.0	52.0
Sarasota	18.4	13.3	5.1	2.2	1.0	6.0		46.0	24.4	13.3	5.1	2.2	1.0	6.0	52.0
Seminole	18.4	13.3	5.1	2.2	1.0	6.0		46.0	24.4	13.3	5.1	2.2	1.0	6.0	52.0
Sumter	18.4	13.3	5.1	2.2	1.0	6.0		46.0	24.4	13.3	5.1	2.2	1.0	6.0	52.0
Suwannee	18.4	13.3	5.1	2.2		6.0		45.0	24.4	13.3	5.1	2.2	1.0	6.0	52.0
Taylor	18.4	13.3	4.3	2.2	1.0	4.0		43.2	24.4	13.3	5.1	2.2	1.0	6.0	52.0
Union	18.4	13.3	5.1	2.2	1.0	5.0		45.0	24.4	13.3	5.1	2.2	1.0	6.0	52.0
Volusia	18.4	13.3	5.1	2.2	1.0	6.0	5.0	51.0	24.4	13.3	5.1	2.2	1.0	6.0	52.0
Wakulla	18.4	13.3	5.1	2.2	1.0	6.0		46.0	24.4	13.3	5.1	2.2	1.0	6.0	52.0
Walton	18.4	13.3	5.1	2.2	1.0	6.0		46.0	24.4	13.3	5.1	2.2	1.0	6.0	52.0
Washington	18.4	13.3	5.1	2.2	1.0	6.0		46.0	24.4	13.3	5.1	2.2	1.0	6.0	52.0

**Future Rate Changes**

Effective January 2001, the 2nd local option tax rate in Broward County will increase from 4 to 5 cents. Additionally, Columbia and Sarasota counties will begin imposing the 2nd local option tax at the maximum rate of 5 cents.

**Footnotes**

- (1) The federal tax on motor and diesel fuels is imposed pursuant to Title 26, United States Code.
- (2) The motor fuel tax column entitled "State Taxes" is comprised of 2 cents of constitutional fuel tax imposed pursuant to s. 206.41(1)(a), F.S.; 1 cent of county fuel tax imposed pursuant to s. 206.41(1)(b), F.S.; 1 cent of municipal fuel tax imposed pursuant to s. 206.41(1)(c), F.S.; and 9.3 cents of fuel sales tax imposed pursuant to s. 206.41(1)(g), F.S.
- (3) The State Comprehensive Enhanced Transportation Systems (SCETS) Tax on motor and diesel fuels is imposed pursuant to ss. 206.41(1)(f), and 206.87(1)(d), F.S., respectively.
- (4) The 2.2 cents of Other Fuel Taxes/Fees is comprised of the following revenue streams: \$0.02 per barrel Tax for Coastal Protection, pursuant to s. 206.9935(3), F.S.; and \$0.00125 per gallon Agricultural Inspection Fee, pursuant to s. 525.09, F.S.
- (5) The local taxes on motor fuel are imposed pursuant to s. 206.41(1)(d)-(e), F.S.
- (6) The diesel fuel tax column entitled "State Taxes" is comprised of 4 cents of excise tax imposed pursuant to s. 206.87(1)(a), F.S., and 9.3 cents of fuel sales tax imposed pursuant to s. 206.87(1)(e), F.S.
- (7) The local taxes on diesel fuel are imposed pursuant to s. 206.87(1)(b)-(c), F.S.

Compiled by the Florida Legislative Committee on Intergovernmental Relations (7/2000) based on data furnished by the Departments of Revenue and Transportation

TABLE 2

NINTH CENT FUEL TAX  
ESTIMATED GALLONS AND TAX BY FUEL TYPE  
LOCAL GOVERNMENT FISCAL YEAR 2000-01

COUNTY	ESTIMATED MOTOR FUEL GALLONS (IN MILLIONS)	ESTIMATED NINTH CENT TAX ON MOTOR FUEL	ESTIMATED NINTH CENT TAX ON DIESEL FUEL	TOTAL ESTIMATED NINTH CENT TAX
ALACHUA	110.0	\$ 1,066,049	\$ 127,867	\$ 1,193,916
BAKER	14.2	137,291	25,842	163,133
BAY	89.5	867,261	117,466	984,727
BRADFORD	15.6	151,622	22,707	174,329
BREVARD	235.3	2,280,368	332,140	2,612,508
BROWARD	759.9	7,363,253	814,251	8,177,504
CALHOUN	6.0	58,051	22,931	80,982
CHARLOTTE	79.6	771,661	132,694	904,355
CITRUS	52.1	504,839	57,099	561,939
CLAY	64.6	625,628	77,326	702,954
COLLIER	112.2	1,086,901	127,057	1,213,958
COLUMBIA	45.6	441,515	146,025	587,540
DESOTO	9.5	91,834	30,844	122,678
DIXIE	6.5	63,168	23,900	87,068
DUVAL	389.0	3,769,714	1,037,613	4,807,327
ESCAMBIA	146.2	1,416,557	254,979	1,671,536
FLAGLER	21.9	212,108	37,914	250,021
FRANKLIN	6.4	62,160	13,092	75,252
GADSDEN	26.0	252,105	169,516	421,621
GILCHRIST	5.1	49,329	9,467	58,796
GLADES	4.0	38,916	17,010	55,925
GULF	5.5	53,192	12,317	65,510
HAMILTON	11.5	111,519	69,885	181,404
HARDEE	11.3	109,067	39,924	148,991
HENDRY	21.0	203,713	88,103	291,817
HERNANDO	60.9	590,325	128,106	718,431
HIGHLANDS	39.1	379,221	114,159	493,380
HILLSBOROUGH	536.5	5,198,476	991,710	6,190,186
HOLMES	9.3	90,496	35,797	126,293
INDIAN RIVER	57.2	553,895	172,593	726,488
JACKSON	33.3	322,651	225,626	548,277
JEFFERSON	10.1	97,724	54,504	152,228
LAFAYETTE	2.5	24,016	7,408	31,425
LAKE	100.5	974,157	155,752	1,129,909
LEE	217.6	2,108,491	316,753	2,425,245
LEON	114.4	1,108,588	134,052	1,242,640
LEVY	21.4	207,390	46,327	253,717
LIBERTY	3.5	34,036	20,489	54,525
MADISON	11.2	108,095	190,958	299,053
MANATEE	111.9	1,084,766	188,178	1,272,943
MARION	148.6	1,439,451	443,302	1,882,754
MARTIN	66.9	648,415	81,376	729,791

