

Attachment 'A'

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Florida Legislative Committee on Intergovernmental Relations

Issue Brief

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Utilization of Local Option Fuel Taxes by Florida Counties in Fiscal Year 2009-10

November 2009

I. Introduction

Local option fuel taxes are significant revenue sources to Florida's local governments and represent important funding mechanisms for the provision of local transportation infrastructure. The current utilization of existing taxing authority is of continuing interest to state lawmakers and local officials alike, particularly in the context of recurring discussions of growth management and local service provisions. This issue brief provides a review of existing taxing authority for local option fuel taxes available to Florida's county governments and offers estimates of realized and unrealized tax revenues for the local fiscal year ending September 30, 2010.

II. Current Taxing Authority

County governments are authorized to impose up to 12 cents of local option fuel taxes via three separate levies. Local option fuel tax impositions shall be levied before July 1st of each year to be effective January 1st of the following year.¹

A. Ninth-cent Fuel Tax ²

The Ninth-cent Fuel Tax is a tax of 1 cent on every net gallon of motor and diesel fuel sold within a county. Since January 1, 1994, this tax has been automatically imposed on diesel fuel in every county pursuant to a policy of statewide equalization of diesel fuel tax rates.³ The tax on motor fuel may be imposed pursuant to an ordinance adopted by an extraordinary vote of the county's governing body or voter approval in a

countywide referendum. Consequently, even if a county does not levy the tax on motor fuel, it still receives proceeds from the levy on diesel fuel.

The county's governing body may, by joint agreement with one or more of its respective municipalities, provide for the distribution of tax proceeds within both the incorporated and unincorporated areas of the county in order to pay only those transportation expenditures defined in s. 336.025(7), F.S., and summarized in the table below. However, the county is not required to share the tax proceeds with municipalities.

Transportation Expenditures Authorized by Section 336.025(7), Florida Statutes	
Paragraph	Authorized Expenditures
(a)	Public transportation operations and maintenance.
(b)	Roadway and right-of-way maintenance and equipment and structures used primarily for the storage and maintenance of such equipment.
(c)	Roadway and right-of-way drainage.
(d)	Street lighting.
(e)	Traffic signs, traffic engineering, signalization, and pavement markings.
(f)	Bridge maintenance and operation.
(g)	Debt service and current expenditures for transportation capital projects in the foregoing program areas, including construction or reconstruction of roads and sidewalks.

¹ See Sections 336.021(5), 336.025(1)(a)1. & (b)1., Florida Statutes.

² Sections 206.41(1)(d), 206.87(1)(b), & 336.021, Florida Statutes.

³ Chapter 90-351, Laws of Florida.

B. 1-6 Cents Local Option Fuel Tax ⁴

The 1-6 Cents Local Option Fuel Tax is a tax of 1 to 6 cents on every net gallon of motor and diesel fuel sold within a county. This tax has been automatically imposed on diesel fuel at the maximum rate of 6 cents in every county since January 1, 1993, pursuant to a policy of statewide equalization of diesel fuel tax rates.⁵ The tax on motor fuel may be imposed pursuant to an ordinance adopted by a majority vote of the county's governing body or voter approval in a countywide referendum. Therefore, even if a county does not levy the tax on motor fuel at all or at the maximum rate, it still receives proceeds from the full 6 cents levy on diesel fuel.

The tax proceeds shall be distributed according to the distribution factors determined at the local level by interlocal agreement between a county and its respective municipalities. 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 five 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 ten years based on the transportation expenditures of the immediately preceding five years. The tax proceeds shall be used for those transportation expenditures as defined in s. 336.025(7), F.S., and summarized in the table on the preceding page.

