



REVENUE ANALYSIS

JANUARY 2012

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REVENUE ANALYSIS FOR LEE COUNTY

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Executive Summary

In analyzing the County's revenue situation, Nabors, Giblin & Nickerson, P.A. discovered that the County had experienced a slower population growth in the past few years than had been previously estimated and a steeper decline in property values than could have been predicted. To shore up its revenues, the County has budgeted a significant amount of its reserves for each of the past three years. As presented in this report, there are other options available to the County. Some, such as the local option sales tax, the Communications Service Tax, and the Public Service Tax, have been authorized by general law and levied by most eligible counties in Florida. Others, such as the stormwater utility, the reclaimed water utility and the electric franchise options, are more localized in nature and rely on home rule authority instead of statute. Two ad valorem options are designed to provide more transparency for expenditures, providing tax payers with a clearer picture of how the property tax revenues are expended. Most of the options presented are currently available to the Board of County Commissioners, but a few of them would require additional legislative authorization.

Several of the options would generate substantial sums of additional revenues. A local option sales tax generates \$92.4 million annually in Lee County. The enactment of the Public Service Tax creates up to \$25 million each year. Adjusting the Communications Services Tax produces an additional \$4.5 million annually. Adjusting the FPL franchise fee and extending it to Lee County Electric Cooperative puts an additional \$7.6 million annually into the County coffers. The revenues from the stormwater utility and the reclaimed water utility depend on the cost of providing the facilities and the services. All of the options, including those that do not produce additional revenue, would put the County in a more secure revenue environment than continuing to rely on reserves.

A one page table summarizing each of the options is included on page 2.

Summary of Options

Source	Levy Requirements	Annual Revenue Estimates	Page
<i>Adjustments to Currently Levied Sources</i>			
Communications Services Tax Adjustment	BOCC Resolution or Ordinance Adopted by September 1 to Take Effect January 1	\$4.5 million	18
Electric Franchise Upgrade the FPL Fee to 4.5%	BOCC Amendment to Franchise Ordinance	\$4.3 million	19
<i>Formation of New Sources by the BOCC</i>			
Electric Franchise Extension to LCEC at 4.5%	BOCC Ordinance	\$3.3 million	23
Stormwater Utility Creation	Study Costs and BOCC Ordinance	Cost recovery	26
Reclaimed Water Utility Establishment	Study Costs and BOCC Ordinance	Cost recovery	30
Public Service Tax Enactment at 10%	BOCC Ordinance	\$25 million	20
Local Option Sales Tax			32
Transportation Surtax at 1%	Referendum	\$92.4 million	34
Infrastructure Surtax at 1%	Referendum	\$92.4 million	35
Indigent Care & Trauma Center Surtax at 0.25%	Referendum or BOCC Extraordinary Vote	\$23.1 million	36
Voter-Approved Indigent Care Surtax at 1%	Referendum	\$92.4 million	37
Fire Rescue Surtax at 1%	Referendum	\$92.4 million	37
<i>New Sources from Future Legislation</i>			
Additional Tourist Tax Authorization at 1%	Legislation	\$4.7 million	40
Rental Car Surcharge Approval at \$2.00 Per Day	Legislation	\$6.7 million	41
State Sales Tax Rebate Appropriation for Spring Training Facilities	Legislation	\$0.5 million	42
<i>Ad Valorem Sources</i>			
Millage Separation	BOCC Include in Final Rate Resolution	Zero	11
MSTU Creation	BOCC Ordinance Prior to July 1	Cost recovery	13

Introduction

Purpose and Scope of Study

Lee County, like other counties in Florida, has experienced a significant decline in ad valorem taxable values in comparison with years prior to 2007. Two important factors have impacted Lee County's budget situation: lower population growth and declines in ad valorem tax revenues. As a consequence, the County has resorted to budgeting reserves from savings accrued when revenues were robust. Nabors, Giblin & Nickerson, P.A., was hired by the County to review the County's revenue structure and offer suggestions for additional revenue options that could be used to fund necessary services and facilities. This revenue analysis presents data showing the reasons for the decline and offers suggestions that could accomplish the goal of raising additional revenue.

Lee County Population Changes

The University of Florida's Bureau of Economic and Business Research (BEBR)¹ recently published the April 1, 2011 population estimates. These are the foundation for next year's updated revenue sharing population which is used for a variety of state-shared revenue distributions to the counties. Table 1 below shows that Lee County's population grew by over one percent during the year, a growth rate almost twice the statewide growth rate of 0.55 percent.

Table 2: Population Growth in the County

	April 1, 2011 Estimate	Total Change	April 1, 2010 Census	April 1, 2011 Inmates	April 1, 2011 Estimate w/o Inmates	Growth
Lee County	625,310	6,556	618,754	290	625,020	1.06%
Bonita Springs	44,307	393	43,914	6	44,301	0.89%
Cape Coral	156,369	2,064	154,305	29	156,340	1.34%
Fort Myers	63,662	1,364	62,298	76	63,586	2.19%
Fort Myers Beach	6,262	-15	6,277	0	6,262	-0.24%
Sanibel	6,470	1	6,469	0	6,470	0.02%
Unincorporated	348,240	2,749	345,491	179	348,061	0.80%
Florida	18,905,048	103,738	18,801,310	127,619	18,777,429	0.55%

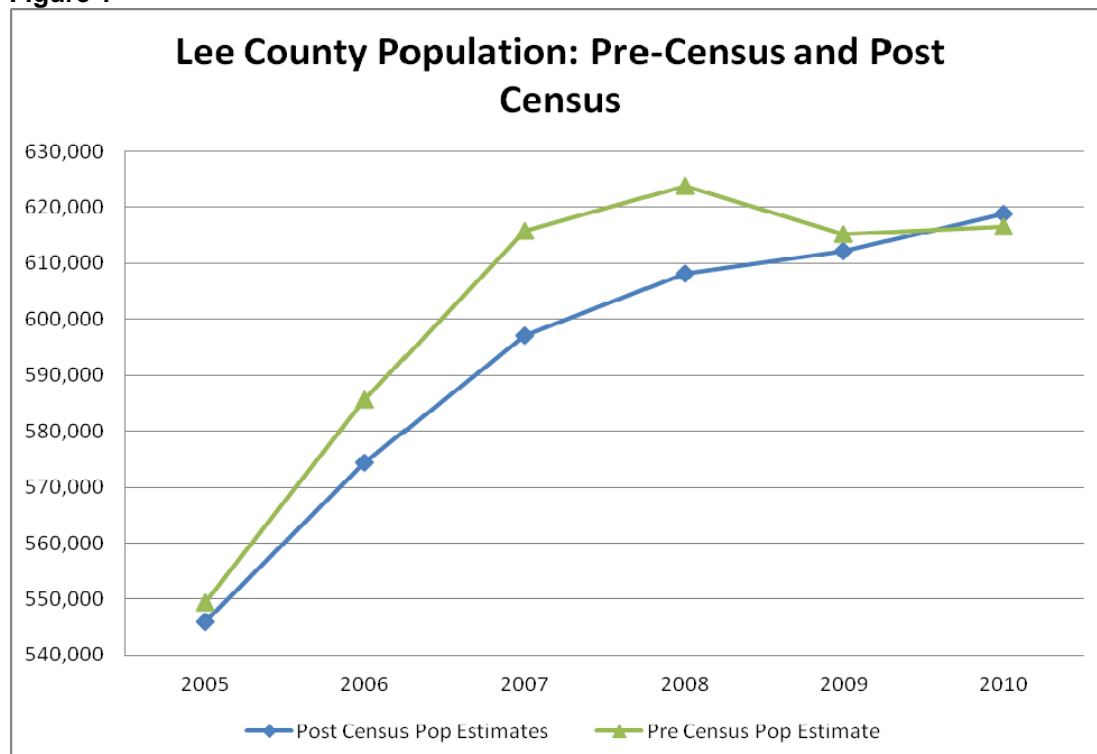
¹ <http://www.bibr.ufl.edu/>

It is interesting to also note that the revisions after the 2010 Census show a somewhat more gradual growth in the population boom years from 2005 through 2007, but also no population loss in 2009, as previously estimated. University of Florida demographers use housing starts and electric hook-ups for their estimates in non-census years. They now believe that the over-estimates in 2006 and 2007 were due to many spec houses being built but remaining unsold and empty. Both the Table 3 and Figure 1 below show these revisions.

Table 3: Population Comparison with the State

	2005	2006	2007	2008	2009	2010
Florida	17,778,156	18,154,475	18,446,768	18,613,905	18,687,425	18,801,310
(Census)	2.3%	2.1%	1.6%	0.9%	0.4%	0.6%
Lee	545,931	574,310	597,156	608,210	612,169	618,754
(Census)	5.7%	5.2%	4.0%	1.9%	0.7%	1.1%
Lee-old	549,442	585,608	615,741	623,725	615,124	616,626
(Pre-Census)	5.4%	6.6%	5.1%	1.3%	-1.4%	0.2%

Figure 1



To put Lee County's ad valorem value situation into perspective, it is useful to understand how the County compares to other counties and how the revenue situation has changed over the last ten years.

