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**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
COMMITTEE ON FISCAL POLICY AND RESOURCES
ANALYSIS**

BILL #: HB 383
RELATING TO: Federal aid/Local-Option Ninth Cent Fuel Tax
SPONSOR(S): Representative(s) Mahon
TIED BILL(S):

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

- (1) TRANSPORTATION YEAS 12 NAYS 0
- (2) COMMITTEE ON FISCAL POLICY AND RESOURCES
- (3) COUNCIL FOR READY INFRASTRUCTURE
- (4)
- (5)

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

HB 383 amends s. 339.12, F.S., to give preference points for state transportation grants to a county that meets the following three criteria:

- Has a population greater than 50,000 persons;
- Levies the local-option Ninth-Cent Fuel Tax pursuant to ss. 206.41(1)(d) and 206.87(1)(b), F.S.; and
- Dedicates 50 percent or more of its 1-percent local-option sales tax for improvements to the State Transportation System or to local projects that upgrade the State Transportation System.

Under the bill, counties that meet the above criteria shall receive preference points equaling 10 percent of the total points used by the state Department of Transportation (DOT) to calculate eligibility for any grant for which they apply.

Potentially, eight counties meet the three criteria, but since DOT does not award any of its local incentive grants based on a points ranking system, HB 383 would have no impact on DOT's grant programs.

The bill sponsor is proposing a strike-everything-after-the-enacting clause amendment that addresses some of the technical concerns in the bill.

HB 383 takes effect upon becoming a law (**summary continued on page 2**).

(NOTE: On February 13, 2002, the House Transportation Committee adopted one strike-all amendment to HB 383 that significantly changes the eligibility criteria for counties seeking preference for state transportation grants. The committee then reported the bill as favorable, with a traveling amendment. See "VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES" below for details.)

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Transportation grants for local governments

DOT funds a number of grant programs that address specific local needs. A synopsis of the major programs follows.

Pursuant to s. 339.2817, F.S., the **County Incentive Grant Program (CIGP)** provides grants to counties to improve a road or other transportation facility that is either located on the State Highway System or which relieves traffic congestion on the State Highway System. Among the criteria considered by each DOT district office when evaluating the grant applications are:

- the extent to which the project will encourage, enhance, or create economic benefits;
- the likelihood that assistance would enable the project to proceed at an earlier date than the project could otherwise proceed;
- the extent to which assistance would foster innovative public-private partnerships and attract private debt or equity investment;
- the extent to which the project uses new technologies, including intelligent transportation systems, which enhance the efficiency of the project;
- the extent to which the project helps to maintain or protect the environment; and
- the extent to which the project includes transportation benefits for improving intermodalism and safety.

All counties are eligible to apply; municipalities submit their applications through their counties. Selected projects are ranked, and are included in the DOT Work Program, to the extent that revenues are appropriated. For projects on the Florida Intrastate Highway System, DOT provides 60 percent of project costs; for projects on the State Highway System, the DOT provides 50 percent of project costs; and for local projects intended to relieve traffic congestion on the State Highway System, DOT provides 35 percent of project costs. The local match for rural areas that meet the criteria for being economically distressed, pursuant to s. 288.06561, F.S., can be waived.

The **Small County Outreach Program (SCOP)** assists small-county governments in resurfacing or reconstructing county roads or in constructing capacity or safety improvements to county roads. Pursuant to s. 339.2818, F.S., counties with a population of 150,000 or less, based on the most recent population estimate, are eligible for state matching of 75 percent of project costs.

SCOP criteria include: whether the county has attempted to keep county roads in satisfactory condition; the physical condition of the road as measured by DOT; whether a road is used as an evacuation route; whether a road has high levels of agricultural travel; whether a road is considered a major arterial route; and whether a project is considered a feeder road. Counties submit project applications to the appropriate DOT District Office, which ranks them.

The **Small County Resurfacing Program (SCRAP)** assists small-county governments in resurfacing and reconstructing county roads. The term "small county" means any county that has a population of 75,000 or less, according to U.S. Census data. Capacity improvements on county roads are not eligible for funding under this program.

Besides the population threshold, the other eligibility requirements are that the county either has enacted the maximum rate of the local-option fuel tax authorized by s. 336.025(1)(a), F.S. and has imposed an ad valorem millage rate of at least 8 mills, or the county has imposed an ad valorem millage rate of 10 mills.

