

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

MEETING DATE: November 14, 2007

DIVISION: Public Works

BULK ITEM: Yes No

DEPARTMENT: Public Works

STAFF CONTACT/PHONE#: Dent Pierce/292-4560

AGENDA ITEM WORDING: Discussion of Gas Tax Fund 102.

ITEM BACKGROUND:

PREVIOUS RELEVANT BOCC ACTION:

CONTRACT/AGREEMENT CHANGES:

STAFF RECOMMENDATION:

TOTAL COST: \$ _____

BUDGETED: Yes: No:

COST TO COUNTY: \$ _____

SOURCE OF FUNDS: _____

REVENUE GENERATED: Yes No AMOUNT PER MONTH _____ PER YEAR _____

APPROVED BY: County Atty.: OMB/Purchasing: Risk Management: _____

DOCUMENTATION: INCLUDED: NOT REQUIRED:

DISPOSITION: _____ AGENDA ITEM #: _____



BOARD OF COUNTY COMMISSIONERS

Mayor Mario Di Gennaro, District 4
Mayor Pro Tem Dixie M. Spehar, District 1
George Neugent, District 2
Charles "Sonny" McCoy, District 3
Sylvia J. Murphy, District 5



Suzanne A. Hutton, County Attorney**
Robert B. Shillinger, Chief Assistant County Attorney **
Pedro J. Mercado, Assistant County Attorney
Susan M. Grimsley, Assistant County Attorney **
Natileene W. Cassel, Assistant County Attorney
Cynthia L. Hall, Assistant County Attorney

Office of the County Attorney
PO Box 1026
Key West, FL 33041-1026
(305) 292-3470 – Phone
(305) 292-3516 – Fax

** Board Certified in City, County & Local Govt. Law

October 26, 2007

TO: Dent Pierce
Division Director
Public Works

FROM: Suzanne Hutton *SH*
County Attorney

RE: GAS TAX or SPECIAL ASSESSMENTS FUNDING

You have inquired as to the pros and cons of seeking funding mechanisms of either additional gas tax or special assessments in order to generate the revenue necessary to continue to provide the necessary level of maintenance and repair service for the roads and bridges in the unincorporated county. There are a number of comparisons which can be made. I may not consider all, but here are at least a few:

1. The gas tax would spread the cost of the additional revenues to visitors as well as the residents, while special assessments would put the full burden on the property owners benefited.
2. The work necessary to get special assessments in place in time to be able to start collecting revenues for repairs and maintenance in fiscal year (FY) 2009 has to be done immediately, while we have some lead time for the imposition of additional gas tax.

Ordinances for special assessment districts would have to be approved in November, unless we are able to rely upon the special districts already set up in Monroe County Code Section 2-235 et seq. In the latter case, the BOCC, acting as the governing board of each district, may adopt by resolution user fees based on the estimated costs of the repairs and maintenance to be incurred in the district less the allocation of gas tax to that district. In either case – establishing Roads & Bridges districts, or utilizing the existing districts, proper cost allocation will be absolutely necessary.

We have until June, 2008 to pass an ordinance to either obtain a majority plus one vote of the BOCC on an ordinance levying one or more additional cents or to enact an ordinance creating a referendum to be placed on the ballot in November 2008 for additional gas tax.

3. The requirements for adoption of additional gas tax (either super majority vote of BOCC or referendum of voters) could not be met and if that occurs, we will have the same time crunch next year to get special assessment ordinances in place to be able to provide repairs and maintenance in FY 2010. See below discussion of gas tax for more details on adoption.

The enactment of the special assessment districts does not require voter referendum. Of course, if we don't do special assessments, we don't get a super majority vote of the BOCC for additional gas tax, and the voters don't approve a referendum, we will be able to do only so much maintenance and repairs as can be funded in FY 2009 with the existing gas tax, and the remainder of the roads and bridges will have to wait until the following year, which of course will exacerbate the problem until more revenue is made available. FYI, there are several memos in our files since about 2000 noting that the costs of maintenance and repairs have been exceeding collections and eating into the fund balance.

It should be noted that the voters voted against a November 6, 1990 referendum to impose an additional one cent gas tax. A copy of the underlying ordinance, No. 022-1990, creating the referendum is attached. The vote was 13,958 No and 6,142 Yes.