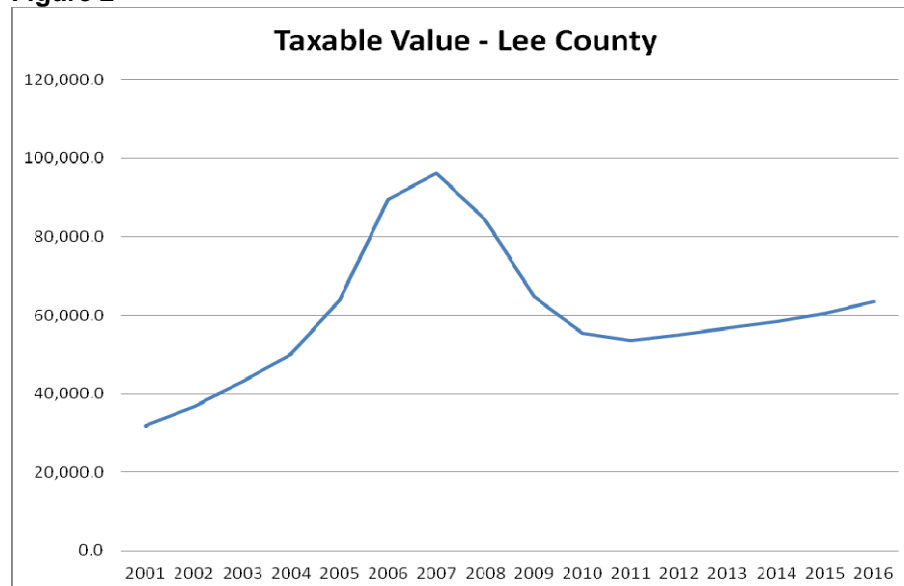
Decline of Ad Valorem Taxes in Lee County and Other Florida Counties

The graph below shows Lee County's taxable value over the last ten years, and the projection from the Revenue Estimating Conference ("REC") for the next five years.² It shows that in 2001, taxable value was just below \$32 billion. At its peak in 2007, it had more than tripled to \$96.3 billion, only to slump to this year's value of \$56.3 billion. The REC expects the County's taxable value to grow slowly over the next three years by just below three percent and speed up a bit over the following two years. However, that compares favorably to the State, which is estimated to grow much more slowly in the next two years, and actually decline by 3.5 percent in 2012, as shown in Table 4 below:

Table 4: Taxable Value Comparison with the State

	2012	2013	2014	2015	2016
FLORIDA	-3.46%	0.28%	2.70%	3.48%	4.34%
Lee	2.8%	2.8%	2.9%	3.9%	4.8%

Figure 2



² All data through the 2011 tax roll are actuals from the Department of Revenue; tax rolls 2012-2016 are estimates from the Revenue Estimating Conference's September 26, 2011 conference.

Table 5 below shows a comparison of Florida's larger counties and their respective taxable value appreciation towards the peak year of 2007 and the subsequent steep drop in taxable value of the last four years.³ **It shows that no other county had as steep a rise as Lee County, which tripled its value from 2001 to 2007.** The statewide appreciation over that period (2001-2007) was 125 percent, or a bit more than doubled. While Lee County stood alone at the top in 2007, its fall in taxable value of negative 44 percent has moved it right back close to the statewide average in 2011. The good news, both for property owners and local governments, is that the REC is expecting stronger value growth in Lee County than statewide.

Table 5: Ad Valorem Tax Value Comparison

COUNTY	2001	2007	2011	2016
Alachua	100.0	192.5	175.3	188.4
Brevard	100.0	223.6	137.0	142.2
Broward	100.0	213.0	154.2	158.9
Charlotte	100.0	276.0	148.2	154.7
Collier	100.0	247.2	174.9	187.6
Miami-Dade	100.0	230.1	180.0	185.5
Duval	100.0	189.5	157.9	167.8
Escambia	100.0	185.1	156.3	167.8
Hillsborough	100.0	204.3	145.2	163.0
Lee	100.0	302.3	168.3	199.4
Leon	100.0	187.4	161.0	167.7
Manatee	100.0	239.3	165.5	186.9
Orange	100.0	191.9	145.9	158.6
Osceola	100.0	271.1	172.2	188.0
Palm Beach	100.0	212.8	156.4	164.7
Pasco	100.0	269.9	184.7	215.4
Pinellas	100.0	188.9	131.1	138.3
Polk	100.0	212.0	145.5	161.5
Sarasota	100.0	236.8	150.2	165.1
Seminole	100.0	197.9	141.7	141.3
Volusia	100.0	235.8	139.7	140.7
Florida	100.0	225.1	160.5	172.3

Save Our Homes

The graph below shows the dramatic changes that the Save Our Homes ("SOH") provision had on Lee County taxable value. From a starting point of \$1.4 billion 2001, it protected \$16.6 billion of homeowner's values in 2006. However, by 2010, the falling

³ To allow for a valid comparison between the counties, all values were set equal to 100 in 2001 and then grown by the respective county's growth rates.

just values made the SOH differential drop to almost 2001 levels of \$1.76 billion, a drop of almost 90 percent.

Figure 3

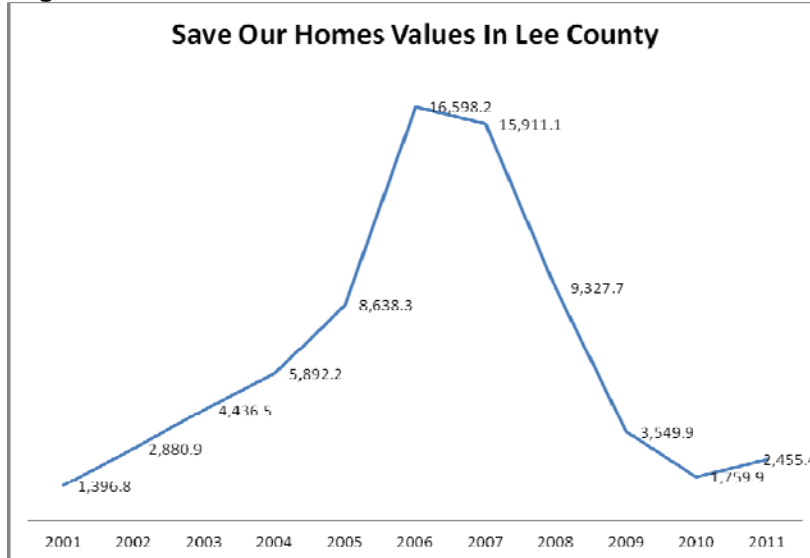


Table 6 below⁴ shows a similar comparison of Florida's larger counties for their respective SOH differential.⁵ Lee County is very similar to a number of large counties where the SOH differential increased more than tenfold from 2001 to 2007. However, Lee County's growth is substantially higher than the statewide average. Interestingly, while the drop to 2011 was substantial, the forecasted SOH differential in 2016 is the highest among this group of counties; this is due to the higher anticipated growth rates in Lee County compared to the rest of this group of counties, as shown in Table 5.

Table 6: SOH Differential in Select Counties

COUNTY	2001	2007	2011	2016e
Brevard	100.0	1,109.8	64.9	31.2
Broward	100.0	1,177.6	209.1	128.2
Charlotte	100.0	786.6	77.3	42.2
Collier	100.0	525.2	92.7	59.6
Miami-Dade	100.0	1,087.3	207.5	133.7
Duval	100.0	662.0	188.6	111.0

⁴ To allow for a valid comparison between the counties, all values were set equal to 100 in 2001 and then grown by the respective county's growth rates.

⁵ Lee County's peak year for the SOH differential was in 2006, but decreased by a relatively small amount in 2007. Most other counties' peak year was 2007.

COUNTY	2001	2007	2011	2016e
Hillsborough	100.0	533.4	60.4	51.8
Lee	100.0	1,139.1	175.8	180.0
Manatee	100.0	845.8	78.3	76.2
Orange	100.0	1,205.1	93.6	55.3
Osceola	100.0	1,381.9	77.2	29.3
Palm Beach	100.0	873.7	163.4	100.6
Pasco	100.0	827.7	83.8	78.8
Pinellas	100.0	637.3	81.4	66.2
Polk	100.0	933.7	83.0	55.7
Seminole	100.0	1,122.6	93.3	36.0
Volusia	100.0	1,278.9	91.1	41.8
Florida	100.0	877.1	146.3	98.4

The Effects of Amendment 1 (2008 Special Election) on Lee County's Property Tax Base

In 2008, voters of Florida approved Amendment 1 as proposed by the Florida Legislature to make substantial changes to the ad valorem tax base. Amendment 1 doubled the homestead exemption for county taxes, allowed portability of the Save Our Homes benefit and imposed a Save Our Homes-like cap on non-homestead property at ten percent. Amendment 1 has substantially reduced ad valorem values in Lee County and through-out Florida.

- ***Double Homestead Exemption:***

Amendment 1 doubled the homestead exemption for almost all homeowners. The new exemption applies fully to homesteads valued over \$75,000 and partially for homesteads valued over \$50,000. This exemption does not apply to school taxes.

Table 7: Double Homestead Comparison with the State

	2008	2009	2010	2011	2012e	Pct Tax Base Loss	
						2010	2011
Lee	3,564.2	3,082.7	2,717.1	2,693.3	2,693.3	4.89%	5.02%
FLORIDA	92,775.7	90,875.1	87,055.8	83,284.9	83,284.9	6.48%	6.47%

Table 7 shows that the impact of the doubling of the homestead exemption in Lee County, while significant, is less than the statewide average. This is due to the lower rate of residents owning homes vis-à-vis the large number of second homes owned in Lee County.

- **Portability**

Portability allows homeowners to transfer their Save Our Homes ("SOH") tax benefits from their old home to a newly purchased home. Portability applies to homes purchased in 2007 and later, and the benefit is capped at \$500,000.

- When upsizing, a homeowner can apply the dollar value of the Save Our Homes tax benefit to the new home.
- When downsizing, a homeowner can apply the percentage of the Save Our Homes benefit to the new home.

Table 8: Portability Comparison with the State

	2008	2009	2010	2011	2012e	Pct Tax Base Loss	
						2010	2011
Lee	157.8	68.9	28.2	32.2	37.8	0.05%	0.06%
FLORIDA	3,398.8	2,200.1	1,016.6	771.1	715.6	0.08%	0.06%

Due to the housing crisis, portability has had a small impact of roughly 0.05 percent statewide and in Lee County. Of course, as the foreclosure supply decreases, existing homesteaded homes may again become attractive purchasing targets and the impact of portability is likely to increase in the future.

- **Ten Percent Non-Homestead Cap.**

Amendment 1 provides an assessment cap of ten percent for all properties not previously capped. While homestead properties had already been capped at three percent with SOH, now all other properties, including rental properties, second homes, and business properties, are protected from increases in valuation. This new exemption does not apply to school taxes.