TABLE 2

**NINTH CENT FUEL TAX**  
**ESTIMATED GALLONS AND TAX BY FUEL TYPE**  
**LOCAL GOVERNMENT FISCAL YEAR 2000-01**

COUNTY	ESTIMATED MOTOR FUEL GALLONS (IN MILLIONS)	ESTIMATED NINTH CENT TAX ON MOTOR FUEL	ESTIMATED NINTH CENT TAX ON DIESEL FUEL	TOTAL ESTIMATED NINTH CENT TAX
MIAMI-DADE	915.1	8,867,110	1,309,122	10,176,232
MONROE	59.0	571,298	42,498	613,796
NASSAU	29.1	282,217	82,908	365,125
OKALOOSA	97.8	947,518	83,795	1,031,313
OKEECHOBEE	27.8	269,745	73,849	343,594
ORANGE	495.3	4,799,616	994,911	5,794,527
OSCEOLA	101.9	987,123	192,580	1,179,703
PALM BEACH	477.1	4,623,040	593,815	5,216,855
PASCO	144.8	1,403,196	235,585	1,638,781
PINELLAS	388.6	3,765,408	353,537	4,118,946
POLK	242.9	2,354,086	789,639	3,143,725
PUTNAM	36.0	349,046	70,158	419,204
SAINT JOHNS	68.4	662,811	217,792	880,603
SAINT LUCIE	98.5	954,072	212,938	1,167,010
SANTA ROSA	58.6	567,553	70,208	637,761
SARASOTA	151.1	1,463,688	165,990	1,629,678
SEMINOLE	162.2	1,571,686	149,169	1,720,855
SUMTER	38.7	374,883	313,390	688,273
SUWANNEE	23.0	222,971	77,788	300,760
TAYLOR	13.5	130,668	61,146	191,814
UNION	4.5	43,560	29,928	73,488
VOLUSIA	220.9	2,140,717	241,904	2,382,621
WAKULLA	11.5	111,107	22,833	133,940
WALTON	31.6	306,439	123,281	429,720
WASHINGTON	11.5	111,511	20,973	132,484
<b>Totals</b>	<b>7,691.2</b>	<b>\$ 74,639,086</b>	<b>\$ 13,644,798</b>	<b>\$ 88,283,884</b>

Source: Department of Revenue (7/2000)

Table 3

Local Option Fuel Tax Distributions  
Local Government Fiscal Year 2000-01 Estimates  
(Estimates Based on the 2000-01 Distribution Percentages)

Local Government	Distribution Percentage	Total Fuel Distribution Per .01 Tax	Motor Fuel Distribution Per .01 Tax
BOCC Alachua	52.150000	\$ 577,052	\$ 515,361
Alachua	1.875000	20,747	18,529
Archer	0.855000	9,461	8,449
Gainesville	38.635000	427,505	381,802
Hawthorne	1.060000	11,729	10,475
High Springs	2.110000	23,348	20,852
LaCrosse	0.295000	3,264	2,915
Micanopy	0.900000	9,959	8,894
Newberry	1.255000	13,887	12,402
Waldo	0.865000	9,571	8,548
	100.000000	1,106,523	988,227
BOCC Baker	86.000000	130,037	109,451
Glen Saint Mary	1.000000	1,512	1,273
Macclenny	13.000000	19,657	16,545
	100.000000	151,206	127,269
BOCC Bay	62.840000	573,486	505,203
Callaway	4.273000	38,996	34,353
Cedar Grove	0.428000	3,906	3,441
Lynn Haven	3.219000	29,377	25,879
Mexico Beach	1.522000	13,890	12,236
Panama City	19.391000	176,965	155,894
Panama City Beach	2.921000	26,657	23,483
Parker	2.243000	20,470	18,033
Springfield	3.163000	28,866	25,429
	100.000000	912,612	803,951
BOCC Bradford	70.000000	113,088	98,388
Brooker	1.800000	2,908	2,530
Hampton	1.900000	3,070	2,671
Lawtey	2.900000	4,685	4,076
Starke	23.400000	37,804	32,890
	100.000000	161,554	140,554
BOCC Brevard	48.896936	1,183,944	1,033,633
Cape Canaveral	1.323181	32,038	27,971
Cocoa	2.877832	69,681	60,835
Cocoa Beach	2.101340	50,880	44,420
Indialantic	0.593017	14,359	12,536
Indian Harbor Beach	1.578140	38,212	33,360
Malabar	0.609862	14,767	12,892
Melbourne	11.981879	290,118	253,285
Melbourne Beach	0.540931	13,098	11,435

## **NINTH-CENT FUEL TAX**

Sections 206.41(1)(d), 206.87(1)(b), and 336.021, *Florida Statutes*

### **Brief Overview**

The Ninth-Cent Fuel Tax is a tax of 1 cent on every net gallon of motor and diesel fuel sold within a county. The tax may be authorized by an ordinance adopted by an extraordinary vote of the governing body or voter approval in a county-wide referendum. Generally, the proceeds may be used to fund transportation expenditures.

### **Authorization to Levy**

Pursuant to ss. 206.41(1)(d) and 206.87(1)(b), F.S., any county in the state may levy a 1 cent per gallon tax on motor and diesel fuels sold in the county by extraordinary vote of the membership of its governing body or voter approval in a county-wide referendum. However, this tax is imposed on diesel fuel in every county as the result of statewide equalization.

The tax shall be imposed before July 1st to be effective January 1st of the following year. However, levies of the tax which were in effect on July 1, 1996, and which expire on August 31st of any year may be reimposed effective September 1st of the year of expiration.

### **Local Governments Eligible to Levy**

All counties are eligible to levy this tax on motor fuel. As of July 2000, 39 counties were imposing the tax.

