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DATE: April 5, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
FINANCE AND TAXATION
ANALYSIS**

BILL #: HB 689

RELATING TO: Local Option Fuel Tax/Homeless Assistance Programs

SPONSOR(S): Representative Gottlieb & others

COMPANION BILL(S): CS/SB 296 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) Community Affairs YEAS 4 NAYS 3
 - (2) FINANCE AND TAXATION
 - (3) Transportation & Economic Development Appropriations
 - (4)
 - (5)
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I. SUMMARY:

The bill provides that any charter county, with a population of more than 1.25 million as of January 1, 1998, may use 1 cent of the local option fuel taxes to fund homeless assistance programs.

The authorization to use fuel taxes for homeless assistance programs expires September 30, 2005.

The bill does not increase or decrease the amount of motor fuel taxes appropriated by the Legislature and has no fiscal impact on state agencies.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION¹:

Constitutional Fuel Tax

In 1941, the Florida Legislature proposed a constitutional amendment to levy a 2 cents per gallon tax on motor fuel, and this tax was approved by the voters in 1943. The original intent of the tax was to cover the costs of state road construction. With the adoption of the amendment, the State Board of Administration (SBA) comprised of the Governor, State Treasurer, and the State Comptroller was created and given the authority to manage, control, and supervise the proceeds.

In its current form, the tax is a state-shared revenue source for counties only. Applying the distribution formula in section 9(c)(4), article XII, of the Florida Constitution, the proceeds are allocated to counties to the extent necessary to comply with all obligations to or for the benefit of holders of bonds, revenue certificates, and tax anticipation certificates or any refunds secured by any portion of the tax proceeds. After complying with the necessary debt service obligations, a county's surplus funds are distributed to its governing body. The tax is collected by the Department of Revenue and is transferred monthly to the SBA for distribution to counties. The funds must be used for the acquisition, construction, and maintenance of roads.

County Fuel Taxes

Section 206.41(1)(b), Florida Statutes, authorizes the levy of a motor fuel tax at the rate of 1 cent per net gallon. The legislative intent of this tax, as stated in subsection 206.60(5), F.S., is to reduce a county's reliance on ad valorem taxes. The funds received from this tax can be used by counties for transportation-related expenses, including the reduction of bond indebtedness incurred for transportation purposes.

On a monthly basis, the Department of Revenue determines the amount of the allocation based on the same distribution factor used to distribute constitutional fuel tax proceeds.

Local Option Fuel Taxes

Counties are authorized by section 206.41(1)(e), Florida Statutes, to levy up to 11 cents per gallon of local option gas tax. For special fuels (diesel), the rate has been statutorily equalized statewide at 6 cents per gallon pursuant to 206.87(1)(c). The proceeds of the tax are distributed by the Department of Revenue back to the counties and eligible municipalities based on interlocal agreement or statutory formula. The 11 cents of gas tax may be levied and used as follows:

1. Pursuant to paragraph 336.025(1)(a), F.S., counties are authorized to levy up to 6 cents per gallon of local option gas taxes by adoption of a county ordinance with a simple majority vote for the following transportation expenditures:
 - Public transportation operations and maintenance;
 - Roadway and right-of-way maintenance and equipment, and related structures;
 - Roadway and right-of-way drainage;
 - Street lighting;
 - Traffic signs, engineering, signalization, and pavement markings;
 - Bridge maintenance and operation, and;
 - Debt service and expenditures for transportation capital projects including road construction and reconstruction.

In counties with a population of 50,000 or less on April 1, 1992, the proceeds from this 6 cents of local option gas tax may be used for a local government's non-transportation

¹The information in this Section is taken from *The Local Government Financial Information Handbook, September 1998*, published by the Legislative Committee on Intergovernmental Relations in conjunction with the Florida Department of Revenue. Specific distribution amounts to each county for each of the fuel taxes described can be found in the *Handbook*.

infrastructure projects if: (a) the non-transportation project is consistent with the local government's comprehensive plan; and (b) the local government certifies that all transportation needs identified in its comprehensive plan have been met. These revenues may be pledged for bonded indebtedness to finance non-transportation infrastructure projects so long as the revenues are not pledged for a period exceeding 10 years.