Table 9: Non-Homestead Cap Comparison with the State

	2008	2009	2010	2011	2012e	Pct Tax Base Loss	
						2010	2011
Lee	0.0	42.7	222.4	1,525.9	1,884.3	0.40%	2.85%
FLORIDA	0.0	5,938.2	6,450.1	9,278.4	11,560.4	0.48%	0.72%

Table 9 shows the remarkable increase of the impact from the ten percent non-homestead cap on Lee County's tax base from 2010 to 2011. The impact rose from

\$222 million to over \$1.5 billion: more than a 600 percent increase in a single year! Statewide, the increase was also substantial; however, its 50 percent increase pales compared to Lee County's.⁶ These data appear to point to significant additional impacts that may result from Amendment 4, the proposal on the November 2012 ballot which would decrease the ten percent cap to five percent.⁷

With the decline of ad valorem values as a backdrop to Lee County's revenue situation, this report now focuses on alternatives for funding Lee County's budget. But first, a brief explanation of the power of the County in the area of taxation and other mechanisms for revenue enhancement.

County Power to Raise Revenues

The Florida Constitution provides that all taxes other than ad valorem taxes are preserved to the State. Counties may be authorized to levy non-ad valorem taxes by the Legislature, but only by general law.⁸ A charter county, such as Lee County and 19 other Florida counties, have all power of local self-government, as authorized by the Florida Constitution. This charter county power encompasses the power to levy tax sources authorized to municipalities by general law. Thus, as a charter county, Lee County may levy the Public Service Tax and a higher rate of the Communication Service Tax not authorized to non-charter counties, but authorized to municipalities and to charter counties. See *McLeod v. Orange County*, 645 So. 2d 411 (Fla. 1994) (extending the municipal taxing power of charter counties to the public service tax authorized under section 166.231, Florida Statutes).

Not all county revenue sources are taxes, however. Non-tax revenue sources may be imposed by a county under its home rule power, unless the Legislature has prohibited a county from doing so by general law in the case of a charter county. A home rule revenue source will be determined not to be a tax requiring general law authorization when it meets the judicially framed parameters of a fee or special

⁶ Further study is needed to explain this phenomenon.

⁷ See proposed Const. Amd 4, HJR 381 (2011 Enrolled).

⁸ See Art. VII, §§ 1 and 9, Fla. Const.

assessment.⁹ The following discussion of revenue options includes taxes currently authorized by general law, and the non-tax sources of fees and special assessments falling within judicial construction of a county's home rule power.

Fees Not Included in Study

Like most local governments in Florida, Lee County levies a variety of fees for services. These fees are levied under the County's home rule power, which allows a county to levy a regulatory fee. Regulatory fees cannot exceed the cost of the regulatory activity and are generally required to be applied solely to pay the cost of the regulatory activity for which they are imposed. These fees include charges for rezoning and ambulance services and the others listed in Lee County Revenue Manual, section 2E (FY 2008-2009). Because of the local nature of the cost of providing the service, it is not prudent to simply compare Lee County's fees to fees levied by other local governments and suggest the County alter its fees to match a neighboring local government's fees. Instead, a recommendation to alter fees must be predicated on additional, extensive cost analysis of the services funded by each fee levied by the County. If such an analysis has not been accomplished by the County recently, it may be time to consider conducting a study of all or some of the regulatory fees levied by the County.

⁹ See Art. VIII, § 1, Fla. Const. See also *Primer on Home Rule and Local Government Revenue Sources*, ch. 5 (Nabors, Giblin & Nickerson, P.A.) (Oct. 2011).

Options Currently Available To The County

1. *Separate Millage on Tax Notice*

Currently, the property tax millage levied by the Board of County Commissioners for services and programs funded by the general fund are set forth on the taxpayers' tax notices in a single line item. In contrast, Manatee County millages are separated out on the tax bill for various components of the general fund expenditure, including the sheriff's budget, the other constitutional offices and transit. Officials in Manatee County indicate that the separation of millages into expenditure categories helps taxpayers understand where their hard-earned tax dollars go. While the published budget summary gives taxpayers a glimpse of the allocation of revenue expenditures, the published summary may not reach all taxpayers. In contrast, listing the expenditure by functional categories on the tax bill makes it crystal clear. It serves the goal of transparency in government.

Implementation

Best practice in this area requires discussion with the Tax Collector. Section 200.065, Florida Statutes, controls the process for the levy of millage. It does not expressly allow the separation of millages by functional expenditure. But the statute does not prohibit it either. Working with the Tax Collector will help ease the switch to separation and provide some confidence in the Department of Revenue.

In addition to working with the Tax Collector, it may be helpful to work with the other constitutional officers, particularly the sheriff, to secure buy-in of the program. Issues have arisen in Manatee County, particularly in determining what costs to allocate to the sheriff. By consulting with the sheriff, Manatee County was successful in securing the sheriff's support for the millage separation program.

As to timing of this change, there is no reason to delay beginning conversations with the affected local governmental officials. The legal mechanism for informing the Tax Collector is the final millage rate resolution adopted by the Board. But a lot of work and a lot of consensus building should be accomplished before then to assure a smooth transition.

A corollary suggestion to separating the millages on the tax bill is to separate them on the Truth in Millage ("TRIM") notice. The TRIM notice is sent to each taxpayer, advising them of the taxable value of their property, and the proposed amount of taxes owed, if the governing body adopts the rate as initially approved. Legally, TRIM locks the governing body into levying the noticed millage as being the highest millage rate available, notwithstanding other legal considerations. The Department of Revenue carefully reviews the TRIM millages for errors. Because the consequences of making an error on TRIM notices are so dire, we strongly recommend the County separate the millages on the tax bill prior to considering implementing the changes on the TRIM notice. Experience with the change to the tax notice will provide guidance for any future consideration of making the change to the TRIM notice.

2. Create a Municipal Services Taxing Unit

As an alternative to listing the millages separately on the ad valorem tax notices as suggested in the first option, Lee County can designate services to emphasize to the taxpayers and create a municipal service taxing unit ("MSTU") to fund them. The creation of an MSTU assures that the millages are separately stated not only on the tax bill but also on the Truth in Millage ("TRIM") notice. The MSTU option does not give the County additional fiscal authority under the statutory millage cap, but the County-levied MSTU millage is not included under the Florida Constitution's ten mill county-purpose millage cap.

MSTU Authority

The Florida Constitution, Article VII, section 9(b), authorizes ad valorem millages: ten mills for county purposes and ten mills for municipal purposes. In addition to the ten mill county-purpose millage, the last sentence of Article VII, section 9(b) provides, "A county furnishing municipal services may, to the extent authorized by law, levy additional taxes within the limits fixed for municipal purposes." Sections 125.01(1)(q) and (r), Florida Statutes, specifically implement the last sentence of section 9(b) and authorize a county to levy millage for a list of services within a municipal service taxing unit. The sections also declare that the county taxes within an MSTU are not subject to referendum approval, and authorize the MSTU-funded services to be provided within all or part of the unincorporated area. See Gallant v. Stephens, 358 So. 2d 536 (Fla. 1978). Additionally, if desired, a county may levy MSTU millage and provide services within a municipality with the consent of the municipal government.

Sections 125.01(1)(q) and (r), Florida Statutes, provide the authority for a county to use municipal millage and provide a non-exclusive list of services that may be funded through an MSTU:

(q) [e]stablish, and subsequently merge or abolish those created hereunder, municipal service taxing or benefit units for any part or all of the unincorporated area of the county, within which may be provided fire protection; law enforcement; beach erosion control; recreation service and facilities; water; . . . streets; sidewalks; street lighting;

garbage and trash collection and disposal; waste and sewage collection and disposal; drainage; transportation; indigent health care services; mental health care services; and other essential facilities and municipal services from funds derived from service charges, special assessments, or taxes within such unit only. Subject to the consent by ordinance of the governing body of the affected municipality given either annually or for a term of years, the boundaries of a municipal service taxing or benefit unit may include all or part of the boundaries of a municipality. If ad valorem taxes are levied to provide essential facilities and municipal services within the unit, the millage levied on any parcel of property for municipal purposes by all municipal service taxing units and the municipality may not exceed 10 mills. This paragraph authorizes all counties to levy additional taxes, within the limits fixed for municipal purposes, within such municipal service taxing units under the authority of the second sentence of s. 9(b), Art. VII of the State Constitution.

Id. Section 125.01(1)(r), Florida Statutes, further grants counties the power to:

(r) Levy and collect taxes, both for county purposes and for the providing of municipal services within any municipal service taxing unit, and special assessments; borrow and expend money; and issue bonds, revenue certificates, and other obligations of indebtedness, which power shall be exercised in such manner, and subject to such limitations, as may be provided by general law. There shall be no referendum required for the levy by a county of ad valorem taxes, both for county purposes and for the providing of municipal services within any municipal service taxing unit.

Id.

Millage Caps

To the extent that an MSTU includes property within a municipality, the county-levied millage is deemed within the Constitution's ten-mill cap for the municipality. Regardless of whether the MSTU includes municipal property, the millage is constitutionally considered municipal millage and is not aggregated with county millage for purposes of determining whether the constitutional ten-mill county cap has been reached. That is not the case for determining whether a county's statutory tax cap is

exceeded. Under sections 200.065(5) and 200.185(8), Florida Statutes, a county's statutory tax cap applies to the aggregate ad valorem revenues of the county, including millage levied within an MSTU. **The application of the statutory tax cap to the aggregate millage means that the creation of a new MSTU depresses the millage available for the general fund unless the millage cap is exceeded by a supermajority vote of the governing body.**

Identify a Service and Create an MSTU to Fund It

Lee County can create an MSTU and fund services through it including, but not limited to, the services listed in sections 125.01(1)(q) and (r), Florida Statutes, such as transit and other transportation services and facilities, libraries, law enforcement, stormwater and drainage. The County's MSTU millage will be separately stated on the TRIM notice and listed separately on the ad valorem tax notice. The MSTU millage will be included in the County's millage for purposes of determining the statutory millage cap. The advantage of creating an MSTU is not for the County to gain additional millage authority under the statutory cap, but to clearly inform the taxpayers of the cost of the services funded through the MSTU. If the County wants to levy the MSTU millage county-wide or within select municipalities, consent of the municipalities is statutorily required.