### **Distribution of Proceeds**

The governing body of the county may, by joint agreement with one or more municipalities located within the county, provide for the authorized transportation purposes and the distribution of the tax proceeds within both the incorporated and unincorporated areas of the county. However, the county is not required to share the proceeds of the tax with municipalities. Regardless of whether or not the county is levying the tax on motor fuel, the county would still receive proceeds from the levy on diesel fuel.

### **Authorized Uses of Proceeds**

County and municipal governments may use the tax proceeds for transportation expenditures as defined in s. 336.025(7), F.S. Transportation expenditures are defined to include those expenditures by the local government from local or state-shared revenue sources, excluding expenditures of bond proceeds, for the following programs:

1. Public transportation operations and maintenance;
2. Roadway and right-of-way maintenance and equipment and structures used primarily for the storage and maintenance of such equipment;
3. Roadway and right-of-way drainage;
4. Street lighting;
5. Traffic signs, traffic engineering, signalization, and pavement markings;
6. Bridge maintenance and operation; and
7. Debt service and current expenditures for transportation capital projects in the foregoing program areas, including construction or reconstruction of roads.

Counties are also authorized to expend the revenues received in conjunction with the state or federal government for joint transportation projects.

### **Relevant Attorney General Opinions**

A number of Attorney General Opinions pertaining to this tax have been issued and are summarized below. This section is intended only to provide a summary of the opinion. Local government officials seeking more clarification should review the opinion in its entirety.

The statutory language pertaining to this tax has been amended numerous times since the tax was authorized. The reader should keep the date of the opinion in mind when reviewing its relevance to current law and any interpretations that have been articulated in Florida case law.

(Note: The references to gas tax or special fuel in the following summaries have not been changed from their original wording to reflect the current statutory language of fuel tax or diesel fuel. In addition, this tax was formerly referred to as the Voted Gas Tax.)

#### **AGO 82-54**

**May a county, in which voters approved, by referendum, the levy of the 1-cent gas tax to be pledged to retire a bond issue for construction and reconstruction of county roads, expend the revenues collected on a pay-as-you-go basis for these purposes rather than using them to fund the bond issue? And if so, what action must the county commission take to be permitted to use these funds for pay-as-you-go road construction projects?**

Language contained in the referendum question as it appeared on the ballot indicated that the voters contemplated immediate construction and reconstruction of a county-wide roadway system. In this case, Columbia County Ordinance No. 81-2 was adopted on May 26, 1981, to implement the bond issue funded by the 1-cent gas tax, pursuant to s. 336.021, F.S., which was approved by the voters on November 4, 1980. The ordinance recognized that the bond proceeds would pay the construction and reconstruction costs, and that such bonds would be payable from the ninth-cent gas tax.

According to this opinion issued July 22, 1982, the Board of County Commissioners may not use taxes collected pursuant to s. 336.021, F.S., following an associated county referendum required by this section which specified a bond issue to immediately fund construction and reconstruction of an adequate county-wide roadway system, to fund road construction projects on a pay-as-you-go basis.

**AGO 83-25**

**Is a school board eligible for a refund of taxes on motor and special fuels levied pursuant to s. 336.021, F.S.?**

The 1983 amendment to s. 336.021, F.S., authorized a voted 1-cent tax on every gallon of motor and special fuel sold within a county and taxed under the provisions of Chapter 206, *Florida Statutes*, if the tax was approved by the county commission and by referendum. This tax was to be collected in the same manner as all other gas taxes and was to be returned monthly to the county where collected.

Additionally, the 1983 amendment specifically provided that the refund provisions contained in ss. 206.625 and 206.64, F.S., should not be applicable to this tax. Historically, Florida courts have held that the taxes imposed on the use or sale of motor and special fuels are taxes on the privilege of selling such fuels, exacted from duly licensed dealers or distributors, and are not taxes on consumers.

According to this opinion issued on April 26, 1983, a district school board is not eligible for a refund of taxes on motor and special fuels levied pursuant to s. 336.021, F.S., since this category of tax is not a tax levied on consumers, but rather an excise tax paid by dealers and distributors and levied on the privilege of selling motor and special fuel. In addition, there is no statutory authority for such a refund to school districts.

**AGO 85-104**

**What is the proper disposition of excess funds in the Voted Gas Tax Trust Fund resulting from taxes remitted to the Florida Department of Revenue by licensed distributors of motor fuel or licensed dealers of special fuel for counties which have no voted gas tax?**

In the absence of an authoritative statute, taxes which were voluntarily albeit mistakenly paid cannot be voluntarily refunded. Therefore, such taxes should not be returned to those who erroneously remitted the payments absent a claim for refund in accordance with statutory procedures and time constraints, nor may such funds be distributed to those counties which have not imposed the voted gas tax since s. 336.021, F.S., only authorizes the distribution of the tax to the county where collected. In the absence of statutory direction for the disposition of excess funds in the Voted Gas Tax Trust Fund resulting from taxes erroneously remitted by licensed distributors of motor fuel or licensed dealers of special fuel for counties which have no voted gas tax, such monies should continue to remain in the Fund subject to appropriation by the Legislature in accordance with the fiscal laws governing the budgeting and appropriation of state funds, according to this opinion issued December 19, 1985.

**AGO 90-79**

**May local option gas tax revenues be used to fund specialized transportation for the transportation disadvantaged?**

The stated purpose of the ninth-cent gas tax is to promote a transportation system that would, among other things, enhance the service of a transit system. Expenditures for public transportation operations are included as an authorized transportation expenditure. While public transportation operations is not defined in Chapter 336, *Florida Statutes*, public transit is defined in Chapter 341, *Florida Statutes*, as:

"the transporting of people by conveyances, or systems of conveyances, traveling on land or water, local or regional in nature, and available for use by the public. Public transit systems may be either governmentally owned or privately owned. Public transit specifically includes those forms of transportation commonly known as 'paratransit'."

Paratransit is defined in Chapter 341, *Florida Statutes*, as:

"those elements of public transit which provide service between specific origins and destinations selected by the individual user with such service being provided at a time that is agreed upon by the user and the provider of the service. Paratransit service is provided by taxis, limousines, 'dial-a-ride' buses, and other demand-responsive operations that are characterized by their non-scheduled, non-fixed route nature."