Pursuant to s. 336.025(8), F.S., the governing body of a county with a population of 50,000 or less on April 1, 1992, or the governing body of a municipality within such a county may use the tax proceeds in any fiscal year to fund infrastructure projects, if such projects are consistent with the local government's approved comprehensive plan or, if the approval or denial of the plan has not become final, consistent with the plan last submitted to the state land planning agency. Additionally, no more than an amount equal to the proceeds from 4 cents per gallon of the imposed tax may be used by such county for the express and limited purpose of paying for a court-ordered

refund of special assessments. Except as provided in subsection (7), such funds shall not be used for the operational expenses of any infrastructure.

Such funds may be used for infrastructure projects pursuant to s. 336.025(8), F.S., 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 has adopted a resolution certifying that the local government has met all of the transportation needs identified in its approved comprehensive plan or, if the approval or denial of the plan has not become final, consistent with the plan last submitted to the state land planning agency. The proceeds shall not be pledged for bonded indebtedness for a period exceeding 10 years, except that, for the express and limited 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 purposes of this subsection, "infrastructure" has the same meaning as provided in s. 212.055, F.S.

C. 1-5 Cents Local Option Fuel Tax ⁶

The 1-5 Cents Local Option Fuel Tax is a tax of 1 to 5 cents on every net gallon of motor fuel sold within a county. Diesel fuel is not subject to this tax. This tax may be levied by an ordinance adopted by a majority plus one vote of the county's governing body or voter approval in a countywide referendum.

The tax proceeds shall be distributed 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 five 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 ten years based on the

⁴ Sections 206.41(1)(e), 206.87(1)(c), & 336.025, Florida Statutes.

⁵ Chapter 90-351, Laws of Florida.

⁶ Sections 206.41(1)(e), & 336.025, Florida Statutes.

transportation expenditures of the immediately preceding five years.

The tax proceeds shall be used for transportation expenditures needed to meet the requirements of the capital improvements element of an adopted comprehensive plan or for expenditures needed to meet the immediate local transportation problems and for other transportation-related expenditures that are critical for building comprehensive roadway networks by local governments. Although public transportation and roadway maintenance is an authorized expenditure for the Ninth-cent and 1-6 Cents fuel taxes, routine maintenance of roads is not considered an authorized expenditure for the 1-5 Cents tax.

III. Utilization of Current Taxing Authority

All county governments are eligible to impose a local option fuel tax on motor fuel. As of November 1, 2009, all counties levy at least one of the three taxes as illustrated in the following table.

Number of County Governments Eligible to Levy and Levying Local Option Fuel Taxes on Motor Fuel		
Tax	# Eligible	# Levying
Ninth-cent	67	49
1-6 Cents	67	65 levy 6 cents. 2 levy 5 cents.
1-5 Cents	67	18 levy 5 cents. 1 levies 3 cents. 2 levy 2 cents.

As summarized below, Florida counties will realize \$755 million in local option fuel tax revenues during the 2009-10 fiscal year. Of the \$519 million statewide in 1-6 Cents Local Option Fuel Tax revenues to be realized during the fiscal year, \$366 million will be received by county governments and \$153 million will be received by municipal governments. Of the \$160 million statewide in 1-5 Cents Local Option Fuel Tax revenues to be realized during the fiscal year, \$111 million will be received by county governments and \$49.5 million will be received by municipal governments. Since counties levying the Ninth-cent Fuel Tax are not statutorily-required to share the proceeds with their

respective municipalities, the LCIR does not have data on the amount of tax revenue to be received by those municipalities located in counties imposing this tax.

Estimates of Realized and Unrealized Local Option Fuel Tax Revenues: Fiscal Year Ending September 30, 2010		
Tax	\$ Realized	\$ Unrealized
Ninth-cent	\$75.9 million	\$15.7 million
1-6 Cents	\$519 million	\$82,668
1-5 Cents	\$160 million	\$206 million
Total	\$755 million	\$222 million

Florida counties, not currently levying local option fuel taxes for which they are eligible to impose, will allow \$222 million statewide to go unrealized during this fiscal year. Of that total, \$206 million or 93 percent, is represented by the 1-5 Cents Local Option Fuel Tax.