3. *Adjust Communications Services Tax*

Charter counties, such as Lee County, and municipalities are authorized to levy the Communications Services Tax ("CST") at a maximum rate of 5.1 percent plus an additional 0.12 percent for deciding not to impose a permit fee on CST providers. Lee County is currently levying the CST at a rate of 3.61 percent. The Board could decide to adjust the CST upward to the maximum rate of 5.22 percent, which would raise an additional \$4.5 million annually.

The CST is a broad based tax on communications services. It has a state component and a local component. Both the state CST and the local CST are collected by the Department of Revenue. The state levies the sales tax and a gross receipts tax on communications services. The Legislature has also authorized a county to levy a CST in the unincorporated area and a municipality to levy within its incorporated area. See § 202.20, Fla. Stat. The local CST applies to telecommunications, cable, and related services, encompassing voice, data, audio, video and any other information or signals. The local CST is imposed on retail sales of communications services which originate and terminate in the local jurisdiction, or originate or terminate in the local jurisdiction and are billed to an address within the local jurisdiction.

Rate Comparison

Counties Comparison

Seventeen of the 20 charter counties levy the CST at or above the maximum rate or slightly below the maximum rate. The following charter counties levy at or above the maximum rate: Alachua, Brevard, Broward, Charlotte, Clay, Duval, Leon, Miami-Dade, Osceola, Palm Beach, Pinellas, Polk and Volusia. Seminole at 5.12 percent and Sarasota at 4.82 percent are slightly below the maximum rate. Hillsborough County is at an even 4 percent. One small charter county, Columbia County, levies at a rate of 1.3 percent, which is reflective of its recent change in status from non-charter county to charter county subsequent to initially adopting the CST. Charlotte County, the other charter county in southwest Florida, levies the maximum rate of 5.22 percent. In

comparison with the other charter counties, clearly Lee County's rate of 3.61 is out of step with charter counties.¹⁰

Table 10: CST Estimates of Select Counties

Forecast of Taxable Communication Services and Revenues Local Fiscal Year Ending September 30, 2012					
Local Government	Estimated Comm. Services Tax Base	Current Tax Rate	Revenue Estimate	2010 Revenue Sharing Pop.	Per Capita Consumption
BREVARD BOCC	\$ 162,686,495	5.22%	\$ 8,058,953	204,944	\$ 794
CHARLOTTE BOCC	\$ 103,100,681	5.22%	\$ 5,226,380	142,247	\$ 725
COLLIER BOCC	\$ 231,434,580	2.10%	\$ 5,468,994	285,070	\$ 812
DUVAL	\$ 760,948,327	5.22%	\$ 39,960,772	821,207	\$ 927
LEE BOCC	\$ 269,397,998	3.61%	\$ 9,991,001	345,299	\$ 780
MANATEE BOCC	\$ 187,501,723	1.84%	\$ 3,559,970	251,653	\$ 745
OKALOOSA BOCC	\$ 82,625,579	2.30%	\$ 2,581,909	103,192	\$ 801
POLK BOCC	\$ 220,225,002	5.22%	\$ 11,809,820	372,357	\$ 591
SARASOTA BOCC	\$ 217,831,518	4.82%	\$ 10,732,829	244,919	\$ 889
VOLUSIA BOCC	\$ 78,394,730	5.22%	\$ 3,380,874	113,874	\$ 688

Comparison with Municipalities within Lee County

Five of the six municipalities within Lee County levy the maximum rate of 5.22 percent. Bonita Springs is the outlier: it levies a 1.82 percent rate.

Table 11: CST Estimates of Lee County and Municipalities

Forecast of Taxable Communication Services and Revenues Local Fiscal Year Ending September 30, 2012					
Local Government	Estimated Tax Base	Current Tax Rate	Revenue Estimate	2010 Revenue Sharing Pop.	Per Capita Consumption
LEE BOCC	\$ 269,397,998	3.61%	\$ 9,991,001	345,299	\$ 780
Bonita Springs	\$ 32,261,122	1.82%	\$ 704,703	43,908	\$ 735
Cape Coral	\$ 106,483,961	5.22%	\$ 5,899,767	154,276	\$ 690
Fort Myers	\$ 66,467,513	5.22%	\$ 3,759,137	62,214	\$ 1,068
Fort Myers Beach	\$ 11,792,552	5.22%	\$ 617,759	6,277	\$ 1,879
Sanibel	\$ 10,318,718	5.22%	\$ 539,209	6,469	\$ 1,595

¹⁰ During the 2011 Session of the Florida Legislature, an amendment to the CST was proposed that would cap the lawfully available CST rate at four percent. See the REC estimate and description of the amendment at: <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2011/pdf/page260-269.pdf> (last visited Nov. 28, 2011).

CST Revenue Projections

The current CST rate in the unincorporated County is 3.61 percent which generates an estimated \$9.991 million annually. The Board can adjust the CST rate to 5.22 percent. If it did so, the CST would generate an additional \$4.456 million annually, for a total annual revenue of \$14,446,822.

Table 12: CST Estimate at Maximum Rate

Communication Services Tax Local Fiscal Year Ending September 30, 2012					
Local Government	Estimated Comm. Services Tax Base	Current Tax Rate	Revenue Estimate	2010 Revenue Sharing Pop.	Per Capita Consumption
LEE	\$ 269,397,998	3.61%	9,991,001	345,299	\$ 780
Max Rate		5.22%	14,446,822		
Add. Revenues			4,455,821		

Use of Revenue

The CST revenues may be used for any public purpose, including as a pledge to retire bonded indebtedness. Thus, it can be used to shore-up the general fund or be allocated to any specific expenditures therein. It could also be used to finance the purchase or construction of any infrastructure.

Implementation Steps

Under the statute, a change in the rate by the Board of County Commissioners may be accomplished either by resolution or ordinance. The new rate may only take effect on January 1st. To allow the CST providers ample lead time to adjust their customers' bills, the County must provide notice to the Department of Revenue on or before September 1 for the new tax rate to take effect on the ensuing January 1. See § 202.21, Fla. Stat. Accordingly, if the Board should decide to adjust the CST for the 2012-13 fiscal year, the Board must adopt a resolution changing the rate and notify the Department of Revenue by September 1, 2012.

4. Enact the Public Service Tax

Tax Base

The Legislature has authorized municipalities and charter counties to levy a Public Service Tax (a "PST") on the retail sale of utility services. As a charter county, Lee County is eligible to levy the PST. Taxable services include electricity, metered natural gas, liquefied petroleum gas, manufactured gas and water service. The statute establishes that the tax rate may be up to ten percent. See § 166.231, Fla. Stat. The statute provides certain exemptions such as the fuel adjustment charge, purchases by utilities, government purchases, and church purchases. The statute also allows discretionary exemptions for agriculture uses, 500 kilowatts for residential uses, and certain manufacturing and other industrial consumer uses.

Use of Revenue

The PST revenues may be used for any public purpose, including a pledge to retire bonded indebtedness. See *McLeod v. Orange Co.*, 645 So. 2d 411 (Fla. 1994). A county may even expend the tax revenue solely within an incorporated area, if it so desires, notwithstanding the fact that the county tax is collected exclusively within the unincorporated area. Id.

Rate Comparison

Charter County Comparison

Twelve of the 20 charter counties levy the PST.¹¹ The two smallest (and most recent) charter counties, Wakulla and Columbia, do not levy the PST. In southwest Florida, Charlotte County does not levy it.

Table 13: PST Estimate for Select Counties

		Rate	2007 Revenue	2008 Revenue	2009 Revenue
Alachua	Electric	10%	\$ 5,703,837	\$ 6,013,936	\$ 5,948,038
	Gas	10%	\$ 611,742	\$ 789,000	
	Water	10%	\$ 1,031,263	\$ 1,033,330	\$ 1,020,042
Broward	Electric	10%	\$ 1,136,000	\$ 789,000	\$ 762,000
Clay	Electric	4%	\$ 2,992,327	\$ 2,825,032	\$ 2,922,524

¹¹ The following charter counties levy the PST: Alachua, Broward, Clay, Duval, Leon, Miami-Dade, Orange, Osceola, Palm Beach, Polk, Seminole and Volusia.

		Rate	2007 Revenue	2008 Revenue	2009 Revenue
Duval	Electric	10%	\$ 47,738,296	\$ 56,386,853	\$ 61,556,310
	Gas	10%	\$ 1,389,953	\$ 640,072	\$ 623,386
	Water	10%	\$ 8,848,095	\$ 9,081,524	\$ 9,170,920
Leon	Electric	10%	\$ 4,164,153	\$ 4,500,799	\$ 4,670,579
	Gas	10%	\$ 419,317	\$ 449,592	\$ 500,240
	Water	10%	\$ 756,965	\$ 687,665	\$ 737,853
Miami-Dade	Electric	10%	\$ 59,906,815	\$ 62,688,547	\$ 57,994,144
	Gas	10%	\$ 2,022,706	\$ 2,095,249	\$ 1,979,343
	Water	10%	\$ 7,251,204	\$ 8,078,705	\$ 8,142,010
Orange	Electric	10%	\$ 47,168,065	\$ 48,568,837	\$ 50,185,652
	Gas	10%	\$ 821,245	\$ 739,608	\$ 868,902
	Water	10%	\$ 8,565,569	\$ 7,975,604	\$ 7,951,497
Osceola	Electric	8%	\$ 8,872,644	\$ 9,085,078	\$ 9,363,124
	Gas	8%	\$ 141,148	\$ 134,038	\$ 142,087
Palm Beach	Electric	10%	\$ 58,182,735	\$ 58,336,517	\$ 55,037,606
	Gas	10%	\$ 1,131,044	\$ 2,024,304	\$ 1,495,790
Polk	Electric	10%	\$ 21,433,098	\$ 22,183,329	\$ 23,476,400
	Gas	10%	\$ 857,909	\$ 957,384	\$ 980,329
	Water	10%	\$ 4,307,241	\$ 3,819,194	\$ 3,716,312
Sarasota	Electric		\$ 17,752,108		
Seminole	Electric	4%	\$ 4,340,795	\$ 4,330,234	\$ 4,441,023
	Gas	4%	\$ 208,416	\$ 219,188	\$ 209,441
	Water	4%	\$ 995,336	\$ 806,792	\$ 994,801
Volusia	Electric	10%	\$ 6,181,608	\$ 6,172,357	\$ 6,428,437

Municipal Comparison

In Lee County, the City of Fort Myers levies the PST, but no other municipality does. All the cities in Collier County levy the PST. The following table depicts the rate of the PST and the revenues received by the City of Fort Myers and the Collier County cities in each of the three most recent fiscal years for which data is available.