By having paratransit services included within its scope, local public transit would appear to encompass services provided to the transportation disadvantaged. In addition, providing paratransit services in a public transit system would be part of a local government's public transportation operation. As a result, ninth-cent gas tax revenues may be used to fund a public transportation system which includes the provisions of paratransit or special transportation services for the transportation disadvantaged, according to this opinion issued on October 1, 1990.



**1 TO 6 CENTS LOCAL OPTION FUEL TAX**  
Sections 206.41(1)(e), 206.87(1)(c), and 336.025, *Florida Statutes*

**Brief Overview**

Local governments are authorized to levy a tax of 1 to 6 cents on every net gallon of motor fuel sold in a county. As the result of statewide equalization, this tax is imposed on diesel fuel in each county at the maximum rate of 6 cents per gallon. The tax on motor fuel may be authorized by an ordinance adopted by a majority vote of the governing body or voter approval in a county-wide referendum. Generally, the proceeds may be used to fund transportation expenditures.

**Authorization to Levy**

The tax shall be levied using either of the following procedures:

1. This tax may be levied by an ordinance adopted by a majority vote of the county's governing body or upon approval by referendum. Such ordinance shall be adopted in accordance with the requirements imposed under one of the following circumstances, whichever is applicable:

- a. Prior to June 1st, the county may establish by interlocal agreement with one or more of the municipalities located within the county, representing a majority of the population of the incorporated area, a distribution formula for dividing the entire proceeds of this fuel tax among the county government and all eligible municipalities within the county.

If no interlocal agreement exists, a new interlocal agreement may be established prior to June 1st. However, any interlocal agreement agreed to after the initial levy of the tax, extension of the tax, or change in the tax rate, shall under no circumstances materially or adversely affect the rights of holders of outstanding bonds which are backed by these taxes. The amounts distributed to the county government and each municipality shall not be reduced below the amount necessary for the payment of principal and interest and reserves for principal and interest as required under the covenants of any bond resolution outstanding on the date of establishment of the new interlocal agreement.

- b. If an interlocal agreement has not been executed, the county may, prior to June 10th, adopt a resolution of intent to levy this tax.
2. If no interlocal agreement or resolution is adopted pursuant to the procedures described above, then municipalities representing more than 50 percent of the county population may,

prior to June 20th, adopt uniform resolutions approving the tax, establishing the duration of the levy and the rate, and setting the date for a county-wide referendum on whether or not to levy the tax. A referendum shall be held in accordance with the provisions of such resolution and applicable state law, provided that the county shall bear the costs of such referendum. The tax shall be levied and collected county-wide on January 1st, following 30 days after voter approval.

If this tax is levied under the conditions of paragraphs 1b or 2 above, then the proceeds shall be distributed among the county and eligible municipalities based on the transportation expenditures of each of the immediately preceding five fiscal years.

This tax shall be levied before July 1st to be effective January 1st of the following year for a period not to exceed 30 years. However, levies of the tax which were in effect on July 1, 1996, and which expire on August 31st of any year may be reimposed effective September 1st of the year of expiration. Upon expiration, the tax may be relevelied provided that a redetermination of the method of distribution is made.

#### **Local Governments Eligible to Levy**

Counties and municipalities must meet the same eligibility requirements as specified for the Local Government Half-Cent Sales Tax Program and the County and Municipal Revenue Sharing Programs in order to receive proceeds from this tax. Any funds otherwise undistributed because of ineligibility shall be distributed to eligible governments within the county in same proportion as other local option fuel tax monies.

All counties are eligible to levy this tax on motor fuel. As of July 2000, all counties were levying the tax, and 62 of 67 counties were levying the maximum rate.

#### **Distribution of Proceeds**

The tax proceeds shall be distributed by the Department according to the distribution factors determined at the local level by interlocal agreement between the county and municipalities within the county's boundaries. If no interlocal agreement has been established, then the distribution shall be based on the transportation expenditures of each local government for the immediately preceding 5 fiscal years, as a proportion of the total of such expenditures for the county and all municipalities within the county. These proportions shall be recalculated every 10 years based on the transportation expenditures of the immediately preceding 5 years.

This recalculation shall under no circumstances materially or adversely affect the rights of holders of bonds outstanding on July 1, 1986, which are backed by the proceeds. The amounts distributed to the county government and each municipality shall not be reduced below the amount necessary for

the payment of principal and interest and reserves for principal and interest as required under the covenants of any bond resolution outstanding on the date of the recalculation.

If the interlocal agreement does not provide for automatic adjustments or periodic review of the distribution method by the local government entities, then the parties to the agreement shall review and hold public hearings on the terms of the agreement at least every two years. Additionally, any inland county with a population greater than 500,000 as of July 1, 1996, having an interlocal agreement with one or more of the incorporated areas within the county must utilize the population estimates of local government units as of April 1st of each year for dividing the proceeds. This 'inland county' provision applies only to Orange County.

Since the tax is imposed on diesel fuel at the maximum rate of 6 cents in all counties as the result of statewide equalization, each county receives the tax revenues associated with that levy regardless of whether or not the county is levying the tax on motor fuel.

### **Authorized Uses of Proceeds**

County and municipal governments shall utilize the tax proceeds only for transportation expenditures. Section 336.025(7), *Florida Statutes*, defines transportation expenditures to include those expenditures by the local government from local or state-shared revenue sources, excluding expenditures of bond proceeds, for the following programs:

1. Public transportation operations and maintenance;
2. Roadway and right-of-way maintenance and equipment and structures used primarily for the storage and maintenance of such equipment;
3. Roadway and right-of-way drainage;
4. Street lighting;
5. Traffic signs, traffic engineering, signalization, and pavement markings;
6. Bridge maintenance and operation; and
7. Debt service and current expenditures for transportation capital projects in the foregoing program areas, including construction or reconstruction of roads.