A. Ninth-cent Fuel Tax

The table below summarizes the realized and unrealized revenues generated from the Ninth-cent Fuel Tax for those counties having total populations of 75,000 or less versus those counties having total populations greater than 75,000, based on the official 2009 countywide population estimates. This distinction is used here and throughout the remainder of this brief in order to contrast the taxing capacities of less populous, predominantly rural counties versus more populous, predominantly urban counties.

Ninth-cent Fuel Tax: Utilization in Local Fiscal Year 2009-10				
Pop.	Realized		Unrealized	
	#	\$	#	\$
75,000 or less	30	\$4.8 million	11	\$1.3 million
> 75,000	37	\$71.1 million	7	\$14.4 million

Florida counties will realize \$75.9 million in Ninth-cent Fuel Tax revenues. Eighteen counties will allow \$15.7 million in tax revenues to go unrealized during the fiscal year. Of that total, \$14.4 million or 92 percent, is represented by seven counties having total populations greater than 75,000.

B. 1-6 Cents Local Option Fuel Tax

Florida counties will realize \$519 million in 1-6 Cents Local Option Fuel Tax revenues. Only Franklin and Union counties, both having total populations of 75,000 or less, do not levy the tax on motor fuel at the maximum rate of 6 cents and consequently will have unrealized tax revenues totaling \$82,668.

1-6 Cents Local Option Fuel Tax: Utilization in Local Fiscal Year 2009-10				
Pop.	Realized		Unrealized	
	#	\$	#	\$
75,000 or less	30	\$34.4 million	2	\$82,668
> 75,000	37	\$484 million	0	\$0

C. 1-5 Cents Local Option Fuel Tax

Florida counties will realize \$160 million in 1-5 Cents Local Option Fuel Tax revenues. Forty-nine counties will allow \$206 million in tax revenues to go unrealized during the fiscal year. Of that total, \$190 million or 92 percent, is represented by 23 counties having total populations greater than 75,000.

1-5 Cents Local Option Fuel Tax: Utilization in Local Fiscal Year 2009-10				
Pop.	Realized		Unrealized	
	#	\$	#	\$
75,000 or less	5	\$3.6 million	26	\$16.1 million
> 75,000	16	\$156 million	23	\$190 million

To facilitate comparisons among individual counties, Table 1 on pages 5-6 lists the current motor fuel tax rates and estimates of total realized tax revenues for each individual county for the local fiscal year ending September 30, 2010. Table 2 on pages 7-8 lists the unrealized motor fuel tax rates and estimates of total unrealized tax revenues.

IV. Conclusion

As of November 1, 2009, all counties levy at least one of the three local option fuel taxes on motor fuel. Forty-nine of 67 counties levy the Ninth-cent

Fuel Tax; 65 of 67 counties levy the 1-6 Cents Local Option Fuel Tax at the maximum rate of 6 cents; and 18 of 67 counties levy the 1-5 Cents Local Option Fuel Tax at the maximum rate of 5 cents.

A number of reasons may help explain why some county governments have chosen not to maximize all possible local option fuel tax levies. County commissioners may be reluctant to increase the overall cost of fuel to motorists given current gasoline prices. For some county commissioners, the increased tax revenues may not be worth the potential political fallout from a commission-authorized fuel tax increase. Another possible explanation for the differences in tax utilization rates among counties may be the varying methods by which these taxes can be authorized.

While current law provides for voter approval in a countywide referendum as an optional authorization method for all three taxes, each tax requires a different standard for approval by vote of the county's governing body. An extraordinary vote is required for the Ninth-cent Fuel Tax; a majority vote is required for the 1-6 Cents Local Option Fuel Tax; and a majority plus one vote is required for the 1-5 Cents Local Option Fuel Tax.