Table 14: PST Estimate of the City of Fort Myers and the Municipalities in Collier County

		Rate	2007 Revenue	2008 Revenue	2009 Revenue
Fort Myers	Electric	10%	\$ 4,478,629	\$ 4,431,504	\$ 4,537,876
	Gas	10%	\$ 108,920	\$ 107,726	\$ 104,969
	Water	10%	\$ 1,177,715	\$ 1,188,265	\$ 1,279,582

		Rate	2007 Revenue	2008 Revenue	2009 Revenue
Everglades City	Electric	8%	\$ 44,943	\$ 54,437	
	Gas				\$ 782
	Water	8%	\$ 21,090	\$ 9,041	
Naples	Electric	7%	\$ 2,354,298	\$ 2,290,253	\$ 2,392,073
	Gas	7%	\$ 44,685	\$ 19,314	\$ 20,719
Clewiston	Electric	10%	\$ 572,070	\$ 574,725	\$ 546,593

Administration of the PST

The Public Service Utility Tax is collected by sellers from purchasers at the time of payment and submitted to the county on the 20th day of the following month.

Lee County PST Revenue Estimates

The following chart shows the PST revenue estimates for Lee County at the rates of one percent and ten percent.¹²

Table 15: Lee County PST Revenue Estimates

		Rate	2010 Revenue	2011 Revenue	2012 Revenue
Lee	Electric	1%	\$ 2,102,971	\$ 2,015,587	\$ 2,053,883
	Gas	1%	\$ 98,776	\$ 97,616	\$ 75,515
	Water	1%	\$ 340,707	\$ 340,707	\$ 340,707

Lee	Electric	10%	\$ 21,029,711	\$ 20,155,866	\$ 20,538,827
	Gas	10%	\$ 987,764	\$ 976,164	\$ 755,153
	Water	10%	\$ 3,407,068	\$ 3,407,068	\$ 3,407,068

Implementation

The statute provides that the PST may take effect on the first day of a calendar quarter at least 120 days after notice is given to the Florida Department of Revenue. To levy the PST, the County must develop an ordinance and notify the sellers. Obviously, successful implementation of such a program requires communication with stakeholders, including the electricity providers and major ratepayers.

¹²The methodology used the average per capita revenues from counties levying the respective taxes. Electric revenues were grown by the most recent Revenue Estimating Conference's growth rate for the gross receipts tax on electric consumption; gas and water were kept constant.

Legal Authority

Section 166.231, Florida Statutes, the Public Service Tax.

5. *Revise Electric Franchise Agreement*

Currently, the County has a non-exclusive franchise agreement with Florida Power and Light Company ("FPL"). See Ord. No. 97-15, adopted August 12, 1997. Pursuant to the agreement, the County grants FPL the authority to use the County's rights-of-way and other County property for the purpose of supplying electricity and other services within the boundaries of unincorporated Lee County. The agreement also provides that the County shall not engage in the distribution or sale of electricity in competition with FPL to any ultimate retail customer. See Id. § 7. Further, the agreement prohibits the County from requiring FPL to transmit the electricity the County generates to any retail customer, but allows the County to sell its power at wholesale to other utilities.¹³

In return, FPL agrees to pay to Lee County a franchise fee equal to three percent of its revenues from residential, commercial and industrial customers within the unincorporated area. See § 6(a). The agreement authorizes the franchise fee to be increased to 4.5 percent at the option of the County by ordinance after giving notice to FPL. See § 6(b). FPL is authorized by statute and Florida Public Service Commission rules to include the fee on the monthly bills for its retail customers in the unincorporated area.

The agreement has an expiration date of 2017 with an option to renew the agreement for an additional 10 years. However, the agreement allows FPL to terminate the agreement earlier, if the County or another governmental entity grants to another electric utility the right to use the County's property to serve customers within FPL's territory in the unincorporated area. See §§ 8 and 9. As the franchise agreement's expiration date draws closer, the County may have an opportunity to negotiate additional favorable terms.

The FPL franchise fee revenues are deposited into the County General Fund. The FPL revenues may be used for any County purpose without restriction. A franchise agreement and franchise fee are typically adopted by the county by ordinance and agreed to by the electrical provider. However, Florida law allows a unilateral imposition

¹³ Another intriguing revenue concept is for the County to use the electricity it generates at the Waste to Energy facilities instead of selling it. The FPL franchise agreement appears to limit that option.

of franchise fee, even when the electrical provider does not agree. See Alachua County v. State, 737 So. 2d 1065 (Fla. 1999); and Town of Belleair v. Florida Power Corp., 897 So. 2d 1261 (Fla. 2005).

Franchise Option One: Upgrade the FPL Rate

The franchise agreement authorizes the County, at its discretion, to increase the franchise fee from its current rate of three percent to 4.5 percent. In 2010-2011, the County budgeted \$8,520,000 from the FPL franchise fee of three percent. A fee adjustment to 4.5 percent would generate an estimated additional \$ 4.26 million on an annual basis.

Table 16: FPL Fee Estimate

FPL	Franchise Fees	Rate
Existing Fees	\$ 8.52	3.0%
New Fees	\$ 4.26	4.5%

Implementation

The FPL franchise fee could be adjusted by the Board through the adoption of an amendment to the ordinance. Under the terms of the agreement, the ordinance may take effect no sooner than 30 days after its adoption. See § 6(b).

Franchise Option Two: Extend to Lee County Electric Cooperative

In addition to FPL, another electric service provider uses County rights-of-way and provides electricity within the unincorporated area of the County. Lee County Electric Cooperative ("LCEC") does not have a franchise agreement with the County. Its customers reap the benefit of revenues contributed by FPL customers, but are not required to contribute a like amount. The Board has the option of securing a franchise agreement with LCEC and imposing a franchise fee on LCEC's revenues from the unincorporated area. It is estimated the fee would generate an estimated \$2.2 million annually at a rate of three percent and \$3.3 million at 4.5 percent.¹⁴

¹⁴ Established in 1940, Lee County Electric Co-Op is a nonprofit electric distribution cooperative that serves more than 167,000 customers in a five-county area in Southwest Florida. Its service area includes: Cape Coral, North Fort Myers, Marco Island, Sanibel and Captiva Islands, Pine Island, Everglades City, Immokalee and parts of Lehigh Acres. With more than 6,000 miles of distribution and transmission lines, it is one of the largest electric cooperatives in the nation. Cooperative membership is open to all customers

Figure 4

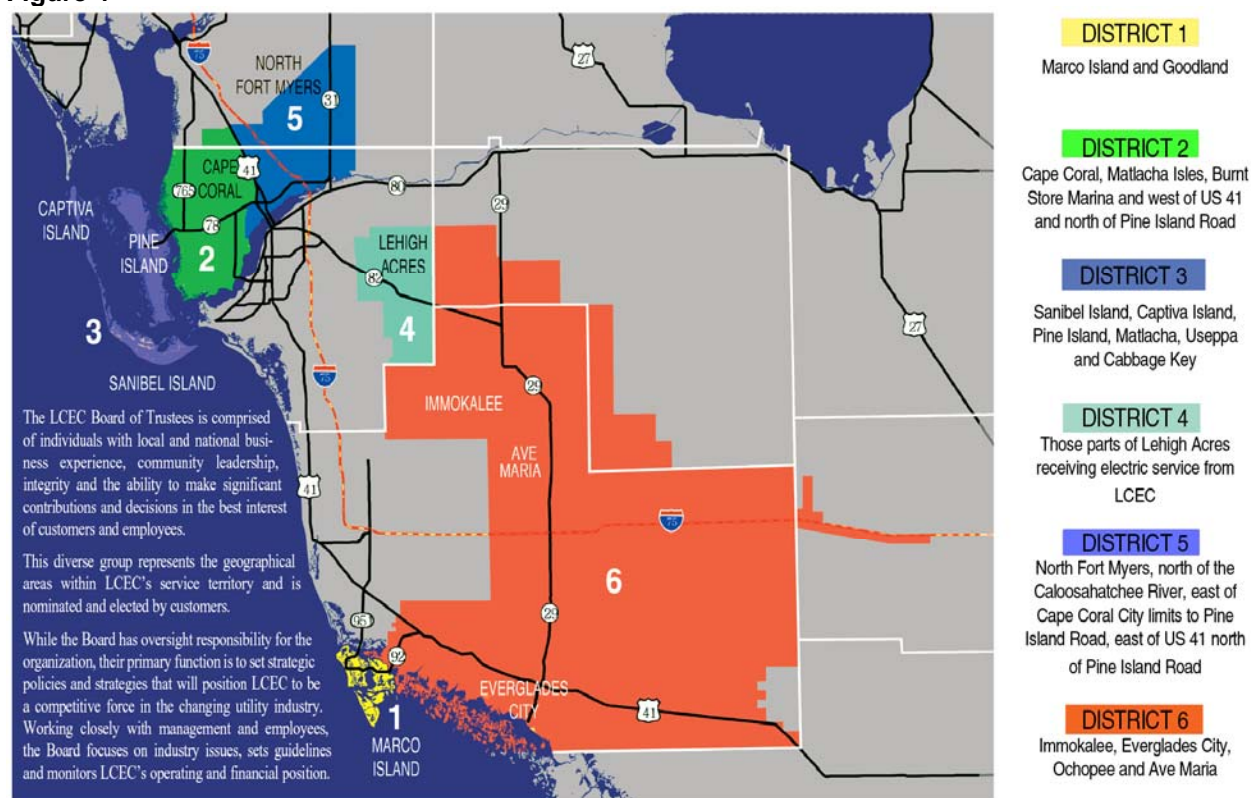


Table 17: LCEC Franchise Fee Estimate

LCEC	Franchise Fees (millions)	Rate
	\$ 2.2	3.0%
	\$ 3.3	4.5%

within the service territory and customers have received equity returns for more than 15 years. It is also one of the largest employers in Lee County. <http://www.yellowpages.com/north-fort-myers-fl/mip/lee-county-electric-co-op-inc-464462503>.