In addition, small counties (defined as having a total population of 50,000 or less on April 1, 1992) are authorized to use the proceeds to fund infrastructure projects, if such projects are consistent with the local government's approved comprehensive plan. If the approval or denial of the plan has not become final, such projects should be consistent with the plan last submitted to the state land planning agency. In addition, no more than an amount equal to the proceeds from 4 cents of this tax may be used by a small county for the express purpose of paying for a court-ordered refund of special assessments.

Except as provided for in s. 336.025(7), F.S., such funds received by small counties shall not be used for the operational expenses of any infrastructure. Such funds may be used for infrastructure projects only after the local government, prior to the fiscal year in which the funds are proposed to be used, or if pledged for bonded indebtedness, prior to the fiscal year in which the bonds will be issued, has held a duly noticed public hearing on the proposed use of the funds and adopted a resolution certifying that the local government has met all of the transportation needs identified in its approved comprehensive plan. If the approval or denial of the plan has not become final, the resolution should certify that the local government has met all transportation needs consistent with the plan last submitted to the state land planning agency.

Small counties shall not pledge the proceeds for bonded indebtedness for a period exceeding 10 years, with one exception. For the express purpose of using such proceeds in any fiscal year to pay a court-ordered refund of special assessments, the proceeds may be pledged for bonded indebtedness not exceeding 15 years.

For these small county purposes, infrastructure has the same meaning as provided in s. 212.055, F.S., which defines the term to mean any fixed capital expenditure or fixed capital costs associated with the construction, reconstruction, or improvement of public facilities which have a life expectancy of 5 or more years and any land acquisition, land improvement, design, and engineering costs related thereto. The term infrastructure also means a fire department vehicle, an emergency medical service vehicle, a sheriff's office vehicle, a police department vehicle, or any other vehicle, and such equipment necessary to outfit the vehicle for its official use or equipment that has a life expectancy of at least 5 years.

Local governments may use the services of the Division of Bond Finance of the State Board of Administration pursuant to the State Bond Act to issue any bonds through these provisions and may pledge the revenues from these local option fuel taxes to secure the payment of bonds. In no case may a jurisdiction issue these bonds more frequently than once a year. Counties and municipalities may join together for the issuance of these bonds.

### **Relevant Attorney General Opinions**

A number of Attorney General Opinions pertaining to this tax have been issued and are summarized below. This section is intended only to provide a summary of the opinion. Local government officials seeking more clarification should review the opinion in its entirety.

The statutory language pertaining to this tax has been amended numerous times since the tax was authorized. The reader should keep the date of the opinion in mind when reviewing its relevance to current law and any interpretations that have been articulated in Florida case law.

(Note: The references to gas tax or special fuel in the following summaries have not been changed from their original wording to reflect the current statutory language of fuel tax or diesel fuel.)

**AGO 90-79**

**May local option gas tax revenues be used to fund specialized transportation for the transportation disadvantaged?**

Counties and municipalities are authorized to use the proceeds of the 1 to 6 cents local option gas tax only for transportation expenditures. Expenditures for public transportation operations are included as an authorized transportation expenditure. While public transportation operations is not defined in Chapter 336, *Florida Statutes*, public transit is defined in Chapter 341, *Florida Statutes*, as:

"the transporting of people by conveyances, or systems of conveyances, traveling on land or water, local or regional in nature, and available for use by the public. Public transit systems may be either governmentally owned or privately owned. Public transit specifically includes those forms of transportation commonly known as 'paratransit'."

Paratransit is defined in Chapter 341, *Florida Statutes*, as:

"those elements of public transit which provide service between specific origins and destinations selected by the individual user with such service being provided at a time that is agreed upon by the user and the provider of the service. Paratransit service is provided by taxis, limousines, 'dial-a-ride' buses, and other demand-responsive operations that are characterized by their non-scheduled, non-fixed route nature."

By having paratransit services included within its scope, local public transit would appear to encompass services provided to the transportation disadvantaged. In addition, providing paratransit services in a public transit system would be part of a local government's public transportation operation. As a result, local option gas tax revenues may be used to fund a public transportation system which includes the provisions of paratransit or special transportation services for the transportation disadvantaged, according to this opinion issued on October 1, 1990.

**AGO 92-20**

**May a local government use the proceeds of the 1 to 6 cents local option gas tax to construct a garage and maintenance building for road and right-of-way maintenance equipment?**

Pursuant to s. 336.025(7), F.S., a county or municipality may use the proceeds of the local option gas

tax only for transportation expenditures. Prior to May 5, 1993, s. 336.025(7)(b), F.S., specified roadway and right-of-way maintenance and equipment as an authorized transportation expenditure. However, roadway and right-of-way maintenance and equipment was not defined. Therefore, it would seem that the statutes did not contemplate the use of the local option gas tax revenues for such incidental purposes as constructing garage and maintenance buildings to house such equipment, according to this opinion issued March 16, 1992.

*It should be noted that Chapters 93-164 and 93-206, Laws of Florida, amended the definition of transportation expenditures in s. 336.025(7)(b), F.S., to include the costs of structures used for the storage and maintenance of road equipment. As a result of these amendments, this opinion is no longer applicable.*

#### **AGO 93-12**

**Must a small county share the proceeds of the 1 to 6 cents local option gas tax, with eligible municipalities within the county, if the county is using the proceeds to fund infrastructure rather than transportation?**

Section 336.025(8), *Florida Statutes*, provides that counties, having a total population of 50,000 or less on April 1, 1992, may use the tax proceeds to fund infrastructure projects, if consistent with the county's comprehensive plan and only after the local government, prior to the fiscal year in which the funds will be used, has held a duly noticed public hearing and adopted a resolution certifying that the local government has met all of the transportation needs identified in its comprehensive plan. However, the statute does not indicate that a county using its gas tax proceeds for infrastructure purposes is entitled to all of the proceeds, to the exclusion of the municipalities eligible to receive distributions. Therefore, a county must distribute the proceeds to eligible municipalities within the county, regardless of whether the funds are used for transportation or infrastructure, according to this opinion issued on February 9, 1993.