GAS TAX:

The County currently utilizes a six cent local option gas tax, which expires September 1, 2019. We have up to eleven cents as a local option gas tax under Section 206.41(1)(e), F.S. Section 336.025(1)(b), F.S., sets forth the enactment procedures for the five cents beyond the first six cents of local option gas tax. Imposition of one or more cents of additional gas tax needs to be completed before July 1 in order to be effective on January 1 of the following year. It can be done by ordinance which is adopted by a super majority (4) vote of the BOCC or by referendum approved by the voters. If we pursue the gas tax before March, 2008, and the ordinance fails to get a super majority vote, we still would have time to get a referendum ordinance approved by a vote of three before July 1, 2008.

If we are going to levy additional gas tax, we need to update the ILAs we have with the cities to provide for a share of the new levy before the effective date of the tax (January 1, 2009).

SPECIAL ASSESSMENTS:

First, I must apologize. I see from going through the files we have on gas tax that you have been asking questions for several years about the possibility of special assessments being used for roads and bridges maintenance. The answer is that municipal service benefit units and special assessments may be implemented for maintenance and repairs as well as capital improvements.

However, special assessments are charges assessed against particular property because that property derives some special benefit from the expenditure of the money in addition to the general benefit accruing to all property or citizens. There are two requirements for the imposition of a valid special assessment. First, the property assessed must derive a special benefit from the service provided. [*Atlantic Coast Line R.R. v. City of Gainesville*, 83 Fla. 275, 91 So. 118 \(1922\)](#). Second, the assessment must be fairly and reasonably apportioned among the properties that receive the special benefit. [*South Trail Fire Control Dist. v. State*, 273 So.2d 380 \(Fla.1973\)](#).

That will require assessments to be imposed by district, based annually on the estimated costs to be incurred in each district. The assessments collected would then have to be applied to the maintenance and repairs in the appropriate district. Higher administrative costs to account for collections and expenditures

in each district will be incurred than in the collection and use of gas tax, which will probably incur no additional administrative costs since there is already a collection of the tax and distribution to the County and municipalities. Special assessments also require equitable distribution of the gas tax which is not currently restricted to district-wide accounting but currently available for all roads and bridges in the unincorporated county, so it will add a level of administration not currently applied.

Special assessments may be placed on the annual tax bill if we follow the appropriate procedure. That makes collection much easier than sending out assessments separately. The procedure requires that the BOCC adopt a resolution to place the non-ad valorem assessment on the tax bill before January 1 (unless both the tax collector and the property appraiser agree to let BOCC approve the resolution by March 1) of the year in which the assessment is to go on the bill. That means that for us to utilize the uniform non-ad valorem assessment procedure to affix assessments on the ad valorem tax bill in November 2008, the BOCC would have to approve the resolution in December, 2007, or get the Tax Collector and Property Appraiser to agree to a resolution passed no later than February 29, 2008.

ORDINANCE NO. 022 -1990

FILED COPY 000000

'90 JUL 17 P2:56

AN ORDINANCE IMPOSING AN ADDITIONAL ONE CENT GAS TAX IN MONROE COUNTY, INCLUDING THE CITIES, FOR THE PURPOSE OF FUNDING A TRANSPORTATION SYSTEM AND RELATED FACILITIES AND THE COST OF ACQUISITION, CONSTRUCTION, RECONSTRUCTION AND MAINTENANCE OF ROADS AND STREETS; PROVIDING THAT A PORTION OF THE TAX PROCEEDS MAY BE DISTRIBUTED BY INTERLOCAL AGREEMENT TO ANY OR ALL OF THE CITIES IN THE COUNTY; PROVIDING FOR A REFERENDUM AS TO WHETHER THE TAX SHOULD BE IMPOSED; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ALL ORDINANCES INCONSISTENT HERewith; PROVIDING FOR INCORPORATION INTO THE MONROE COUNTY CODE; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA, that:

Section 1. The Monroe County Board of County Commissioners may, by resolution, impose a tax, including the municipalities therein, in addition to all other taxes required or allowed by law, a one cent gas tax upon every gallon of motor fuel and special fuel sold in the County and taxed under the provisions of part I or part II of Chapter 206, Fla.Stat. The tax shall be collected in the manner provided in Sec. 336.021, Fla.Stat.