Table 18: LCEC Customer Distribution

State, County and City	April 1, 2010 (Census)	Population (Less Inmates)	[¹⁵]	
Florida	18,801,310	18,673,368	LCEC	Customers
Collier	321,520	321,420		
Everglades	400	400	100%	400
Marco Island	16,413	16,413	100%	16,413
Naples	19,537	19,537	0%	-
UNINCORPORATED	285,170	285,070	25%	71,268
Lee	618,754	618,443		
Bonita Springs	43,914	43,908	0%	-
Cape Coral	154,305	154,276	100%	154,276
Ft. Myers	62,298	62,214	20%	12,443
Ft. Myers Beach	6,277	6,277	0%	-
Sanibel	6,469	6,469	100%	6,469
UNINCORPORATED	345,491	345,299	20%	69,060
Total	940,274	939,863		242,248

Implementation

The County can extend a franchise agreement to Lee County Electric Cooperative through negotiation with the Cooperative or by unilateral imposition of the fee.

¹⁵ The assumptions on percent served by LCED are by the author based on the map above; local knowledge should be used to refine them.

6. Create a Stormwater Utility

According to a recent report of 405 cities and 67 counties in Florida, 154 of the local governments currently have stormwater utilities to fund runoff and treatment. The utility charges have been adopted pursuant to Chapter 403, Florida Statutes, or pursuant to the local government's home rule powers. Lee County has the power to adopt a stormwater utility to fund facilities and services that alleviate stormwater problems and pollution. This section discusses the legal parameters of the special assessment and provides a summary of information about stormwater utilities throughout Florida.

Legal Authority to Impose Special Assessments for Stormwater

In 1995, the Florida Supreme Court considered whether a county may lawfully impose a special assessment for the purpose of funding stormwater facilities and services. The Supreme Court began its analysis with the Constitution. Article VII, section 9, authorizes county governments to levy taxes only where authorized by general law of the Legislature. In contrast, a local government may levy a special assessment under its home rule power when the assessment meets two requirements: (1) the property assessed derives a special benefit from the service or facility provided; and, (2) the assessment is fairly and reasonably apportioned according to the benefits received. See *Sarasota County v. Sarasota Church of Christ*, 667 So. 2d 180 (Fla. 1995). In applying those two requirements to a stormwater assessment, the Court examined the State's public policy regarding water quality and water pollution found in various sections of the Florida Statutes, but most specifically in Chapter 403, Florida Statutes. The Court made the following findings:

Through the adoption of the Act and related provisions, the legislature determined that the creation, maintenance, and operation of stormwater facilities are necessary to prevent the pollution of the state's waters. The Act was also intended to implement and comply with Title 33 of the United States Code. See, e.g., 33 U.S.C. § 1281 (1995) (Water Pollution Prevention and control) (waste treatment management plans shall provide for the confined disposal of pollutants so they will not migrate to cause water or other environmental pollution).

In accordance with this legislative determination, Sarasota County had found that stormwater services would be beneficial to the County, assessments were necessary for the funding of stormwater management and that the cost of stormwater services should be allocated in relationship to the respective stormwater contributions of individual parcels of property. The Court emphasized the following: "developed property which is the only type of property assessed under Sarasota County's ordinance contributes almost all of the contaminated stormwater runoff that is to be treated by the stormwater facility. Because the stormwater must be controlled and treated, developed properties are receiving the special benefit of control and treatment of no-pollution runoff." Thus, the Court found the requisite special benefit to property in the Sarasota County special assessment for stormwater.

On the fair and reasonable apportionment requirement, the Court specifically upheld the County's apportionment methodology. That methodology was based on the relative stormwater contributions of different types of developed property which included residential and non-residential. It was based primarily on the amount of horizontal impervious area for each parcel divided by the contributions based on property uses. Most specifically, the County did not impose the assessment on undeveloped properties. The Court concluded that the assessment methodology bore a reasonable relationship to the benefits received by the individual developed properties in the treatment and control of polluted stormwater runoff.

Stormwater Utilities throughout Florida

As reflected in a recent report¹⁶, the Stormwater Utility Association expects the number of stormwater utilities to increase throughout Florida for several reasons: the Supreme Court has consistently upheld stormwater assessments, there is generally more public support for funding programs with user fees in comparison with ad valorem taxes or other general taxes, and Florida is in the process of implementing the multi-billion dollar total maximum daily load program. Further, to the extent that there is more pressure on the ad valorem tax by decreasing value and increasing pressure to lower

¹⁶ "2009 Stormwater Utilities Survey" by the Florida Stormwater Association.

millages from Tallahassee politicians, local governments may be more inclined to consider stormwater user fees as a way to fund water quality programs.

User Fee or Special Assessment

As noted above, the Florida Supreme Court has specifically upheld the authority of a county through home rule to impose a special assessment for stormwater services and facilities. One of the effects of this determination is to allow the local government to collect this special assessment on the ad valorem tax bill through the non-ad valorem assessment process in the Florida Statutes.¹⁷ According to the survey, 69 of the 91 local government respondents employ the user fee method of collecting the stormwater charges on a utility bill, and 18 of the 91 respondents use the non-ad valorem assessment method for collecting the stormwater charge. Lee County has the option of using the ad valorem tax bill to collect an assessment or to have the fee collected on the utility bills for water and wastewater.

Basis for Fee or Assessment

As indicated in the Sarasota case, a stormwater assessment based solely on impervious area is lawful. Some local governments include not only impervious area but also the gross area of the parcel as determining factors for the basis of the fee. Either of these approaches may be considered depending on the legislative determinations made by the Board of County Commissioners. However, section 163.3162(4)(b), Florida Statutes, adopted in 2011, prohibits counties from imposing stormwater assessments or fees on agricultural properties.

Rates and Revenues

According to the survey, the average monthly rate for a stormwater utility is \$4.88. The average annual revenue collected is over \$3 million annually. Both of these numbers are guided by the numbers of parcels within the community and, more importantly, the cost of the services and facilities provided through the stormwater charge. In order to calculate a revenue estimate for the County or develop a per parcel

¹⁷ § 197.3632, Fla. Stat.

charge, it would be necessary to examine the contemplated stormwater program and develop a cost allocation methodology.

Other Factors to Consider in Implementing a Stormwater Charge

The implementation of a stormwater program must be made by ordinance. The ordinance should address other issues, such as who pays, property owners or occupants, and whether there are exemptions for certain governmental properties and properties that provide retention of stormwater and perhaps treatment on their own property, and how the stormwater charge will be enforced, either through the non-ad valorem process which includes ultimately a tax certificate being issued for non-payment or whether it would be collected through utility bill for which enforcement could include the shut off of other utility services for failure to pay.

The following counties are reported to have levied some type of stormwater charge: Hillsborough, Lake, Leon, Marion, Miami-Dade, Pasco, Sarasota, and Volusia.

7. *Create a Reclaimed Water Utility*

Counties have the home rule power to impose a fee for the development of reclaimed water services for those portions of the county in which the county provides water or wastewater services. The home rule power of a county to impose a reclaimed water service fee was approved by the Florida Supreme Court in Pinellas County v. State, 776 So. 2d 262 (Fla. 2001). In Pinellas County, the Court upheld Pinellas County's ordinance for a mandatory service availability charge for water reuse. The County had adopted the ordinance as a means to minimize the use of existing potable water supplies to provide a less expensive and unrestricted source of water for irrigation and to recycle wastewater generated from the service area. The Court noted that the use of a reclaimed water service fee may be fairer than paying for such a service with ad valorem taxes because, unlike the water reuse fee, ad valorem taxes require undeveloped properties to pay for a problem that they do not significantly contribute to. In upholding the fee, the Supreme Court noted "where a governmental entity provides access to traditional utility services, this Court has not hesitated to uphold local ordinances imposing mandatory fees, regardless of whether an individual customer actually uses or desires the service." See Pinellas County at 268 (cits. omitted). The Court also relied upon Florida Statutes, section 153.12, which authorizes a county to provide for a sewage disposal system and a direct requirement for property to pay for such a system.

Water Reuse Fee

At this point, it is unknown how many local governments in Florida have a water reuse system and charge a fee for it. However, in Pinellas County, the Court described an approved structure for the water reuse fee. The Pinellas County fee did not include amounts associated with constructing the sewage treatment facilities, nor the transmission lines to the general area where the reuse facilities would be made available to individual customers. Instead, Pinellas County's system proposed an availability charge or a readiness-to-serve charge which would apply only to those properties in the service area to which the County's new facilities would extend, allowing

these properties to have access to the reclaimed water services.¹⁸ The availability charge was amortized over 30 years and calculated to cover only a part of the water distribution lines and the connections for each property receiving service. Properties electing to use the reclaimed water would also be subject to a connection charge and fees based upon usage. Any reclaimed water charge should be calculated based on the cost of the facilities provided and the benefit received by the customers pursuant to a home rule analysis of the fee.