#### **AGO 94-20**

**May a local government use the local option gas tax proceeds to repair and maintain runways at an airport?**

The statute limits the use of the local option gas tax revenues to transportation expenditures. While the local option gas tax revenues may be used for public transportation operations and maintenance, the term is not defined in the statute. However, the enumerated uses of the local option gas tax revenues relate to the county road system. Chapter 336, *Florida Statutes*, provides for a county road system as the responsibility of the county commission. Runways at a local airport do not fall within the definition of the county road system pursuant to s. 334.03(8), F.S., as incorporated by s. 336.01, F.S. In addition, aviation fuel is not subject to the local option gas tax. While arguably, a public

transportation system may include an airport, it would appear inconsistent to include runway repair and maintenance in the expenditures allowed by local option gas tax revenues when aviation fuel is excluded from the tax. Therefore, a local government may not use local option gas tax revenues for the repair and maintenance of runways at a local airport, according to this opinion issued on March 11, 1994.

**AGO 94-67**

**If the City of Port LaBelle is created by referendum, can the city receive local option gas tax revenue if it does not meet the requirements of Parts II and VI of Chapter 218, *Florida Statutes*?**

Current law states that any newly incorporated municipality, eligible for participation in the distribution of moneys under Parts II and VI of Chapter 218, *Florida Statutes*, and located in a county levying either local option gas tax, is entitled to receive a share of the tax revenues. Distribution of such revenues to a newly incorporated municipality shall begin in the first full fiscal year following incorporation. The only qualification for sharing in the local option gas tax proceeds is that the municipality be eligible to participate in the revenue-sharing programs. The enabling legislation, enacted by the 1994 Legislature as Chapter 94-480, *Laws of Florida*, states that "...the City of Port LaBelle shall be entitled to participate in the State of Florida Shared Revenue Programs and qualify as provided in Chapter 218, *Florida Statutes*, for all similar programs effective July 1, 1994." Therefore, the City of Port LaBelle, assuming it is created by referendum vote, may participate in the distribution of the local option gas tax, according to this opinion issued on August 12, 1994. (Note: The referendum, calling for the creation of the City of Port LaBelle, failed.)

**AGO 99-70**

**May the local option fuel tax revenues be used to pay for dredging canals that are maintained as part of the City of Cape Coral's road and right-of-way drainage program?**

Proceeds of the 1 to 6 cents local option fuel tax may be used only for those transportation expenditures authorized in s. 336.025(7), F.S. One of those authorized expenditures includes "roadway and right-of-way drainage." The city has determined that maintaining the canals is part of its road and right-of-way drainage program and that maintenance of the canals by removal of silt and other materials that may impede the flow of water is imperative to ensure proper road and right-of-way drainage. Therefore, such tax revenues may be used for the maintenance of canals by dredging and removal of silt and other materials that would impede the flow of water as part of the city's road and right-of-way drainage program. However, a determination that canal maintenance is necessary to ensure road and right-of-way drainage would not authorize the use of tax revenues for other canal-related projects, according to this opinion issued on November 9, 1999.

**AGO 2000-37**

**May the local option fuel tax revenues be used for sidewalk construction as a stand-alone project (that is, extending or constructing sidewalks without any accompanying road construction, reconstruction, or maintenance) or for tree trimming projects when the trees are not directly on or adjacent to roads or streets?**

The construction of sidewalks does not fall within the scope of authorized uses of the local option fuel tax revenues. Additionally, tree trimming projects that involve trees not directly on or adjacent to roads and streets would not be authorized as well, according to this opinion dated June 22, 2000.



**1 TO 5 CENTS LOCAL OPTION FUEL TAX**  
Sections 206.41(1)(e) and 336.025, *Florida Statutes*

**Brief Overview**

County governments are authorized to levy a tax of 1 to 5 cents upon every net gallon of motor fuel sold within a county. Diesel fuel is not subject to this tax. This tax shall be levied by an ordinance adopted by a majority plus one vote of the membership of the governing body or voter approval in a county-wide referendum. The tax proceeds may be used for transportation expenditures needed to meet the requirements of the capital improvements element of an adopted local government comprehensive plan.

**Authorization to Levy**

The tax may be levied by an ordinance adopted by a majority plus one vote of the county's governing body or upon approval by referendum. Such ordinance shall be adopted in accordance with the requirements imposed under one of the following circumstances:

1. This tax shall be levied before July 1st, to be effective January 1st of the following year. However, levies of the tax which were in effect on July 1, 1996, and which expire on August 31st of any year may be reimposed effective September 1st of the year of expiration.
2. The county may, prior to levy of the tax, establish by interlocal agreement with one or more of the municipalities located within the county, representing a majority of the population of the incorporated area, a distribution formula for dividing the entire proceeds of this fuel tax among the county government and all eligible municipalities within the county. If no interlocal agreement is adopted before the effective date of the tax, the tax revenues shall be distributed according to the transportation expenditures methodology described in detail in the section, *Distribution of Proceeds*.

If no interlocal agreement exists, a new agreement may be established prior to June 1st of any year. However, any interlocal agreement agreed to after the initial levy of the tax, or change in the tax rate, shall under no circumstances materially or adversely affect the rights of holders of outstanding bonds which are backed by these taxes. The amounts distributed to the each local government shall not be reduced below the amount necessary for the payment of principal and interest and reserves for principal and interest as required under the covenants of any bond resolution outstanding on the date of establishment of the new interlocal agreement.

### **Local Governments Eligible to Levy**

Counties and municipalities must meet the same eligibility requirements as specified for the Local Government Half-Cent Sales Tax Program and the County and Municipal Revenue Sharing Programs in order to receive proceeds from this tax. Any funds otherwise undistributed because of ineligibility shall be distributed to eligible governments within the county in same proportion as other local option fuel tax monies.

All counties are eligible to levy this tax. As of July 2000, 13 counties were levying the tax, and 8 of those 13 counties were levying the maximum rate.

### **Distribution of Proceeds**

The tax proceeds shall be distributed by the Department according to the distribution factors determined at the local level by interlocal agreement between the county and municipalities within the county's boundaries. If no interlocal agreement is established, then the distribution shall be based on the transportation expenditures of each local government for the immediately preceding 5 fiscal years, as a proportion of the total of such expenditures for the county and all municipalities within the county. These proportions shall be recalculated every 10 years based on the transportation expenditures of the immediately preceding 5 years.