The primary criterion is the physical condition of the road, as measured by DOT. The DOT district offices evaluate and rank the project applications from the counties within their jurisdictions.

For CIGP, SCOP and SCRAP grants, DOT tries to equitably distribute the available funds among the counties within the individual districts.

The **Transportation Outreach Program (TOP)** was created by passage of s. 339.137, F.S., in the 2000 legislative session. **TOP** is intended to fund transportation projects of a high priority that would enhance Florida's economic growth and competitiveness, preserve existing infrastructure, and improve travel choices to ensure mobility. Projects for this program are selected by a seven-member advisory council made up of representatives of private interests directly involved in transportation or tourism

TOP projects must be consistent with the "prevailing principles" of preserving the existing transportation infrastructure, enhancing economic growth and competitiveness, and improving the public's travel choices to ensure mobility. Other criteria, which can be waived under certain circumstances, are that the project:

- Is able to be made production-ready within five years;
- Is listed in an outer year of the DOT Five-Year Work Program, but could be made production ready and advanced to an earlier year;
- Is consistent with a current transportation system plan; and
- Is not inconsistent with a local government comprehensive plan, or if inconsistent, documentation must be provided of why the project should be undertaken.

Any local government, economic development organization, metropolitan planning organization, state agency, or public-private partnership can apply for a **TOP** grant. Each year prior to legislative session, the seven-member TOP Advisory Council selects a list of projects it recommends that the Legislature fund. The Legislature is not bound by the recommendation. As with most of the other local-government incentive programs, approved TOP projects are folded into the Five Year Work Program.

The current **TOP** statute does not direct the Advisory Council to select projects through a numeric ranking process, although the council used such a system informally during its FY 2002-2003 project-selection cycle.

The aforementioned CIGP, SCOP, SCRAP and TOP are considered local transportation incentive programs, because they serve local needs not addressed through the traditional DOT Five Year Work Program process. However, they are not the only grant programs within DOT that help finance local transportation projects. DOT also distributes at least 15 percent of its state funding each year as grants to airports, mass transit systems, railroads, and seaports to promote public transportation. Each of these public transportation grant programs has its own selection criteria – some of which are established by the federal government -- and projects are selected and funded through the work program process.

Local-option taxes

Within Florida Statutes, there are more than a dozen different types of local-option taxes or surtaxes. HB 383 refers to three of them.

The **Local Government Infrastructure Surtax**, pursuant to ss. 212.054 and 212.055(2), F.S., can be levied by any county, upon voter approval in a referendum, at a rate of either .5 percent or 1 percent on most transactions already subject to taxation. The proceeds can be shared between a county and its municipalities. The uses of the surtax revenues vary, depending on the county's population, whether it is within an area of critical state concern, or whether at least 40 percent of its real property is exempt from ad valorem taxation.

In general, a county whose population exceeds 50,000 persons must spend the money either to finance, plan and build infrastructure, including new schools; acquire land for public recreation, conservation, or protection of natural resources; or to finance the closure of government-owned landfills. Counties that meet some or all of the other criteria enjoy more flexibility in how they can spend the surtax proceeds.

Twenty-eight counties levy the infrastructure surtax. All levy 1 percent, except for Bay, Duval, and Hillsborough County, which levies .5 percent, according to the *2002 Florida Tax Handbook*.

Pursuant to ss. 212.054 and 212.055(1), F.S., the **Charter County Transit System Surtax** is designed to finance the development, construction, maintenance, and operation of a fixed-guideway train system or a bus system, and their support infrastructure. In addition, the proceeds can be remitted to an expressway or transportation authority for use on county roads and bridges, for a bus system, or to repay or refinance existing local road bonds, or as revenue pledge for a new bond issue. The surtax can be either .5 percent or 1 percent, and must be approved by a county referendum. Broward, Dade, Duval, Sarasota and Volusia are the only eligible counties, and only Duval has actually imposed the surtax, at a .5-percent rate.