2. Pursuant to paragraph 336.025(1)(b), F.S., counties are authorized to levy up to 5 additional cents per gallon of local option gas taxes by adoption of a county ordinance with a majority plus one vote or by referendum. *Unlike the local option tax authorized by section 336.025(1)(a), authorized expenditures of this tax are limited to transportation expenditures needed to meet the requirements of the capital improvements element of an adopted local government comprehensive plan.*
3. Pursuant to paragraph 336.021(1)(a), F.S. counties may levy a 1 cent tax on each net gallon of motor and diesel fuels sold within the county's jurisdiction. The ninth-cent fuel tax may be levied by either an extraordinary vote of the membership of the county's governing body or subject to voter approval in a county-wide referendum. The ninth-cent fuel tax on diesel fuel is mandatory. The proceeds must be used to pay the costs and expenses of establishing, operating, and maintaining a transportation system and related facilities as well as the cost of acquisition, construction, reconstruction, and maintenance of roads and streets. The authorized uses of the ninth-cent fuel tax appear to overlap somewhat with the authorized uses of the first 6 cents of local option fuel taxes transportation expenditures as defined in section 336.025(7), Florida Statutes. The Department of Revenue administers the tax and has the authority to promulgate rules as may be necessary for proper enforcement. The tax collected by the Department is transferred to the Ninth-Cent Fuel Tax Trust Fund.

Counties are not required to share the revenue received with municipalities, however, a number of counties share the revenues with their respective municipalities pursuant to negotiated interlocal agreements.

B. EFFECT OF PROPOSED CHANGES:

The bill amends section 336.025, Florida Statutes, by redesignating present subsection (9) as subsection (10), and a new subsection (9) is created. This section authorizes counties to levy this tax and use it to address the needs of homeless people. The proceeds of the tax fund homeless assistance programs that are consistent with the local government's comprehensive plan.

The bill authorizes charter counties with populations of more than 1.25 million as of January 1, 1999, to use 1 cent per gallon from the 5 cents authorized in this paragraph of legally restricted local option fuel taxes to fund homeless assistance programs. As a condition, the eligible county must meet its transportation needs as identified in its 5-year transportation capital improvement program within the county's comprehensive plan. The bill requires the governing body of the county to adopt a resolution certifying that the county is meeting its transportation needs as identified in its 5-year transportation capital improvement program within the county's comprehensive plan. A certified copy of the Resolution must be submitted to the Department of Revenue and Secretary of Community Affairs.

Broward county and Dade county are the only counties which are eligible to participate under the bill.

The bill allows eligible counties to enter into interlocal agreements with municipalities that represent a majority of the incorporated area population to exclude the distribution of proceeds derived from the 1 cent tax used for countywide homeless assistance programs.

The bill defines "homeless assistance program" as a program that involves the construction, renovation, rehabilitation, and operation of emergency shelters, homeless assistance centers, or other directly related facilities which provide assistance within an established continuum of care to homeless persons.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

- (1) any authority to make rules or adjudicate disputes?

No.

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

The bill requires eligible counties who levy the 1 cent local option fuel tax for homeless assistance programs to use the money for homeless assistance programs rather than transportation expenditures. It appears that qualified counties choosing to use the 1 cent local option fuel tax proceeds may create, rehabilitate, and operate emergency shelters, homeless assistance centers and other facilities.

In order to use the tax proceeds for homeless assistance programs, eligible counties are obligated to spend funds from other sources for homeless programs in an amount equal to the amount it expended in the year the county makes the election. The county is required to set up a segregated account for the tax proceeds prior to the implementation of this section.

The bill requires the governing body of the county to adopt a resolution certifying that the county is meeting its transportation needs as identified in its 5-year transportation capital improvement program within the county's comprehensive plan. A certified copy must be submitted to the Department of Revenue and Secretary of Community Affairs.

- (3) any entitlement to a government service or benefit?

Homeless persons may be entitled to services from eligible counties choosing to use the 1 cent motor fuel tax proceeds.

b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

- (2) what is the cost of such responsibility at the new level/agency?