Section 2. The proceeds of the tax shall be used for the purpose of paying the costs and expenses of establishing, operating and maintaining a transportation system and related facilities and the cost of acquisition, construction, reconstruction, and maintenance of roads and streets.

Section 3. The County may, at anytime, enter into an interlocal agreement with any or all of the municipalities in the County in order to provide for the distribution of the tax proceeds between the County and the municipality or municipalities. No tax proceeds distributed to a municipality may be used for purposes other than those described in Section 2 of this Ordinance.

Section 4. The November 6, 1990, general election ballot in Monroe County, including the municipalities located therein, shall have the following referendum question:

Additional One Cent Gas Tax Levy

Should an additional one cent gas tax be imposed in Monroe County, including the cities, for the purpose of funding a transportation system and related facilities, and the acquisition, construction, reconstruction, and maintenance of roads and streets?

_____ Yes

_____ No

Section 5. If any section, subsection, sentence, clause or provision of this Ordinance is held invalid, the remainder of this Ordinance shall not be affected by such invalidity.

Section 6. All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed to the extent of said conflict.

Section 7. If this Ordinance becomes effective, it shall be included and incorporated in the Code of Ordinances of the County of Monroe, Florida, as an addition or amendment thereto, and shall be appropriately renumbered to conform to the uniform numbering system of the Code.

Section 8. A copy of this Ordinance shall be filed in the Office of the Secretary of State, State of Florida, but the Ordinance shall not take effect unless and until a majority of those voting on the referendum question set forth in Section 4 vote yes.

PASSED AND ADOPTED by the Board of County Commissioners of Monroe County, Florida, at a regular meeting of said Board held on the 10th day of July, A.D., 1990.

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By John C. Stewart
Mayor/Chairman

(SEAL)

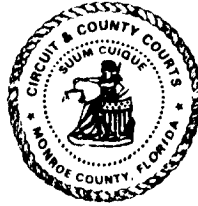
Attest DANNY L. KOLHAGE, Clerk

Rosalie L. Connolly, D.C.
Clerk

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY.

BY Robert G. [Signature]
Attorney's Office

EFFECTIVE DATE: _____
2



Danny L. Kolhage

BRANCH OFFICE
3117 OVERSEAS HIGHWAY
MARATHON, FLORIDA 33050
TEL. (305) 743-9036

CLERK OF THE CIRCUIT COURT
MONROE COUNTY
500 WHITEHEAD STREET
KEY WEST, FLORIDA 33040
TEL. (305) 294-4641

BRANCH OFFICE
P.O. BOX 379
PLANTATION KEY, FLORIDA 33070
TEL. (305) 852-9253

July 18, 1990

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mrs. Liz Cloud, Chief
Bureau of Administrative Code and Laws
Department of State
The Capitol
Tallahassee, Florida 32301

P-506-002-703

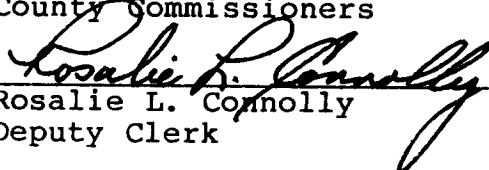
Dear Mrs. Cloud:

Enclosed please find a certified copy of Ordinance No. 022-1990 imposing an additional one cent gas tax in Monroe County, including the cities; providing that a portion of the tax proceeds may be distributed by interlocal agreement to any or all of the cities in the County; providing for a referendum as to whether the tax should be imposed; etc.

This Ordinance was adopted by the Monroe County Board of County Commissioners at a Regular Meeting in formal session on July 10, 1990. Please file for record.

Very truly yours,

Danny L. Kolhage
Clerk of the Circuit Court and
ex officio Clerk to the Board
of County Commissioners

By: 
Rosalie L. Connolly
Deputy Clerk

cc: Mayor J. Stormont
Mayor Pro Tem W. Harvey
Commissioner D. Jones
Commissioner E. Lytton
Commissioner M. Puto
County Attorney R. Ludacer
County Administrator T. Brown
Public Works Director D. Pierce
File