This recalculation shall under no circumstances materially or adversely affect the rights of holders of bonds outstanding on July 1, 1986, which are backed by the proceeds. The amounts distributed to the county government and each municipality shall not be reduced below the amount necessary for the payment of principal and interest and reserves for principal and interest as required under the covenants of any bond resolution outstanding on the date of the recalculation.

If the interlocal agreement does not provide for automatic adjustments or periodic review of the distribution method by the local government entities, then the parties to the agreement shall review and hold public hearings on the terms of the agreement at least every two years.

### **Authorized Uses of Proceeds**

The tax proceeds must be used for only those transportation expenditures needed to meet the requirements of the capital improvements element of an adopted comprehensive plan. Expenditures for the construction of new roads, the reconstruction or resurfacing of existing paved roads, or the paving of existing graded roads when undertaken in part to relieve or mitigate existing or potential adverse environmental impacts, shall be deemed to increase capacity and such projects shall be included in the capital improvements element of an adopted comprehensive plan. Routine maintenance of roads is not considered an authorized expenditure.

Local governments may use the services of the Division of Bond Finance of the State Board of Administration pursuant to the State Bond Act to issue any bonds through these provisions and may pledge the revenues from these local option fuel taxes to secure the payment of bonds. In no case may a jurisdiction issue these bonds more frequently than once a year. Counties and municipalities may join together for the issuance of these bonds.

### **Relevant Attorney General Opinions**

A number of Attorney General Opinions pertaining to this tax have been issued and are summarized below. This section is intended only to provide a summary of the opinion. Local government officials seeking more clarification should review the opinion in its entirety.

The statutory language pertaining to this tax has been amended numerous times since the tax was authorized. The reader should keep the date of the opinion in mind when reviewing its relevance to current law and any interpretations that have been articulated in Florida case law.

(Note: The references to gas tax or special fuel in the following summaries have not been changed from their original wording to reflect the current statutory language of fuel tax or diesel fuel.)

#### **AGO 94-20**

##### **May a local government use the local option gas tax proceeds to repair and maintain runways at an airport?**

The statute limits the use of the local option gas tax revenues to transportation expenditures. While the local option gas tax revenues may be used for public transportation operations and maintenance, the term is not defined in the statute. However, the enumerated uses of the local option gas tax revenues relate to the county road system. Chapter 336, *Florida Statutes*, provides for a county road system as the responsibility of the county commission. Runways at a local airport do not fall within the definition of the county road system pursuant to s. 334.03(8), F.S., as incorporated by s. 336.01, F.S. In addition, aviation fuel is not subject to the local option gas tax. While arguably, a public transportation system may include an airport, it would appear inconsistent to include runway repair and maintenance in the expenditures allowed by local option gas tax revenues when aviation fuel is excluded from the tax. Therefore, a local government may not use local option gas tax revenues for the repair and maintenance of runways at a local airport, according to this opinion issued on March 11, 1994.

#### **AGO 94-67**

##### **If the City of Port LaBelle is created by referendum, can the city receive local option gas tax revenue if it does not meet the requirements of Parts II and VI of Chapter 218, *Florida***

***Statutes?***

Current law states that any newly incorporated municipality, eligible for participation in the distribution of moneys under Parts II and VI of Chapter 218, *Florida Statutes*, and located in a county levying either local option gas tax, is entitled to receive a share of the tax revenues. Distribution of such revenues to a newly incorporated municipality shall begin in the first full fiscal year following incorporation. The only qualification for sharing in the local option gas tax proceeds is that the municipality be eligible to participate in the revenue-sharing programs. The enabling legislation, enacted by the 1994 Legislature as Chapter 94-480, *Laws of Florida*, states that "...the City of Port LaBelle shall be entitled to participate in the State of Florida Shared Revenue Programs and qualify as provided in Chapter 218, *Florida Statutes*, for all similar programs effective July 1, 1994." Therefore, the City of Port LaBelle, assuming it is created by referendum vote, may participate in the distribution of the local option gas tax, according to this opinion issued on August 12, 1994. (Note: The referendum, calling for the creation of the City of Port LaBelle, failed.)

**AGO 97-25**

**May the proceeds of the 1 to 5 cents local option fuel tax be used for public transportation operations and maintenance expenditures or must such revenues be used only for capital improvements? Must the expenditures be specifically identified in the capital improvements element of the county's adopted comprehensive plan? May the county contract with a public transit authority to provide the transportation services enumerated in the capital improvements element of the county's comprehensive plan?**

According to this opinion issued May 5, 1997, the tax revenues may be used not only for the capital improvement of a public transportation facility but also for its operation and maintenance, conditioned on the fact that the capital improvements element of the county's comprehensive plan identifies the need for such a facility. The capital improvements element must identify the needed public transportation facility and the estimated facility's costs including operation and maintenance costs. In addition, the element must specify that funding shall come from the fuel tax revenues in order for such revenues to be used for that purpose. Finally, the county commission may contract with and provide funding to the public transit authority to implement the public transportation services referenced in the capital improvements element if the county commission determines that such funding serves a county or dual purpose.

# **F.S. 336.025**

↪ 336.025(1)(b)3. "County and municipal governments shall utilize moneys received pursuant to this paragraph only for transportation expenditures needed to meet the requirements of the capital improvements element of an adopted comprehensive plan. For purposes of this paragraph, expenditures for the construction



of new roads, or the reconstruction or resurfacing of existing paved roads, shall be deemed to increase capacity and such projects shall be included in the capital improvements element of an adopted comprehensive plan. Expenditures for purposes of this paragraph shall not include routine maintenance of roads.”