Implementation

As with any other water utility or wastewater utility charge, an engineering feasibility study would need to be conducted with fiscal information gathered to determine the overall cost of the program. Additionally, an apportionment methodology for the water use fee would need to be determined. Thereafter, an ordinance could be prepared to establish the County's authority to impose the fee and implement it.

¹⁸ Of course, reclaimed water although highly treated is not potable and must be delivered through dedicated lines.

8. Enact a Local Option Sales Tax

Currently, Lee County does not levy a local option sales tax. Any such levy, of course, requires a referendum for approval. The Florida Statutes allows Lee County to levy up to 3 percent of local option sales tax. Those authorized for Lee County include the:

- charter county and regional transportation system surtax,
- emergency fire rescue services and facilities surtax,
- local government infrastructure surtax,
- indigent care/trauma center surtax, and
- voter approved indigent care surtax.

Each of these local option sales taxes has their own statutory limitations on uses of the revenue, requirements for levying, and requirements for sharing the revenue with other entities. A one percent sales tax levied within Lee County generates an estimated \$92.4 million annually.

Of the 67 counties in Florida, 51 have levied some form of local option sales tax. The chart below shows local option sales taxes levied in similarly-populated counties as Lee County.

Table 19: Local Sales Tax in Select Counties

County	Levies	Unused Capacity
Brevard	0.0	3.0
Charlotte	1.0	2.0
Collier	0.0	2.0
Duval	1.0	2.0
Lee	0.0	3.0
Okaloosa	0.0	3.0
Pasco	1.0	2.0
Polk	0.5	2.5
Sarasota	1.0	2.0
Volusia	0.0	3.0

Some of the three cents authorized to the County require sharing with municipalities. However, the charter county and regional transportation local option sales tax is not

required to be shared with municipalities. As a result, under that tax the County would be entitled to all of the revenue generated by the local option sales tax.

This section details the uses of the various local option sales taxes authorized by the Legislature. It begins with a description of the local option sales tax base and the effective date of levy authorized by the Legislature. A table comparing the local sales taxes available to Lee County is included on page 42.

The Local Option Sales Tax Base

Substantially all of the transactions subject to taxation under the state general sales tax law, Chapter 212, Florida Statutes, constitute the local option sales tax base. See § 212.054(2), Fla. Stat. The local option sales tax base extends to all admissions, rentals of property, and sales of items of tangible personal property subject to the state sales tax and the payment for all services taxable under the state sales tax base, including commercial cleaning services, pest control services, and security services.

The local option sales tax base applies only to the first \$5,000 of the purchase price of an item of tangible personal property while the state sales tax applies to the entire purchase price regardless of amount. The \$5,000 limitation of the local option sales tax does not apply to the payment for services. It is estimated that the \$5,000 cap on taxable transactions reduces the revenue collections from the local option sales tax by about fifteen percent compared to a local option sales tax without the cap.¹⁹

Effective Date of Levy

A local option sales tax may take effect only on January 1 and may be repealed effective only on December 31. See § 212.054(5), Fla. Stat. The county must notify the Department of Revenue within ten days of adoption and no later than November 16. § 212.054(7), Fla. Stat. Local government failure to provide the notice in a timely manner may result in a one year delay in the effective date of the local sales tax levy. Id.

¹⁹ Cf. the Florida Legislature Office of Economic & Demographic Research published the statewide sales tax revenue estimates at: http://edr.state.fl.us/Content/conferences/generalrevenue/grpackage_updatedforSummeractions.pdf (last visited Sept. 7, 2011) with those for the statewide local option sales tax revenue estimates at <http://edr.state.fl.us/Content/local-government/data/data-a-to-z/LDSS11-12Aug11R.pdf> (last visited Sept. 7, 2011).

Charter County and Regional Transportation System Surtax

Lee County currently levies the maximum of 12 cents of the various local option gas tax rates. The other source of revenue for funding transportation programs is the charter county and regional transportation system surtax. This surtax is subject to approval of the majority vote of the electorate of the county or by a charter amendment approved by a majority vote of the electorate of the county.

Limitations on Uses

The proceeds from the surtax must be:

(a) Used for purposes of the development, construction, equipment, maintenance, operation, supportive services, including a countywide bus system, on demand transportation services, and related costs of a fixed guide-way rapid transit system; or

(b) Used for the development, construction, operation, or maintenance of roads or bridges in the county, for the operation and maintenance of a bus and fixed guideway system, or for the payment of principal and interest on existing bonds issued for the construction of such system or roads or bridges.

The proceeds may also be pledged for bonds issued to refinance existing bonds or new bonds issued. The charter county may also enter into an interlocal agreement for distribution of surtax revenue to a municipality or an expressway or transportation authority, but sharing the proceeds is not required.

Limitations on Rate

The Legislature authorized the rate to be up to one percent. For eligible counties, this surtax may be levied in addition to any other surtax for which the county is eligible.

Duration of Tax Levy

The Legislature did not limit the duration of the Charter County and Regional Transportation System Surtax. The County may limit the duration itself, if it so desires, by ordinance.

Legal Authority

Section 212.055(1), Florida Statutes.

The Local Government Infrastructure Surtax

Lee County may levy the Local Government Infrastructure Surtax.

Duration of Tax Levy

The statutes do not limit duration of the levy of the Local Government Infrastructure Surtax. The County may limit the duration itself, if it so desires, by ordinance.

General Uses

The Local Government Infrastructure Surtax revenue may be used for the purposes enumerated in section 212.055(2)(d), Florida Statutes. The revenues may be used to finance, plan, and construct infrastructure. Additionally, surtax revenues may be used to acquire land for public recreation or conservation or protection of natural resources. Fifteen percent of surtax revenues may be expended on economic development activities under certain circumstances. See § 212.055(2)(d)3., Fla. Stat. The surtax revenue may also be used for expenditures for the construction, lease, maintenance, utilities or security of courthouse facilities, as defined in section 29.008, Florida Statutes. See § 212.055(2)(d)2., Fla. Stat.

The Legislature has also authorized the Local Government Infrastructure Surtax proceeds to be used for capital expenditures associated with the improvement of private facilities that may be used by a local government as an emergency shelter without charge. See § 212.055(2)(d)1.d., Fla. Stat. Additionally, up to 15 percent of the Infrastructure Surtax may be used for funding economic development projects and the operational costs and incentives related to economic development. See § 212.055(2)(d)2., Fla. Stat. The Legislature has also authorized expenditures for land acquisition for certain residential housing projects. See § 212.055(2)(e)., Fla. Stat.

Sharing Among the County, Municipality and the School Board

The surtax may be shared with the school board. The tax proceeds must be shared between the county and the municipalities within the county pursuant to an interlocal agreement or pursuant to the half-cent sales tax formula provided in section 218.62, Florida Statutes. If the County voters approved the Infrastructure Surtax and the Surtax revenues were shared with the cities pursuant to the statutory formula, the County would receive 65.9 percent of the revenue or approximately \$60.9 million annually of the total \$92.4 million in taxes collected county-wide.

Rate Limitations

The Local Government Infrastructure Surtax may be levied at a rate of one-half or one percent. The combined rate of all the local sales taxes may not exceed one percent, omitting the Charter County Transit System and Emergency Fire Rescue services and Facilities Surtax from this calculation limitation.

Legal Authority

Section 212.055(2), Florida Statutes.

Indigent Care and Trauma Center Surtax

Counties with a Population of Fewer than 800,000

Counties with a population of fewer than 800,000 may seek referendum approval of a surtax for the purpose of funding trauma care services provided by a licensed trauma center.

Limitations on Rate

The rate is limited to 0.25 percent. The combined rate of this Surtax and the other surtaxes except the Charter County and Regional Transportation System Surtax and the Emergency Fire Rescue Services and Facilities Surtax may not exceed one percent.

Duration of Tax Levy

The Surtax expires four years after the effective date of the Surtax, unless re-approved by referendum.

Legal Authority

Section 212.055(4)(b), Florida Statutes.

Voter-Approved Indigent Care Surtax

Counties with a population of 800,000 and less may seek referendum approval of a surtax for the purpose of funding indigent health care.

Limitations on Rate

The rate is limited to one-half a percent. Excluding the Charter County and Regional Transportation System Surtax and the Emergency Fire Rescue Services and Facilities Surtax, the combined rate of this Surtax and the other surtaxes may not exceed one percent.

Duration of Tax Levy

There are no statutory limits on the duration of the levy.

Legal Authority

Section 212.055(7), Florida Statutes.

Emergency Fire Rescue Services and Facilities Surtax

Lee County and 64 of Florida's 67 counties are authorized to levy the Emergency Fire Rescue Services and Facilities Surtax.

General Description of the Fire Rescue Surtax

Subject to approval by local voters and the enactment of interlocal agreements between the local governments, the legislation authorizes the levy of a one percent local option sales tax for funding fire rescue serviced and facilities.

Interlocal Agreement Requirement

The Surtax interlocal agreement requirements are quite complicated. Generally speaking, the Surtax subsection requires that prior to the referendum for the Emergency Fire Rescue Services and Facilities Surtax the county governing body must enter into an interlocal agreement with the local governments within the county that provide fire rescue services. The agreement must include a "majority of the service providers in the county." The agreement must provide for a distribution of the revenue based on population allocations as provided in the law or pursuant to relative expenditures on fire rescue services, if a county has a special fire control district. Additionally, the agreement shall address payments to out-of-jurisdiction service providers when there is another long term agreement for such services. There is an exception to this latter rule for counties that have issued a certificate of public convenience to a dependent district or a county department.

Other Revenue Consequences for the Levying Local Governments

Local governments that receive Emergency Fire Rescue Services and Facilities Surtax revenues are required to reduce ad valorem property taxes or non-ad valorem assessments allocated to fire rescue services by an amount equal to the Surtax revenues. Because the property tax is billed in November, and the Surtax takes effect on January 1, the first property tax reductions take effect the following fiscal year. Typically, non-ad valorem assessments are billed on the property tax cycle, and the same revenue reduction schedule applies to them as well.

