The Florida Senate

Interim Project Report 2003-117 *January 2003*

Committee on Comprehensive Planning, Local and Military Affairs Senator James E. "Jim" King, Jr., President

REVIEW TO DETERMINE THE ADEQUACY OF CURRENT FUNDING AND IMPLEMENTATION MECHANISMS FOR GROWTH MANAGEMENT INFRASTRUCTURE

SUMMARY

The amount of money needed for future investment in Florida's infrastructure is a matter of some debate, and various estimates have been developed. However, adequate, functioning infrastructure is essential for both growth and debt servicing capacity. This report examines various local options for funding infrastructure. The goal of this report is to provide committee members with options to address local government infrastructure needs.

BACKGROUND

Over the past few decades, the state has authorized new revenue options to counties and municipalities to provide the infrastructure necessary to support their population growth.[1] However, many of these local governments report that these options are inadequate.

The Legislative Committee on Intergovernmental Relations (LCIR) recently completed a study of current local government revenue sources for infrastructure, patterns of infrastructure spending, and options for addressing local infrastructure needs.[2] The report discusses:

- The historical context and background information on local infrastructure funding;
- Expenditure patterns of Florida local governments relating to local infrastructure spending;
- The role of local debt to fund infrastructure;
- The role of federal and state governments' expenditures for local infrastructure;
- The revenue sources available to Florida local governments;
- The methods used in other states for funding local infrastructure; and
- Policy options for funding local infrastructure that were brought before the LCIR by staff.

It is these policy options that are reviewed in this report.

METHODOLOGY

In compiling this report, committee staff reviewed the LCIR's *Local Infrastructure Funding Options*, interviewed staff of the LCIR , the Florida League of Cities, and the Florida Association of Counties.

FINDINGS

The LCIR report identified a number of potential options for addressing local infrastructure needs. These include, in the following general categories:

- ***Non-Revenue Policy Options****;*
- ***Local Revenue Policy Options****;*
- ***State Revenue Sources****;*
- ***State Water Revenue Sources***; and
- ***State Transportation Revenue Sources***.

Non-Revenue Policy Options

The following are a number of policy options that, while not requiring additional state revenue or authorizing new revenue generating authority for local governments, would address local infrastructure funding needs. These recommendations include:

- The Legislature could develop a list of local infrastructure deficits and future infrastructure needs and their priority. This list could also:

[1] See TABLE 1 on page 7

[2] Much of this report is taken directly from the LCIR's "Local Infrastructure Funding Options", June, 2002.

- Define local infrastructure to include, at a minimum, the types of projects contained in the capital improvement element of the local governments comprehensive plans;
- Develop criteria necessary to distinguish between infrastructure deficits and future infrastructure needs from merely desirable infrastructure; and
- Develop a methodology to estimate revenues necessary to fund the current deficit and future needs. [3]

- The state could establish a policy for distributing state revenues for local infrastructure projects to maximize the benefit of limited state resources. These guidelines should clearly articulate the:
  - Revenues appropriate for funding local infrastructure;
  - Unit of government appropriate to assign functional responsibility for local infrastructure; and
  - Circumstances under which state revenue streams should assist in funding local infrastructure.

- The state could prioritize state financial assistance to local governments for infrastructure in the following ways:
  - Provide financial assistance for local infrastructure based on local taxing effort and minimal remaining taxing capacity;
  - Direct state funds for local infrastructure in areas designated as preferred development areas to provide for efficient infrastructure development and maximize benefits of infrastructure dollars; and
  - Revise the distribution formulae in the three major State Shared Revenue programs (The Local Government Half-cent Sales Tax Program, the County Revenue Sharing Program, and the Municipal Revenue Sharing Program) to reflect current functional responsibilities and financial need. This would require extensive study of whether these functional responsibilities have shifted and the capacity of local governments to respond with adequate funding.

- For water infrastructure, the state could use existing programs to fund water projects, but rank proposed projects consistent with state policy. The LCIR recommended that this funding could be through current programs administered by the Florida Department of Environmental Protection (DEP), or through a review process established by Executive Order #99-288.[4]

- The state could establish a policy for distributing state revenues for local transportation infrastructure projects, and direct state financial assistance to those counties that have levied two of the following:
  - All local option fuel taxes at the maximum rate, Transportation impact fees, and
  - The Local Government Infrastructure Surtax and Small County Surtax.