**Scenario One:**

**1 cent off the top goes to Transit  
Services**

**4 cents divided based on road  
mileage**



# **Transit Service Alternatives**

- ⇒ Current base funding from County: \$247,180.00
- ⇒ Route 75 funding from County: \$179,000.00
- ⇒ Route 35 funding from County: \$220,000.00
  
- ⇒ Total Annual Funding from County: \$646,180.00
- ⇒ Annual Revenue 1 cent: 1,250,000.00
- ⇒ Balance: \$ 603,820.00



# **Additional Transit Program**

- ⇒ Bus Replacement Program
  - 2 buses/year: **\$522,000.00**
- ⇒ Enhanced Headways on Routes 10 and 43
  - Route 10 – improve headway to 30-minute frequency till 11 pm: **\$174,000.00** plus one bus
  - Route 43 – improve headway to 30-minute frequency till 11 pm: **\$369,000.00** plus two buses



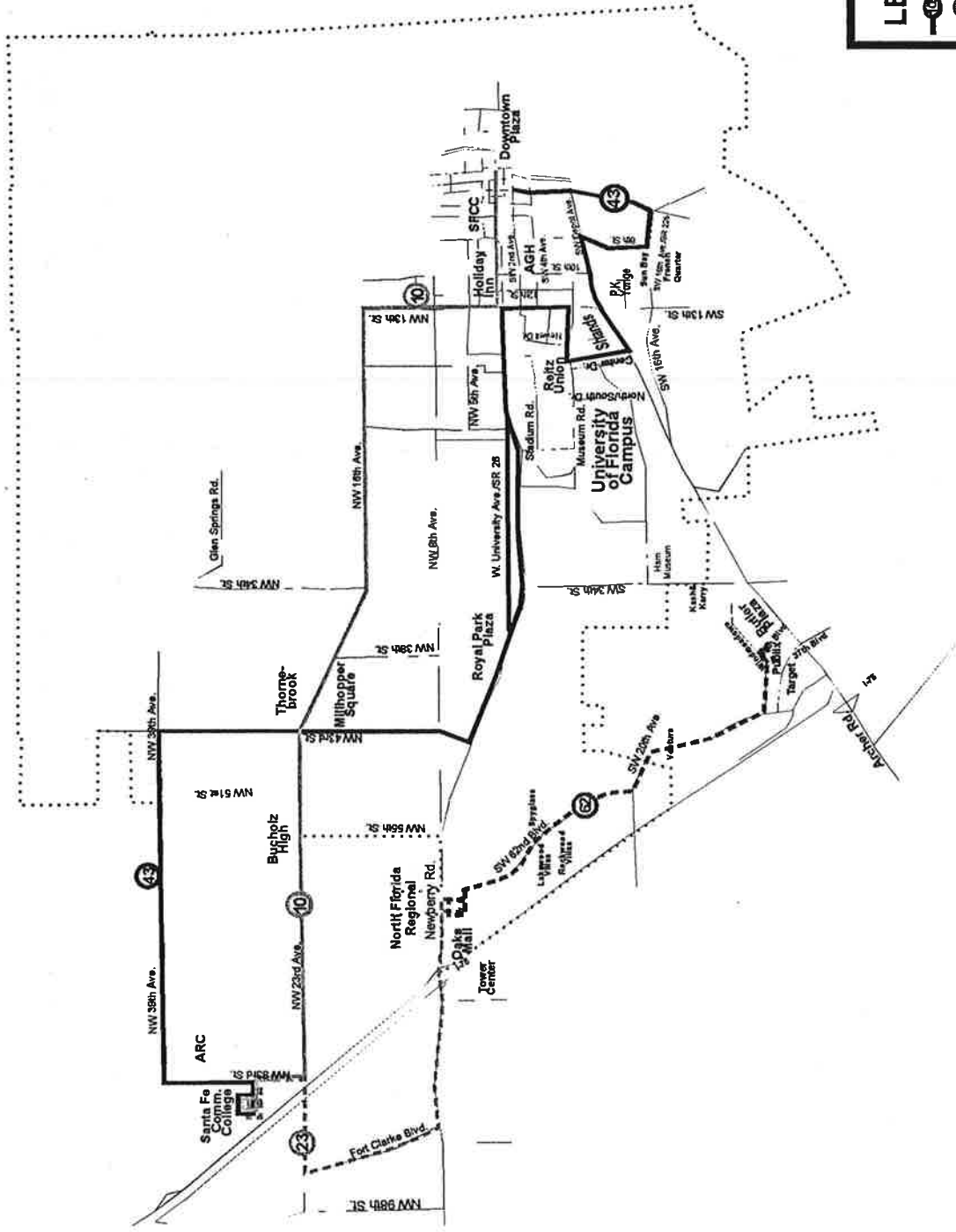
# Additional Transit Service

## ⇒ Potential New Routes

- Route 23 – SFCC to Oaks Mall via Ft. Clarke Blvd
  - Weekday Service from 6:30 am to 11:00 pm
  - 2 buses at 15-minute frequency
  - Yearly Operating Cost: **\$353,000.00**
- Route 62 – Oaks Mall to Butler Plaza via SW 43<sup>rd</sup> St
  - Weekday Service from 6:30 a.m. to 11:00 pm
  - 2 buses at 15-minute frequency
  - Yearly Operating Cost: **\$353,000.00**









## **ADA Service**

- ⇒ Expansion of route service will provide result in additional ADA Paratransit trips of approximately 3,500 per year. Estimated cost is \$35,000.00.



# Transportation Infrastructure

- ➔ Depot Avenue – reconstruction as an enhanced two lane facility – SW 13 Street to Williston Road
  - \$6 million
- ➔ NE 2<sup>nd</sup> Street – reconstruction as an enhanced two lane facility – NE 10 Avenue to 16<sup>th</sup> Avenue
  - \$1 million



# Transportation Infrastructure

⇒ S 2<sup>nd</sup> Avenue – streetscaping, from 13 Street to just east of S 3<sup>rd</sup> Street

□ \$300,000

⇒ SE 4<sup>th</sup> Street – reconstruction, from Depot Avenue to Williston Road

□ \$1,500,000





# Transportation Infrastructure

⇒ SW 6<sup>th</sup> Street – streetscaping, from SW 16 Avenue to SW 5 Avenue

□ \$250,000

⇒ SW 6<sup>th</sup> Street – reconstruction, from SW 5 Avenue to University Avenue

□ \$1 million