During the 2009-10 fiscal year, Florida counties will realize \$755 million in local option fuel tax revenues, which represents 77 percent of the \$977 million statewide that would be realized if every county were levying each separate local option fuel tax at its maximum possible rate. Counties not currently levying local option fuel taxes for which they are eligible to impose will allow \$222 million statewide, or 23 percent of the total possible, to go unrealized during this fiscal year.

Table 1
Current Motor Fuel Tax Rates and Estimates of Total Realized Tax Revenues in LFY 2009-10

County	Ninth-cent Fuel Tax		1-6 Cents Fuel Tax		1-5 Cents Fuel Tax		Total – All Taxes	
	Rate	\$	Rate	\$	Rate	\$	Rate	\$
Alachua	1	\$1,213,691	6	\$6,885,214	5	\$5,062,463	12	\$13,161,368
Baker	1	171,929	6	974,574	0	0	7	1,146,503
Bay	1	945,068	6	5,364,480	0	0	7	6,309,548
Bradford	0	26,312	6	983,832	0	0	6	1,010,144
Brevard	0	331,967	6	14,515,559	0	0	6	14,847,526
Broward	1	8,349,225	6	47,228,366	5	35,650,164	12	91,227,754
Calhoun	0	24,091	6	350,676	0	0	6	374,767
Charlotte	1	866,632	6	4,911,729	5	3,469,055	12	9,247,416
Citrus	1	524,040	6	2,976,658	5	2,180,708	12	5,681,406
Clay	1	767,906	6	4,354,635	0	0	7	5,122,541
Collier	1	1,337,038	6	7,572,895	5	5,744,712	12	14,654,644
Columbia	1	564,559	6	3,196,176	0	0	7	3,760,735
De Soto	1	137,776	6	784,089	5	491,535	12	1,413,400
Dixie	0	27,606	6	467,182	0	0	6	494,788
Duval	0	1,067,137	6	29,726,737	0	0	6	30,793,874
Escambia	1	1,464,603	6	8,311,731	0	0	7	9,776,335
Flagler	1	367,446	6	2,082,669	0	0	7	2,450,115
Franklin	0	13,072	5	331,586	0	0	5	344,658
Gadsden	0	254,771	6	3,036,436	0	0	6	3,320,487
Gilchrist	1	79,258	6	448,771	0	0	7	528,030
Glades	1	45,992	6	264,813	0	0	7	310,805
Gulf	1	58,265	6	334,702	0	0	7	392,967
Hamilton	0	75,310	6	868,404	0	0	6	943,714
Hardee	1	164,836	6	935,720	5	598,914	12	1,699,470
Hendry	1	229,885	6	1,309,904	2	265,399	9	1,805,188
Hernando	1	829,142	6	4,703,470	2	1,330,444	9	6,863,057
Highlands	1	487,076	6	2,764,298	5	1,759,310	12	5,010,684
Hillsborough	1	6,332,995	6	35,857,853	0	0	7	42,190,848
Holmes	1	108,635	6	616,502	0	0	7	725,137
Indian River	0	176,563	6	4,249,226	0	0	6	4,425,789
Jackson	1	522,332	6	2,953,494	0	0	7	3,475,827
Jefferson	1	128,966	6	730,746	0	0	7	859,711
Lafayette	0	9,159	6	169,352	0	0	6	178,511
Lake	1	1,368,555	6	7,757,636	0	0	7	9,126,192
Lee	1	2,942,704	6	16,679,361	5	12,313,530	12	31,935,596
Leon	1	1,271,344	6	7,195,808	0	0	7	8,467,152
Levy	0	45,412	6	1,178,251	0	0	6	1,223,663
Liberty	1	50,508	6	287,126	0	0	7	337,634
Madison	0	193,544	6	1,542,054	0	0	6	1,735,597
Manatee	1	1,431,195	6	8,104,354	5	5,840,250	12	15,375,799
Marion	1	2,142,874	6	12,135,828	0	0	7	14,278,701
Martin	1	759,987	6	4,305,169	5	3,229,289	12	8,294,445
Miami-Dade	1	10,427,464	6	59,092,889	3	25,901,336	10	95,421,689
Monroe	0	43,366	6	2,949,092	0	0	6	2,992,458
Nassau	1	383,802	6	2,169,668	0	0	7	2,553,470
Okaloosa	1	933,305	6	5,281,688	0	0	7	6,214,993
Okeechobee	1	334,876	6	1,901,083	5	1,221,380	12	3,457,339
Orange	0	1,016,362	6	36,795,173	0	0	6	37,811,535
Osceola	1	1,675,694	6	9,500,596	0	0	7	11,176,290