- To support local planning efforts, the state could provide financial support or incentives to local governments that participate in joint planning activities and share facilities.

- To address current local-level revenue options, the state could:
  - Examine the distribution formulae for local option sales taxes and local option fuel taxes, and determine if each should be modified to reflect a shift in government responsibilities or costs associated with service delivery; and
  - Encourage or require full or true cost accounting-based service charges for services, assessments, and impact fees.[5]

In 2001, the Florida Legislature appropriated $500,000 to the Florida Department of Environmental Protection "to facilitate the development of a uniform fiscal impact analysis model to assist local governments to evaluate the cost of infrastructure to support development."[6] The Governor's Office contracted with Hank Fishkind and Associates, Inc., to develop this model.

[3] Chapter 2002-387, s. 904, L.O.F., currently requires local governments within counties with a population of 100,000 or greater to inventory their service delivery agreements and identify deficits or duplication in the provision of services, and to identify any deficits or duplication in the provision of services within its jurisdiction, whether capital or operational.

[4] This Executive Order created the Florida Water Advisory Panel to recommend to the Legislature a list of surface water restoration projects and a list of wastewater projects for funding consideration.

[5] See the first entry under section 1.

[6] Ch. 2001-229, s. 7, L.O.F.

The Governor's Office appointed a "working group" to advise the contractor in the development of the model. Members include representatives from state agencies (Department of Community Affairs, Department of Transportation, Department of Environmental Protection, and the Executive Office of the Governor), local government, a non-profit environmental group, and the development community. The model was tested in the Fall of 2002 by seven pilot communities: City of Hollywood, City of Orlando, City of Panama City Beach, Orange County, Palm Beach County, Sarasota County, and Sumter County.

On December 10, 2002, the work group discussed utility of the model and implementing issues, to include:

- Methods the State could use to implement use of the model by local governments;
- Whether use of the model should be required for certain levels of projects;
- Technical support and maintenance of the model;
- The role of the model in local government decision-making; and
- Possible incentives to encourage use of the model.

Fishkind and Associates, Inc., must provide a report on the utility of the model and any recommendations to the Department of Environmental Protection by early 2003.

- The state could review the functional responsibilities of the state, local general-purpose, and special-purpose governments, the costs necessary to carry-out those responsibilities, and current revenue generating capacity authorized to each of the different levels of government for executing their respective responsibilities. One outcome of the study would be to generate any necessary recommendations for reassignment of functional responsibilities among local governments or between local and state governments to better align functional responsibility with revenue sources capable of generating revenues sufficient for funding assigned responsibilities.

Local Revenue Policy Options

The following are a number of policy options that would address local infrastructure funding needs:

- The Legislature could increase the cap on the Local Infrastructure Surtax from 1 to 2 percent, subject to referendum approval. If all counties levied this additional 1 percent, it could generate an estimated $2.1 billion.[7]

- The Legislature could amend s. 212.055, F.S., to allow the Local Government Infrastructure Surtax and School Capital Outlay Surtax to be imposed by a 2/3 vote of the respective governing boards, rather than by referendum approval. Use of tax proceeds could be limited to infrastructure located within the urban service area as identified in the capital improvements element of the comprehensive plan, or as identified in the school district's educational facilities plan. Additional restrictions could include:
  - requiring the district school board and local governments where the school district is located could be required to adopt an interlocal agreement (as required by s. 163.3177(6)(h), F.S., and 163.31777, F.S.), and the public educational facilities element required by s. 163.31776, F.S.;
  - requiring the district school board to adopt a district educational facilities plan pursuant to s. 1013.35, F.S.; and
  - requiring the school district's use of surtax proceeds for new construction not to exceed the cost-per-student criteria established for the School Infrastructure Thrift (SIT) program in s. 1013.42, F.S.