Dubbed the "**Ninth Cent Fuel Tax**" (a throwback to when the state's fuel excise taxes totaled 8 cents per gallon) this tax was authorized in 1972 by s. 336.021, F.S. On gasoline and gasohol, the tax is a local option, but on diesel fuel it is mandatory. Levied by counties, the tax is limited to 1 cent-per-gallon on highway fuels, and its proceeds may be shared with cities. For non-diesel fuels, the Ninth Cent Fuel Tax is approved by an extraordinary (majority plus one) vote of a county's governing body. As of January 2002, the Ninth Cent Fuel tax is levied on non-diesel fuel by 39 counties. The proceeds are authorized to be spent, according to s. 336.021(3), F.S., "in conjunction with the state or federal government in joint projects."

C. EFFECT OF PROPOSED CHANGES:

HB 383 amends s. 339.12, F.S., to specify that any county that meets the following three criteria:

- ❑ Has a population greater than 50,000 persons;
- ❑ Levies the local-option Ninth-Cent Fuel Tax pursuant to ss. 206.41(1)(d) and 206.87(1)(b), F.S.; and
- ❑ Dedicates 50 percent or more of its 1-percent local-option sales tax for improvements to the State Transportation System or to local projects that upgrade the State Transportation System

shall receive preference points equaling 10 percent of the total points used by DOT to calculate eligibility for any transportation grant for which it applies.

Potentially, eight counties meet the three criteria, but since DOT does not award its grants based on a points ranking system, HB 383 would have no impact on DOT's grant programs. For more details, see "D. FISCAL COMMENTS" section below.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 339.12, F.S., to specify that counties meeting certain, specific requirements shall receive preference points equaling 10 percent of the total points used to calculate eligibility for DOT grants.

Section 2: Specifies this act shall take effect July 1, 2002.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See "D. FISCAL COMMENTS" below.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

It is unlikely any county would obtain DOT grants under HB 383, as drafted.

In order for a county to obtain funds pursuant to HB 383, it has to meet several threshold requirements. Eligible counties must have more than 50,000 residents, levy the local-option Ninth Cent Fuel Tax, and dedicate at least 50 percent of its 1-percent local-option sales tax either for improvements to the State Transportation System or to local projects that directly upgrade the State Transportation System.

On paper, eight counties are eligible, based on a comparison of 2000 Census data and Department of Revenue listings of counties that levy both the Ninth Cent Local-Option Fuel Tax and a 1-percent local-option sales tax, in this case the local-government infrastructure surtax. Those counties are: Clay, Escambia, Highlands, Lake, Leon, Osceola, Sarasota, and Seminole. Without surveying them to determine how they spend their local-option sales tax revenues, it is unknown which ones qualify.

However, since DOT does not rank or award grants based on a point scale, none of these counties would receive additional funds even with the passage of HB 383.

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:

This bill will not reduce the authority of counties and municipalities to raise total aggregate revenues.

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

This bill is not anticipated to reduce the total aggregate percent of state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None

B. RULE-MAKING AUTHORITY:

HB 383 does not give DOT any additional rulemaking authority.

C. OTHER COMMENTS:

None

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 13, 2002, the House Transportation Committee adopted, without objection, a strike-everything amendment that significantly changed HB 383 as originally filed.

Any county with a population greater than 50,000 which levies the full 6 cents of local option fuel tax pursuant to ss. 206.41(1)(e) and 206.87(1)(c), and which dedicates 35 percent or more of its discretionary sales surtax, pursuant to s.212.055, for improvements to the State Transportation System or to local projects directly upgrading the State Transportation System within the county's boundaries shall receive preference for receipt of any transportation grant for which the county applies. This provision shall not apply to loans or non-highway grant programs operated by DOT.

According a DOT analysis, 24 counties potentially are eligible for DOT preference under the amendment. As with the original bill, it is unknown which counties actually qualify without surveying them to determine how they spend their discretionary sales surtax revenues. The potentially eligible counties are: Alachua, Bay, Charlotte, Clay, Columbia, Duval, Escambia, Hernando, Highlands, Hillsborough, Indian River, Lake, Leon, Miami-Dade, Monroe, Nassau, Osceola, Pinellas, St. Lucie, Santa Rosa, Sarasota, Seminole, Sumter and Volusia.

After adopting the amendment, the committee then voted 12-0 in favor of the bill. At the sponsor's request, the amendment is traveling separately.

VII. SIGNATURES:

COMMITTEE ON TRANSPORTATION :

Prepared by:

Joyce Pugh

Staff Director:

Phillip B. Miller

AS REVISED BY THE COMMITTEE ON COMMITTEE ON FISCAL POLICY AND RESOURCES:

Prepared by:

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