

**Lee County Board of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20030217

1. REQUESTED MOTION:

ACTION REQUESTED:

Amend Resolution No. 90-03-25, Section 5.06., Uniformity of Tolls, eliminating the Clergy Exemption from toll payment on Lee County Facilities.

WHY ACTION IS NECESSARY:

Board must approve any amendment to a Resolution.

WHAT ACTION ACCOMPLISHES:

Improves operational delays at toll bridges, increases revenue and reduces administrative oversight.

**2. DEPARTMENTAL CATEGORY:
COMMISSION DISTRICT #**

A 12 A

3. MEETING DATE:

03-18-2003

4. AGENDA:

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED:

**5. REQUIREMENT/PURPOSE:
(Specify)**

- STATUTE
 - ORDINANCE
 - ADMIN. CODE
 - OTHER
- Lee County Resolution 90-03-25

6. REQUESTOR OF INFORMATION:

- A. COMMISSIONER
- B. DEPARTMENT
- C. DIVISION

BY: *Scott S. Covert*
Scott S. Covert
Assistant County Attorney

7. BACKGROUND:

On March 21, 1990 the Board adopted Resolution No. 90-03-25 amending Resolution No. 87-12-19 and others pertaining to Revenue Bonds for the Lee County Transportation Facilities. Resolution 90-03-25, Section 5.06., Uniformity of Tolls provided, in part, that members of the clergy are exempt from paying tolls on County Toll Facilities.

On January 6, 2003, at the Board's Management and Planning Meeting, Scott Gilbertson, DOT Director, recommended to the Board that Resolution 90-03-25 be amended by eliminating the Clergy Exemption from payment of tolls on County Toll Facilities.

(Continued on Page 2)

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL:

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
<i>2/26/03</i> <i>Scott Gilbertson</i>	N/A	N/A	N/A	<i>5-11</i> <i>Scott Gilbertson</i> <i>2/25/03</i>	<i>OA</i> <i>RK 2/26</i>	<i>OM</i> <i>2/27/03</i>	<i>RISK</i> <i>2/27/03</i>	<i>GC</i> <i>2-27-03</i>	<i>2-27-03</i>

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

Rec. by CoAtty
Date: *2/26/03*
Time: *2:00 PM*
Forwarded To:
City Admin

RECEIVED BY
COUNTY ADMIN. *RK*
2/26 3:40
COUNTY ADMIN.
FORWARDED TO: *DS*
2/27 10:00

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Page No.: 2

Subject: Uniformity of Tolls

7. BACKGROUND:

(Continued from Page 1)

Administrative Staff and Legal Staff recommend deleting the Clergy Exemption from Resolution No. 90-03-25.

- ATTACHMENTS:**
1. Proposed Lee County Resolution
 2. January 6, 2003, Management and Planning Committee Agenda (Item #2)
 3. Legal Opinion

LEE COUNTY RESOLUTION NO. _____

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, FURTHER AMENDING RESOLUTION NO. 87-12-9 AS AMENDED BY RESOLUTION NO. 90-03-25, PROVIDING FOR THE EXEMPTION FOR TOLLS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Lee County on December 3, 1987, adopted Lee County Resolution No. 87-12-9 and on March 21, 1990 adopted Lee County Resolution No. 90-03-25 amending the exemptions for tolls; and

WHEREAS, Florida Statute 338.155 no longer includes clergy in the exemptions for tolls; and

WHEREAS, said Resolutions need to be amended to adjust the exemptions for tolls in order to enable the free flow of traffic without interruption by deleting the exemption for vehicles driven by members of the clergy.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS that:

Section 1 Lee County hereby exercises its authority for amending this Resolution. This amending Resolution is adopted pursuant to the provisions of Chapter 125, Florida Statutes, and other applicable provisions of law.