- The Legislature could authorize any municipal government to hold referendum on the levy of the local government infrastructure surtax within the boundaries of the municipal jurisdiction. Currently, s. 212.055(2), F.S., authorizes one or more municipalities that collectively represent a majority of the county's population to initiate the surtax through the adoption of uniform resolutions calling for a countywide referendum. Otherwise, the referendum is initiated by resolution of the county government. Staff is unaware of any instances in which municipal governments have triggered a countywide referendum. Representatives from the Department of Revenue report that such taxes

[7] This is based on projections for FY 2001-2, as reported in the LCIR's "Local Government Financial Information Handbook," April 2002, p. 204.

levied at the sub-county level create unique challenges in administration and in compliance by local dealers. In addition, it would be advisable to ensure that any such levies have uniform compliance dates.

- The Legislature could eliminate the $5,000 cap on local option sales surtaxes. Currently, s. 212.054(2), F.S., caps the sales amount subject to local option sales surtaxes at $5,000 per item. It is estimated that if the cap were removed, an additional $373 million would be generated for local governments from a 1 percent levy in FY 2002-03.[8]

- The Legislature could remove or modify current expenditure restrictions on local option revenues and other revenue streams, to expand expenditures for operations and maintenance related to infrastructure. Such revenue streams would include the Local Government Infrastructure Surtax and Small County Surtax; Tourist Development Taxes; and Local Option Fuel Taxes

- The Legislature could increase the maximum rate for the County Local Option Motor Fuel Tax[9] from 5 to 10 cents. Proceeds from the tax may only be used to meet the requirements of the capital improvements element of an adopted comprehensive plan. While all counties are eligible, 15 counties currently levy this tax, 11 of which levy at the maximum rate.[10]

- The Legislature could authorize local option fuel taxes to be annually indexed to the consumer price index, as is the state's fuel sales tax. This state tax is levied at 6 percent on the retail sales of motor and diesel fuels. The tax is levied by applying the 6 percent rate to the legislative initially established price of $1.148 per gallon. On January 1 of each year, this established price is adjusted by the percentage change in the average of the consumer price index (CPI) with the caveat that it cannot fall below 6.9 cents per gallon. Allowing local option taxes to be indexed would enable revenues generated from these taxes to keep pace with inflation as measured by the CPI. During times of high inflation, fuel taxes would increase, as would the cost of fuel to consumers. Conversely, periods of recession would result in reduced tax rates and, thus revenues for local governments unless a minimum tax rate is established similar to the minimum rate established for the state's fuel sales tax.

- The Legislature could amend s. 215.20(4)(m), F.S., to eliminate current 7.3 percent surcharge on 1-6 Cent Local Option Fuel Tax that is currently deposited to general revenue. The surcharge could be phased out starting with a reduction to 3.5 in 2003 and complete elimination in 2004. Information provided by the Florida Department of Transportation indicate that elimination of this surcharge would generate up to $50 million more in local option fuel tax revenues in FY 2000-01 for participating local governments.[11] In 2000, the Legislature amended s. 215.211(3), F.S., calling for the phase out of the 7.3 percent service charge. In 2005 the surcharge to general revenue is to be reduced to 3.5 percent and in 2006, eliminated completely with these monies redirected to the County Incentive Grant Program and the Small County Outreach Program. Unless s. 215.211(3), F.S., is also amended, any reduction or elimination of the 7.3 percent surcharge will result in only a temporary redistribution of these monies back to local governments.

- The Legislature could authorize counties, school districts and municipalities to, within their respective jurisdictions, levy an interim improvement surcharge on improvements to real property which were not substantially completed before January 1 of the preceding year, and consequently not on the tax roll, but which were substantially completed before January 1 of the current year. The surcharge may be computed by multiplying the taxable value of the improvement by the ad valorem millage rate levied by the county, school district, or municipality, as appropriate, in the previous year and by a time factor. If all counties, school districts, and municipalities levied the surcharge, they could raise an estimated $232 million in FY 2002/3.

[8] 2002 Florida Tax Handbook, p.157.
[9] Sections 336..025(1)(b), F.S., and 206.41(1)(e), F.S.
[10] 2002 Florida Tax Handbook, p.162.
[11] The LCIR's *Local Infrastructure Funding Options*, p. 8-8.