Table 1 continued
Current Motor Fuel Tax Rates and Estimates of Total Realized Tax Revenues in LFY 2009-10

County	Ninth-cent Fuel Tax		1-6 Cents Fuel Tax		1-5 Cents Fuel Tax		Total – All Taxes	
	Rate	\$	Rate	\$	Rate	\$	Rate	\$
Palm Beach	1	5,389,926	6	30,539,506	5	22,676,163	12	58,605,595
Pasco	1	2,023,788	6	11,457,934	0	0	7	13,481,722
Pinellas	1	3,572,737	6	20,228,142	0	0	7	23,800,879
Polk	1	2,960,372	6	16,804,065	5	10,390,518	12	30,154,955
Putnam	0	69,123	6	2,056,643	0	0	6	2,125,766
Saint Johns	0	212,750	6	6,075,662	0	0	6	6,288,411
Saint Lucie	1	1,314,748	6	7,447,071	5	5,275,894	12	14,037,713
Santa Rosa	0	89,343	6	3,845,448	0	0	6	3,934,790
Sarasota	1	1,540,895	6	8,719,526	5	6,530,242	12	16,790,663
Seminole	1	2,037,290	6	11,541,860	0	0	7	13,579,149
Sumter	1	725,426	6	4,105,370	0	0	7	4,830,796
Suwannee	1	288,162	6	1,632,840	5	987,074	12	2,908,076
Taylor	0	65,427	6	987,998	0	0	6	1,053,425
Union	1	63,693	5	330,741	0	0	6	394,435
Volusia	1	2,164,390	6	12,265,232	5	9,094,351	12	23,523,973
Wakulla	1	114,739	6	652,293	0	0	7	767,032
Walton	1	404,592	6	2,298,785	0	0	7	2,703,377
Washington	1	113,906	6	646,731	0	0	7	760,637
Statewide		\$75,904,860		\$518,774,105		\$160,012,731		\$754,691,695