Section 2 Lee County hereby amends Article V Section 5.06 Uniformity of Tolls in its entirety to read as follows:

ARTICLE V COVENANTS

SECTION 5.06 UNIFORMITY OF TOLLS. The Issuer covenants that, no later than the commencement of operation of each Transportation Facility, the Issuer shall establish and place into effect reasonable tolls, fees and charges in regard to the use of such Transportation Facility. The Issuer further covenants that tolls for traffic using the Transportation Facilities will be classified in a reasonable way to cover all traffic, so that the tolls may be uniform in application to all traffic falling within any reasonable class regardless of the status or character of any person participating in the traffic, and that no reduced rate of toll will be allowed within any such class except that, subject to the provisions of Section 5.05 hereof, provision may be made for the use of commutation or other tickets or privileges based upon frequency or volume. The Issuer further covenants that no free vehicular passage will be permitted on the Transportation Facilities except public and private school buses that are being used for the purpose of regular school transportation, vehicles owned by the State of Florida, the County, or any municipality

within the County that are being used for public purposes, ambulances that are being used for patient transport, vehicles owned and operated by agents and independent contractors of the County that are being used in connection with the maintenance or operation of the Causeway, other vehicles exempted from the payment of tolls by laws of the State of Florida, and except on such portions of any approaches of the Transportation Facilities as may be determined by the Issuer.

Section 3 Lee County Resolution 87-12-9 and 90-03-25 are duly amended by the adoption hereof and shall remain in full force and effect.

Section 4 This Resolution shall become effective upon its adoption by a majority vote of the Board of County Commissioners sitting at a regularly scheduled Board Meeting.

The foregoing Resolution was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____ and, being put to vote, the vote was as follows:

BOB JANES	_____
DOUGLAS ST. CERNY	_____
RAY JUDAH	_____
ANDREW W. COY	_____
JOHN E. ALBION	_____

DULY PASSED AND ADOPTED THIS _____ day of _____, 2003.

ATTEST: CHARLIE GREEN
CLERK OF COURTS

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: _____
Deputy Clerk

BY: _____
Chairman

APPROVED AS TO FORM:

BY: _____
Office of the County Attorney



BOARD MANAGEMENT AND PLANNING COMMITTEE AGENDA

MONDAY

JANUARY 6, 2003

1:30 PM - 4:00 PM

COUNTY COMMISSION CHAMBERS

- #1. **CONSIDERATION OF REVISED LEEWAY TOLL RATES**
PRESENTER: Scott Gilbertson, Transportation
TIME REQUIRED: 10 Minutes
- #2. **CLERGY EXEMPTIONS**
PRESENTER: Scott Gilbertson, Transportation
TIME REQUIRED: 5 Minutes
- #3. **FUNDING FOR THE BICYCLE/PEDESTRIAN FACILITIES PROGRAM**
PRESENTER: Andrew J. Getch, Transportation
TIME REQUIRED: 10 Minutes
- #4. **PROPOSED REVISIONS TO THE PARTNERING FOR RESULTS PROCESS**
PRESENTER: Ann Arnall, Human Services
TIME REQUIRED: 15 Minutes

BOARD COMMENTS/DISCUSSION

3:10 PM **ADJOURN**

**BACK UP FOR THIS AGENDA CAN BE OBTAINED FROM THE
PUBLIC RESOURCES OFFICE - (239) 332-2737**

The Management & Planning Meeting is carried live on the following cable channels

Comcast

Cable Channel 11

Time Warner

Cable Channel 16

**MANAGEMENT & PLANNING COMMITTEE
AGENDA REQUEST FORM
COMMISSION DISTRICT #**

PRESENTED BY: Scott Gilbertson, DOT Director

REQUESTED BY: Scott Gilbertson, DOT Director

TITLE OF ITEM FOR THE AGENDA: Clergy Exemptions

1. DESCRIPTION AND OBJECTIVE OF THE ISSUE

The purpose is to seek the BOCC's desire in the elimination of the Clergy Exemption from toll payment on Lee County Toll Bridges. Elimination of this exemption will increase traffic throughput on the Sanibel, Cape Coral and Midpoint bridges. The primary concern prompting this request is due to the delay caused to the Toll customers when they are held up in a lane while a vehicle at the both is stopping to sign through. The customers question why a private vehicle is being allowed to sign through without paying the toll. In the time it takes to sign a vehicle through, 3 to 6 additional vehicles could have passed through the plaza. Also, the clergy, can be reimbursed from their parish for any tolls paid., like other business people are reimbursed by their employers.

2. PROPOSE POLICY, PROCEDURE OR PLAN OF ACTION

Amend Resolution 01-06-58 pertaining to the bonds for Lee County Transportation Facilities to eliminate the Clergy Exemption from payment of tolls.

NOTE: the 1988 Florida Legislature 88-252 repealed Florida Statute Section 347.19 that provided that clergy are exempt from paying tolls. On March 21, 1990 the BOCC discussed and approved an amendment to resolution 87-12-9 and others, pertaining to the Bonds for Lee County Transportation Facilities allowing an exemption of Clergy from paying tolls. There are approximately 500 Clergy Passes issued.