- The Legislature could authorize county governments to levy a Local Option Documentary Stamp Tax. The state's Documentary Stamp Tax is comprised of a tax on deeds and other documents related to real property at the rate of 70 cents per $100 and a tax on corporate shares, certificates of indebtedness, promissory notes, wage assignments and retail charge account agreements at the rate of 35 cents per $100. In 1983, the Legislature authorized Miami-Dade County to levy a discretionary surtax on deeds of up to 45 cents for each $100 except for deeds on single-family residence. The value of the state's one cent levy per $100 dollars on deeds and other documents related to realty is $11.1 million and the value of a similar levy on corporate shares, bonds, certificates of indebtedness, promissory notes, wage assignments and retail charge account agreements is approximately $15 million.[12]

- The Legislature could modify Small County Surtax requirements to permit bonding without referenda. Currently, local governments authorized to levy the Small County Surtax may use the proceeds to service bonded indebtedness only if approved by referendum. As of January 1, 2003, 20 of the 31 small counties levy the Local Government Infrastructure Surtax at 1 percent.[13] Only two small counties (Franklin and Gulf) do not levy either the Local Government Infrastructure Tax or the Small County Surtax.

- The Legislature could authorize local governments to jointly issue debt through an interlocal agreement in order to enable the development of regional capital facilities. Currently, provisions within s. 163.01(7)(c), F.S., prohibit such a joint venture. The extent to which this prohibition is an obstacle to development or redevelopment of local infrastructure is unknown. However, amending the law to authorize local governments to jointly issue debt may improve intergovernmental coordination among local governments and generate additional benefits associated with the development provision of adequate local infrastructure.

- The Legislature could expand local government bonding capacity by allowing up to 50 percent of the revenues in excess of the guaranteed entitlement for municipalities and the first and second guaranteed entitlement for counties from the revenue sharing trust funds (in s. 218.215, F.S.) to be pledged for the payment of principal or interest on bonds, tax anticipation certificates, or any other form of indebtedness used to finance public infrastructure (as enumerated in s. 163.3180, F.S.) within the designated urban service area on the local government's future land use map (adopted pursuant to s. 163.3177, F.S.) The additional bonding authority would allow approximately 10 times the current amount in bonding capacity. Conceptually, the guaranteed amounts represent fixed amount of monies and as such have not kept pace with inflation. In addition, with annual increases in growth portions of the funds, the guaranteed distributions have declined as a percentage of total revenue sharing funds.

  It is important to note that increasing the bonding capacity beyond current guaranteed amounts may set a defacto guaranteed level. In essence, the state may incur a moral obligation to maintain funding levels equal to the amount revenues are bonded.

State Revenue Sources

- The Legislature could eliminate current sales tax exemptions in chapter 212, F.S. Florida's sales and use tax is a 6 percent levy on retail sales of most tangible personal property, admissions, transient lodging, commercial rentals, and motor vehicles. Chapter 212, F.S., grants more than 300 exemptions to the state sales tax. Local governments are negatively impacted from such exemptions in two ways. First, by loss of revenues received as a portion of total state collections. Transactions exempted from state sales tax are also exempted from local option sales surtaxes. Local governments would have received an estimated $2.2 billion more in FY 2001-02 from annual distribution of sales tax revenue collected by the state if all exemptions were eliminated.[14] In addition, local governments

[12] 2002 Florida Tax Handbook, p. 50.
[13] LCIR and DOR compilations, November, 2002.
[14] See the estimate for state impact on p. 117, 2002 Florida Tax Handbook, multiplied by 9.653 percent.

would realize increased collections from local option sales surtaxes from this expanded tax base.

The state could dedicate specific state revenue sources to fund local infrastructure.