N/A

- (3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

The bill has the potential of increasing the local option fuel tax by 1 cent per gallon in Dade and Broward county. Currently, Dade county levies 3 cents of the 5 cents authorized by section 336.025(1)(b), and Broward county levies 4 cents of the authorized 5 cents. The counties could levy the additional 1 cent per gallon or utilize one cent of the current gas tax levied for homeless assistance programs.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Section 336.025, Florida Statutes

E. SECTION-BY-SECTION ANALYSIS:

Section 1:

- Amends section 336.025, Florida Statutes, to allow charter counties that have populations of more than 1.25 million and have levied taxes authorized in subsection (1)(b) as of January 1, 1999, to use 1 cent from the 5 cents authorized in subsection (1)(b) for homeless assistance programs. These funds are to be used to fund homeless assistance programs within an established continuum of care within the county as long as the eligible county has met its transportation needs as identified in its 5-year transportation capital improvement program within the county's comprehensive plan;
- Requires the governing body of the county to adopt a resolution certifying that the county is meeting its transportation needs as identified in its 5-year transportation capital improvement program within the county's comprehensive plan. A certified copy of the Resolution must be submitted to the Department of Revenue and Secretary of Community Affairs.
- Allows the exclusion of the 1 cent per gallon proceeds levied for countywide homeless assistance programs from the distribution formula provided in this section if municipalities representing a majority of the incorporated areas are in agreement.
- Requires eligible counties to spend funds from other sources for homeless assistance programs in an amount equal to the amount of tax proceeds being used in the fiscal year in which the county makes the election. The county is required to set up a segregated account for the tax proceeds prior to the implementation of this section.
- Defines "homeless assistance program."
- Provides for expiration date of September 30, 2005.

Section 2: Provides for effective date of October 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

It is estimated that the 1 cent per gallon local option gas tax generates \$7.9 million in Dade County and \$6.47 million in Broward County for homeless assistance programs.²

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

The cost of the bill may be an additional 1 cent per gallon motor fuel tax on purchases in Dade and Broward counties. [See Fiscal Comments below]

2. Direct Private Sector Benefits:

Homeless persons, in eligible counties choosing to use the 1 cent motor fuel proceeds for homeless assistance programs, benefit from this legislation.

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

²The estimate of revenue is taken from *The Local Government Financial Information Handbook, September 1998*, published by the Legislative Committee on Intergovernmental Relations in conjunction with the Florida Department of Revenue.

D. FISCAL COMMENTS:

A distinction needs to be drawn between whether the county will levy an additional 1 cent per gallon tax or will redesignate 1 cent per gallon from its current levy. If the levy is an additional tax, the levy will generate increased revenue. If it is a redesignation, the designation will take money currently designated for transportation purposes and allocate it for homeless assistance programs. This impacts money that municipalities receive under interlocal distribution agreements since the redesignation decreases the money that municipalities can receive. This new tax versus redesignation is an issue for Broward and Dade counties since each county has the option to either levy an additional 1 cent per gallon local option fuel tax or to redesignate 1 cent from its currently levy. The bill does not address the issue of new tax or redesignation as the bill's language only states that the county may use 1 cent of the tax that it levied pursuant to section 336.025(1)(b). It does not restrict an eligible county to the tax it is currently levying. However, an increase of this tax requires the adoption of a county ordinance with a majority plus one vote or by referendum.

This bill does not increase or decrease the amount of motor fuel taxes appropriated by the Legislature and has no fiscal impact on state agencies. However, the bill has an impact on the use of motor fuel taxes by local governments by providing an exception to the general law provisions which authorize local governments to use fuel taxes only for transportation expenditures. Such an exception may set a precedent for other local government exemptions to general law for the use of fuel taxes.

Another impact of the bill is that eligible counties choosing to use the 1 cent per gallon local option fuel tax proceeds for homeless services will also be able to use the funds as leverage for additional funds for homeless services in their county. This is because the eligible county is required to at least match the tax proceeds from other county funds from other sources in an amount equal to the amount it expended in the fiscal year in which the county makes the election.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority of municipalities and counties to raise revenues, and the bill is therefore exempt from the provisions of Article VII, Section 18(b), Florida Constitution.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill will not reduce the amount of the local Government Half Cent Sales Tax shared with municipalities and counties, and it does not reduce the percentage of a state tax shared with municipalities and counties. Therefore, Article VII, Section 18(b), Florida Constitution does not apply.

V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

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