3. OPTIONS (List advantages/Disadvantages of Each Option Listed)

- 1. Eliminate Clergy Exemption from payment of tolls.

ADVANTAGE:

- A. Improve traffic throughput
- B. Slight increase in revenue
- C. Slight reduction in administrative oversight.

DISADVANTAGE:

- A. Clergy will pay appropriate toll with each bridge crossing that was previously exempt.

- 2. Do Nothing

4. FINANCIAL IMPACTS/FUNDING SOURCE

Slight increase in toll revenue

5. STAFF RECOMMENDATIONS, AND JUSTIFICATION FOR RECOMMENDATIONS

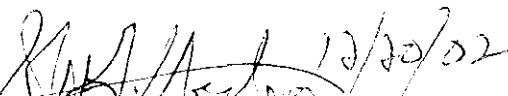
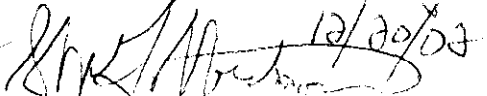
Adopt Option 1 - Florida Statutes do not require an exemption for Clergy, throughput of traffic will be enhanced with a slight increase in revenue.

6. Mandated:

Y

 N

BY WHAT AUTHORITY?

<u>DEPARTMENT DIRECTOR SIGNATURE</u>	<u>COUNTY MANAGER SIGNATURE</u>	<u>MEETING DATE</u>	<u>TIME REQUIRED</u>
		January 6, 2003	5 MIN.

Mr. Paul Bangs, Director of Development Review, Department of Community Development, reviewed the request for the Board. Commissioner Judah suggested a language change where it says that the Groves Subdivision will be able to receive \$17,640.00 in impact fee credit; he would like to make certain that the language stated "not-to-exceed \$17,640.00" as far as impact fee credit that would go to the developer. Mr. Bangs clarified that the developer was entitled to a maximum of approximately \$46,500.00 and he is willing to accept the \$17,640.00 and not request the difference which would be \$28,860.00. Mr. Ronald K. Brown, Deputy Director, Department of Transportation & Engineering, stated that they would do their best not to impact negatively on the property owners when doing the road resurfacing. Commissioner Slisher moved the item, seconded by Commissioner Judah, called and carried.

FOR PHOTO COPY OF AGREEMENT SEE PAGES 1682 Thru 1685

6. SUPPORT SERVICES

No requests received.

7. COUNTY ADMINISTRATOR

No requests received.

8. COUNTY ATTORNEY

- (a) Request Board adopt amendment to Resolution 87-12-9 and others, pertaining to the Bonds for Lee County Transportation Facilities and Exemption of Clergy from tolls.

County Attorney James Yaeger reviewed the request for the Board stating that Bond Counsel's response was that the loss in revenue was relatively insignificant. He stated that the definition of Clergy could be done by Administrative Code and read into the record the Attorney General's definition of Clergy. In response to Commissioner Manning's question of whether the Bond covenants need to be changed, Attorney Yaeger stated yes, because the Bond Resolution provides for the exemptions, and to do it correctly, we need to provide that exemption into the bond document. The issue of the employees having to cross the bridge to park was discussed. Mr. George Crawford, Acting Director, Department of Transportation & Engineering, addressed the issue stating that he felt it was just a part of getting to work and back. Commissioner Slisher moved the item, seconded by Commissioner Fussell, called and carried.

RESOLUTION NO. 90-03-25

FOR PHOTO COPY OF RESOLUTION SEE PAGES 1686 Thru 1687

- (b) Request Board consider offer to settle A.W.D. Harris interest for \$400.00, including attorney fees, for Metro Parkway case Lee County v. Walker, Case No. 89-7586 CA. Funds are available in Account No. 307-510-541250-6110-000-46906-00.

Commissioner Judah moved the item, seconded by Commissioner Fussell, called and carried.

- (c) Request Board consider offer of settlement in Metro Parkway condem-

RESOLUTION NO. 90-03-25

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, AMENDING RESOLUTION NO. 86-4-12, AS AMENDED AND RESTATED BY RESOLUTION NO. 87-12-9, TO AMEND THE EXEMPTION FOR TOLLS; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA:

SECTION 1. AUTHORITY FOR THIS AMENDING RESOLUTION. This amending resolution is adopted pursuant to the provisions of Chapter 125, Florida Statutes, and other applicable provisions of law.