- The Legislature could designate proceeds from the Intangible "C" Tax for local infrastructure projects. The Intangibles "C" Tax is comprised of two mills imposed on mortgages and other obligations secured by liens on Florida realty, including bonds. It is estimated that $232 million will be generated from this tax in FY 2002-03.[15]

- The Legislature could increase the Documentary Stamp Tax through a Real Estate Transfer Fee to generate funds for local infrastructure. The Real Estate Transfer Fee is essentially a documentary stamp tax on real estate title recordation. The current state documentary stamp tax on deeds and other documents related to realty is levied at a rate of 70 cents per $100 (except in Miami-Dade County). It was estimated that a Real Estate Transfer Fee levied statewide in FY 2001-02 would generate an estimated $11 million for every one-cent per $100 consideration.[16]

- The Legislature could increase the existing Documentary Stamp Tax base and dedicate additional collections for local infrastructure. The Documentary Stamp Tax is comprised of a tax on deeds and other documents related to real property at the rate of 70 cents per $100 and a tax on corporate shares, certificates of indebtedness, promissory notes, wage assignments and retail charge account agreements at the rate of 35 cents per $100. The value of the state's one-cent levy per $100 dollars on deeds and other documents related to reality is $11.1 million and the value of a similar levy on corporate shares, bonds, certificates of indebtedness, promissory notes, wage assignments and retail charge account agreements is approximately $15 million.[17]

State Water Revenue Sources

The state should consider alternative funding mechanisms for water infrastructure for those local governments with demonstrated financial need. Representatives of local governments and staff with the Florida DEP claim that certain local governments with water infrastructure needs are unable to use the department's loan programs because of difficulty in raising the revenues necessary to repay the loans.[18] Federal law requires each state to deposit a 20% match in its State Revolving Fund in order to secure its allotted federal capitalization grant.

The match plus the federal grant plus repayments on previous loans plus interest on the fund plus any bond proceeds equals the total amount available to the state for loans in any given year. Florida has appropriated its match, generally from General Revenues, every year since 1989. Local governments are not required to come up with "match money" for the loans they receive. They must, however, repay the loans and provide for other appropriate security (e.g., reserves, an agreement to raise rates, an agreement to impose liens in event of non-payment).

State Transportation Revenue Sources

The Legislature could increase the statewide tax on motor fuels to fund transportation needs and designate a minimum of 25 percent of the proceeds for local transportation infrastructure projects. Currently, the state levies 13.6 cents per gallon as state taxes on motor fuels, up to 5.3 cents per gallon for the State Comprehensive Enhance Transportation System (SCETS), and other fuel taxes and fees at a rate of 2.2 cents per gallon. Four cents are shared with local governments: 2 cents county constitutional gas tax, 1 cent county tax, and 1 cent municipal gas tax. The value of one cent of the state motor fuel tax is $93.3 million in FY 2002-03.[19] The amount that 25 percent of this fuel tax revenue would provide for local governments is estimated at approximately $23.3 million for each 1-cent tax per gallon. Such an increase would also assist in funding unmet need in the state highway system.

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[15] 2002 Florida Tax Handbook, p. 75.
[16] 2002 Florida Tax Handbook, p. 195.
[17] 2002 Florida Tax Handbook, p. 50.
[18] The LCIR's *Local Infrastructure Funding Options*, p. 8-7.
[19] 2002 Florida Tax Handbook, p. 89.

Local Option Sales Tax Rates in Florida's Counties Effective January 1, 2003

Boxed areas indicate those counties eligible to impose the tax.

Combined Rate Cannot Exceed 1 % (Local Gov't Infrastructure Surtax through Voter-Approved Indigent Care Surtax)