Uses of the Revenue

The subsection allows the Surtax revenues to be expended to fund emergency fire rescue services and facilities. The legislation defines the term emergency fire rescue services to include, but not be limited to: "preventing and extinguishing fires; protecting and saving life and property from fires or natural or intentional acts or disasters; enforcing municipal, county, or state fire prevention codes and laws pertaining to the prevention and control of fires; and providing pre-hospital emergency

medical treatment." The legislation does not define the term "facilities," but that term appears to include those facilities that serve to assist in the provision of emergency fire rescue services.

Limitations on Rate

The statute limits the rate of the Surtax to a maximum of one percent. Historically, surtaxes have not been levied below equal quarter percentages. Thus, it is recommended for administrative ease that the Surtax rate be levied in one-quarter percent increments up to a full one percent.

Duration of Tax Levy

There are no statutory limits on the duration of the levy.

Legal Authority

Section 212.055(8), Florida Statutes.

LOCAL OPTION SALES TAXES AVAILABLE TO LEE COUNTY

Tax	Uses	Approval Method	Sharing Among Local Governments	Rate Limitations
Charter County and Regional Transportation System Surtax	All eligible counties may use the proceeds for funding transit or roads.	Referendum.	No sharing required.	Up to one percent.
Local Government Infrastructure Surtax	Every county may use the revenue for: (1) paying for infrastructure, including pledging it to repay debt; (2) acquiring land for public recreation or conservation or protection of natural resources; (3) closing certain landfills; (4) constructing, leasing, maintaining, providing security or utilities for courthouses; and (5) improving private facilities used as emergency shelters. Additionally, every county may use 15 percent of the revenue for economic development. Charter counties may use the revenue to retire debt issued prior to July 1, 1987.	Referendum.	Sharing is required between the county and the governing bodies of municipalities representing a majority of the county's municipal population. The distribution formula among the local governments may be established by interlocal agreement. If no agreement is in effect, the revenue is distributed pursuant to the half-cent sales tax formula. The revenue may also be shared with school boards.	The surtax may be set at a rate of one percent or one-half percent. The aggregate levy of all local option sales surtaxes, except the Emergency Fire Rescue Service and Facilities Surtax, the Charter County Transportation System Surtax and the School Capital Outlay Surtax, may not exceed one percent.
Voter-Approved Indigent Care Surtax	Indigent health care.	Referendum.	No sharing required.	One-half or one percent, except that the combined rate of this Surtax and all other surtaxes except the School Capital Outlay Surtax, the Emergency Fire Rescue Service and Facilities Surtax and the Charter County Transportation System Surtax, may not exceed one percent.
Indigent Care and Trauma Center Surtax	Indigent health care and trauma care.	Referendum or extraordinary vote of the members of the governing body.	The revenue must be shared with certain trauma centers.	The statute limits the rate to one-half percent. The aggregate levy of all local option sales taxes may not exceed one percent, except for counties authorized to levy the Charter County Transportation System Surtax, the School Capital Outlay Surtax and the Emergency Fire Rescue Service and Facilities Surtax.
Emergency Fire Rescue Service and Facilities Surtax	May be used to fund fire rescue facilities and services.	Referendum.	Interlocal agreement required.	Up to one percent.

Options Requiring Legislative Authorization

Secure Additional Tourist Tax Authority

Lee County currently levies its maximum rate of five cents of tourist development taxes. Each penny of tourist tax generates an estimated \$4.7 million annually in Lee County. The County, as limited by statutes, uses the tourist tax revenues for tourist promotion activities and for funding facilities catering to tourists. If the County desires additional tourist tax options to pay for operational expenses of these facilities, general law authority would be required. Such a law can be justified with a variety of arguments, including the fact that other high tourist destination counties in Florida have been authorized additional tourist taxes. The following table shows those counties with higher authorized tourist tax rates than Lee County.

Table 21: Tourist Tax Levies in Select Counties

County	Maximum	Actual	Capacity
Broward	6	5	1
Duval	6	6	0
Miami-Dade	6	6	0
Monroe	7	5	2
Orange	6	6	0
Osceola	6	6	0
Volusia	6	6	0
Walton	6	4.5	1.5

Obtain a Rental Car Surcharge: Local Option

The State imposes a \$2.00 per day surcharge on the short term rental of motor vehicles. See § 212.0606, Fla. Stat. In 2006, the Legislature authorized certain counties to levy a local option rental car surcharge to pay for commuter rail in Central Florida, but Governor Bush vetoed the legislation. See CS/SB 1350 (2006). County by county data on the rental car surcharge is available for fiscal years 1998 to 2003. Very consistently, Lee County has generated about five percent of the state's rental car surcharge. Applying the five percent to the 2012-13 REC forecast of the state's rental car surcharge of \$134 million implies that, at the same rate, a local option surcharge would generate roughly \$6.7 million annually for Lee County.

The following chart shows revenue estimates for Lee County and 11 other counties in the region.

Table 22: Rental Car Surcharge in Select Counties

Rental Car Surcharge in DOT District 1							
County	dist.	%1998	%1999	%2000	%2001	%2002	%2003
CHARLOTTE	1	0.23%	0.21%	0.22%	0.19%	0.23%	0.19%
COLLIER	1	0.78%	0.77%	0.78%	0.82%	0.73%	0.63%
DE SOTO	1	0.02%	0.02%	0.03%	0.02%	0.03%	0.02%
GLADES	1						
HARDEE	1	0.01%	0.00%	0.02%	0.01%	0.01%	0.00%
HENDRY	1	0.01%	0.01%	0.05%	0.03%	0.03%	0.02%
HIGHLANDS	1	0.08%	0.07%	0.08%	0.08%	0.09%	0.06%
LEE	1	5.30%	4.67%	4.59%	5.25%	4.25%	4.20%
MANATEE	1	0.76%	0.70%	0.98%	0.91%	0.66%	0.62%
OKEECHOBEE	1	0.02%	0.02%	0.03%	0.03%	0.02%	0.02%
POLK	1	0.67%	3.21%	0.92%	0.50%	3.69%	3.73%
SARASOTA	1	1.36%	1.12%	1.19%	0.90%	0.99%	0.92%

If the Board decides to put this issue back into play with the Legislature and Governor, it may be helpful to first organize local businesses, residents and others interested in an improved transportation system. Then, the movement could be expanded regionally to garner more support for the proposal. The regional goal could be to convince the legislative delegations to push the issue in the state Capitol. Without a broad base of support locally and regionally, the issue will probably not generate much interest in the Legislature.

Enact a State Sales Tax Rebate for the County's Spring Training Facilities

The Legislature has authorized rebates of certain sales taxes collected at designated pro-sports facilities. See § 212.20(6)(d)6b., Fla. Stat. The following chart lists the designated facilities and the amounts distributed by the State to date.

Table 23: State Sales Tax Rebate for Sports

CITY/ COUNTY	NAME OF TEAM/FACILITY		First Distribution	Paid To Date
Miami	FLORIDA MARLIINS/MIAMI DOLPHINS	PRO SPORTS	06/94	34,333,402
Jacksonville	JACKSONVILLE JAGUARS(FOOTBALL)	PRO SPORTS	06/94	32,500,065
St. Petersburg	TAMPA BAY DEVIL RAYS(BASEBALL)	PRO SPORTS	06/95	30,333,394
Tampa	TAMPA BAY LIGHTNING(HOCKEY)	PRO SPORTS	09/95	30,000,060
Broward	FLORIDA PANTHERS(HOCKEY)	PRO SPORTS	08/96	28,166,723
Hillsborough	TAMPA BAY BUCCANEERS(FOOTBALL)	PRO SPORTS	01/97	27,333,388
Miami	MIAMI HEAT(BASKETBALL)	PRO SPORTS	03/98	24,833,383
Orlando	ORLANDO MAGIC	PRO SPORTS	02/08	5,166,677
World Golf	WORLD GOLF VILLAGE	GOLF FACILITY	07/98	24,333,382
Intern'l Fish Hall	INTL GAME FISH ASSOC WORLD CTR	GAME & FISH	03/00	11,499,954
Clearwater	PHILLIES(BASEBALL)	Sp. Training	02/01	4,750,038
Dunedin	TORONTO BLUEJAYS(BASEBALL)	Sp. Training	02/01	4,750,038
Indian River	DODGERS(BASEBALL)	Sp. Training	02/01	4,750,038
Osceola	HOUSTON ASTROS(BASEBALL)	Sp. Training	02/01	4,750,038
Lakeland	DETROIT TIGERS(BASEBALL)	Sp. Training	02/01	4,433,346
Charlotte	TAMPA BAY DEVIL RAYS(BASEBALL)	Sp. Training	03/07	1,750,014
Bradenton	PITTSBURGH PIRATES(BASEBALL)	Sp. Training	03/07	1,750,014
Fort Lauderdale	Currently without a team	Sp. Training	03/07	1,750,014
Sarasota	BALTIMORE ORIOLES(BASEBALL)	Sp. Training	03/07	1,750,014
St. Lucie	NEW YORK METS(BASEBALL)	Sp. Training	03/07	923,389
Totals				279,857,371

The Legislature has the authority to add the Lee County's spring training facilities to the list and begin distributing revenues to the County.

Conclusion

This report has suggested a dozen revenue options that can generate additional revenue for Lee County. For more transparency and flexibility, the report suggests the County can create a municipal services taxing unit or highlight certain programs funded by ad valorem taxes by separately presenting them on the ad valorem tax bill. The report also suggests the County could consider broader based options that can generate substantial amounts of additional revenue, including enacting the Public Service Tax, adjusting the Communications Services Tax, and putting a local option sales tax up for referendum approval. The report also suggests options that are more localized in implementation, including the creation of a stormwater utility, the development of a reclaimed water utility, an adjustment to the FPL franchise fee rate and the extension of the franchise fee to Lee County Electric Cooperative. All of the options directly or indirectly would move the County closer to achieving the goal of reducing its reliance on reserves consisting of ad valorem revenues generated in the past when the taxable value was higher than it is now.

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