**Table 2
Unrealized Motor Tax Rates and Estimates of Total Unrealized Tax Revenues in LFY 2009-10**

County	Ninth-cent Fuel Tax		1-6 Cents Fuel Tax		1-5 Cents Fuel Tax		Total - All Taxes	
	Rate	\$	Rate	\$	Rate	\$	Rate	\$
Alachua	0	\$0	0	\$0	0	\$0	0	\$0
Baker	0	0	0	0	5	666,444	5	666,444
Bay	0	0	0	0	5	3,876,139	5	3,876,139
Bradford	1	146,435	0	0	5	688,654	6	835,089
Brevard	1	2,231,647	0	0	5	10,494,957	6	12,726,604
Broward	0	0	0	0	0	0	0	0
Calhoun	1	37,747	0	0	5	177,518	6	215,266
Charlotte	0	0	0	0	0	0	0	0
Citrus	0	0	0	0	0	0	0	0
Clay	0	0	0	0	5	3,241,208	5	3,241,208
Collier	0	0	0	0	0	0	0	0
Columbia	0	0	0	0	5	1,964,874	5	1,964,874
De Soto	0	0	0	0	0	0	0	0
Dixie	1	53,719	0	0	5	252,630	6	306,349
Duval	1	4,173,353	0	0	5	19,626,387	6	23,799,740
Escambia	0	0	0	0	5	5,625,777	5	5,625,777
Flagler	0	0	0	0	5	1,531,383	5	1,531,383
Franklin	1	54,358	1	51,126	5	255,632	7	361,116
Gadsden	1	254,771	0	0	5	1,198,133	6	1,452,904
Gilchrist	0	0	0	0	5	325,682	5	325,682
Glades	0	0	0	0	5	152,971	5	152,971
Gulf	0	0	0	0	5	218,863	5	218,863
Hamilton	1	78,090	0	0	5	367,243	6	445,333
Hardee	0	0	0	0	0	0	0	0
Hendry	0	0	0	0	3	398,098	3	398,098
Hernando	0	0	0	0	3	1,995,666	3	1,995,666
Highlands	0	0	0	0	0	0	0	0
Hillsborough	0	0	0	0	5	24,897,281	5	24,897,281
Holmes	0	0	0	0	5	342,077	5	342,077
Indian River	1	574,279	0	0	5	2,700,712	6	3,274,991
Jackson	0	0	0	0	5	1,400,073	5	1,400,073
Jefferson	0	0	0	0	5	363,467	5	363,467
Lafayette	1	20,165	0	0	5	94,830	6	114,994
Lake	0	0	0	0	5	5,718,565	5	5,718,565
Lee	0	0	0	0	0	0	0	0
Leon	0	0	0	0	5	5,345,210	5	5,345,210
Levy	1	162,092	0	0	5	762,285	6	924,377
Liberty	0	0	0	0	5	133,366	5	133,366
Madison	1	80,277	0	0	5	377,527	6	457,805
Manatee	0	0	0	0	0	0	0	0
Marion	0	0	0	0	5	7,915,391	5	7,915,391
Martin	0	0	0	0	0	0	0	0
Miami-Dade	0	0	0	0	2	17,267,557	2	17,267,557
Monroe	1	477,654	0	0	5	2,246,304	6	2,723,958
Nassau	0	0	0	0	5	1,421,713	5	1,421,713
Okaloosa	0	0	0	0	5	3,986,726	5	3,986,726
Okeechobee	0	0	0	0	0	0	0	0
Orange	1	5,483,754	0	0	5	25,788,923	6	31,272,677
Osceola	0	0	0	0	5	7,107,382	5	7,107,382

Table 2 continued								
Unrealized Motor Fuel Tax Rates and Estimates of Total Unrealized Tax Revenues in LFY 2009-10								
County	Ninth-cent Fuel Tax		1-6 Cents Fuel Tax		1-5 Cents Fuel Tax		Total – All Taxes	
	Rate	\$	Rate	\$	Rate	\$	Rate	\$
Palm Beach	0	0	0	0	0	0	0	0
Pasco	0	0	0	0	5	8,359,801	5	8,359,801
Pinellas	0	0	0	0	5	15,140,589	5	15,140,589
Polk	0	0	0	0	0	0	0	0
Putnam	1	293,440	0	0	5	1,379,987	6	1,673,428
Saint Johns	1	862,693	0	0	5	4,057,060	6	4,919,753
Saint Lucie	0	0	0	0	0	0	0	0
Santa Rosa	1	586,734	0	0	5	2,759,283	6	3,346,016
Sarasota	0	0	0	0	0	0	0	0
Seminole	0	0	0	0	5	8,753,784	5	8,753,784
Sumter	0	0	0	0	5	1,883,891	5	1,883,891
Suwannee	0	0	0	0	0	0	0	0
Taylor	1	108,018	0	0	5	507,984	6	616,002
Union	0	0	1	31,541	5	157,707	6	189,249
Volusia	0	0	0	0	0	0	0	0
Wakulla	0	0	0	0	5	436,346	5	436,346
Walton	0	0	0	0	5	1,611,353	5	1,611,353
Washington	0	0	0	0	5	447,841	5	447,841
Statewide		\$15,679,226		\$82,668		\$206,423,274		\$222,185,168