	County	Charter County Transit System Surtax (up to 1%)	Local Gov't Infrastructure Surtax (0.5 or 1%)	Small County Surtax (0.5 or 1%)	Indigent Care and Trauma Center Surtax (up to 0.5 %)	County Public Hospital Surtax (0.5 %)	Voter-Approved Indigent Care Surtax (up to 0.5 or 1%)	School Capital Outlay Surtax (up to 0.5%)	Maximum Potential % Levy	Total % Levy	No Additional County Levy Capacity	No Additional School Levy Capacity
1	Alachua								2.0	0.0		
2	Baker			1					1.5	1.0	X	
3	Bay		0.5					0.5	1.5	1.0		X
4	Bradford			1					1.5	1.0	X	
5	Brevard								1.5	0.0		
6	Broward								2.5	0.0		
7	Calhoun			1					1.5	1.0	X	
8	Charlotte		1						1.5	1.0	X	
9	Citrus								1.5	0.0		
10	Clay		1						1.5	1.0	X	
11	Collier								1.5	0.0		
12	Columbia			1					1.5	1.0	X	
13	Desoto			1					1.5	1.0	X	
14	Dixie		1						1.5	1.0	X	
15	Duval	0.5	0.5						2.5	1.0		
16	Escambia		1					0.5	1.5	1.5	X	X
17	Flagler		0.5					0.5	1.5	1.0		X
18	Franklin								1.5	0.0		
19	Gadsden			1					1.5	1.0	X	
20	Gilchrist			1					1.5	1.0	X	
21	Glades		1						1.5	1.0	X	
22	Gulf							0.5	1.5	0.5		X
23	Hamilton		1						1.5	1.0	X	
24	Hardee			1					1.5	1.0	X	
25	Hendry			1					1.5	1.0	X	
26	Hernando							0.5	1.5	0.5		X
27	Highlands		1						1.5	1.0	X	
28	Hillsborough		0.5		0.5				2.5	1.0		
29	Holmes			1					1.5	1.0	X	
30	Indian River		1						1.5	1.0	X	
31	Jackson			1				0.5	1.5	1.5	X	X
32	Jefferson		1						1.5	1.0	X	
33	Lafayette		1						1.5	1.0	X	
34	Lake		1						1.5	1.0	X	
35	Lee								1.5	0.0		
36	Leon		1					0.5	2.0	1.5		X
37	Levy			1					1.5	1.0	X	
38	Liberty			1					1.5	1.0	X	
39	Madison		1						1.5	1.0	X	
40	Manatee							0.5	1.5	0.5		X
41	Marion		1						1.5	1.0	X	
42	Martin								1.5	0.0		
43	Miami-Dade	0.5				0.5			2.5	1.0		
44	Monroe		1					0.5	1.5	1.5	X	X
45	Nassau			1					1.5	1.0	X	
46	Okaloosa								1.5	0.0		
47	Okeechobee			1					1.5	1.0	X	
48	Orange							0.5	1.5	0.5		X
49	Osceola		1						1.5	1.0	X	
50	Palm Beach								1.5	0.0		
51	Pasco								1.5	0.0		
52	Pinellas		1						2.5	1.0		
53	Polk								1.5	0.0		
54	Putnam		1						1.5	1.0	X	
55	Saint Johns								1.5	0.0		
56	Saint Lucie							0.5	1.5	0.5		X
57	Santa Rosa							0.5	1.5	0.5		X
58	Sarasota		1						2.5	1.0		
59	Seminole		1						1.5	1.0	X	
60	Sumter			1					1.5	1.0	X	
61	Suwannee			1					1.5	1.0	X	
62	Taylor		1						1.5	1.0	X	
63	Union			1					1.5	1.0	X	
64	Volusia							0.5	2.5	0.5		X
65	Wakulla		1						1.5	1.0	X	
66	Walton			1					1.5	1.0	X	
67	Washington			1					1.5	1.0	X	
	# ELIGIBLE TO LEVY	7	67	31	5	1	61	67		67	39	13
	# LEVYING	2	26	20	1	1	0	13		54		

Notes:

(1) The Voter-Approved Indigent Care Surtax may be levied, by referendum, by counties with less than 800,000 residents, at a rate of 0.5 percent. However, eligible counties with publically supported medical schools (Alachua and Leon) may levy at a rate of 1 percent, and the combined rate cap for these counties (excluding schools) is increased from 1.5 to 2 percent if they levy the Indigent Care surtax at 1 %.

(2) Clay, Osceola, and Sarasota Counties share proceeds from the Infrastructure Surtax with their respective county school districts.

(3) Effective May 2008, the Local Government Infrastructure Surtax levy in Bay County will expire.

Compiled by the Florida Legislative Committee on Intergovernmental Relations (revised 11/21/2002) using data obtained from the Florida Department of Revenue.

RECOMMENDATIONS

This report reviews the local infrastructure funding options recently identified by LCIR and committee staff. The committee may want to consider legislation to implement any of the identified options.