SECTION 2. FINDINGS. It is hereby found and determined that:

(A) On April 16, 1986, Lee County, Florida (the "Issuer") duly adopted its Resolution No. 86-4-12, as amended and restated by Resolution No. 87-12-9, adopted December 3, 1987 (collectively, the "Resolution"), authorizing, among other things, the issuance of Lee County, Florida Transportation Facilities Revenue Bonds, Series 1987 (the "Bonds").

(B) The Issuer deems it desirable and in its best interests to amend at this time certain exemptions from the toll facilities contained in the Resolution.

(C) Such amendment shall have no material adverse affect on the security for the Bonds provided in the Resolution.

SECTION 3. AMENDMENT TO SECTION 5.06 OF THE RESOLUTION. Section 5.06 of the Resolution is hereby amended in its entirety to read as follows:

SECTION 5.06. UNIFORMITY OF TOLLS. The Issuer covenants that, no later than the commencement of operation of each Transportation Facility, the Issuer shall establish and place into effect reasonable tolls, fees and charges in regard to the use of such Transportation Facility. The Issuer further covenants that tolls for traffic using the Transportation Facilities will be classified in a reasonable way to cover all traffic, so that the tolls may be uniform in application to all traffic falling within any reasonable class regardless of the status or character of any Person participating in the traffic, and that no reduced rate of toll will be allowed within any such class except that, subject to the provisions of Section 5.05 hereof, provision may be made for the use of commutation or other tickets or privileges based upon frequency or volume. The Issuer further covenants that no free vehicular passage will be permitted on the Transportation

Facilities except public and private school buses that are being used for the purpose of regular school transportation, vehicles owned by the State of Florida, the County, or any municipality within the County that are being used for public purposes, ambulances that are being used for patient transport, vehicles owned and operated by agents and independent contractors of the County that are being used in connection with the maintenance or operation of the Causeway, vehicles driven by members of the clergy, other vehicles exempted from the payment of tolls by laws of the State of Florida, and except on such portions of any approaches of the Transportation Facilities as may be determined by the Issuer.

SECTION 4. RESOLUTION TO CONTINUE IN FORCE. Except as herein expressly provided, the Resolution, and all terms and provisions thereof, including the covenants contained therein, are and shall remain in full force and effect.

SECTION 5. EFFECTIVE DATE. This amending Resolution shall become effective immediately upon its adoption.

ADOPTED in Regular Session this 21st day of March, 1990.

BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA

By: [Signature]
Chairman

ATTEST: [Signature] Ex - Officio Clerk
Board of County Commissioners

[Signature]
DEPUTY CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

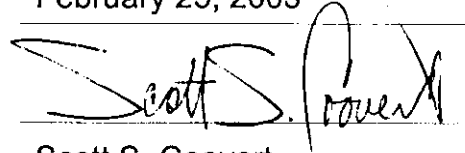
[Signature]
County Attorney

**MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY**

DATE: February 25, 2003

To: Board of County Commissioners

FROM:



Scott S. Covert
Assistant County Attorney

RE: **CLERGY EXEMPTION FROM TOLL PAYMENT ON LEE COUNTY TOLL
BRIDGES**

The Board has requested that the County Attorney's Office research the question of whether or not "clergy exemption" from toll payment on Lee County Toll Bridges violates the Establishment Clause of the First Amendment to the United States Constitution.

In 1988, the Florida Legislature, by HB 40, 88-252, repealed Florida Statute Section 347.19, which exempt members of the clergy from paying tolls on toll facilities within the State. There is no legislative history providing insight as to the reason why the Statute was repealed. On March 21, 1990, the Board of County Commissioners (BOCC) approved Resolution No. 90-03-25 that, in part, exempt clergy from paying tolls on County Toll Facilities. On January 6, 2003, at the Management and Planning Meeting, Scott Gilbertson, DOT Director, presented this matter to the Board. The Board directed the County Attorney's Office to provide a legal opinion.

The Establishment Clause of the First Amendment prohibits government from even the appearance of taking a position on the question of religious belief, and prevents governmental endorsement not only of particular religions, but also religion in general. The Establishment Clause mandates complete government neutrality towards religion. For any governmental benefit to withstand Constitutional scrutiny requires the application of a three-part test articulated in Lemon v. Kurtzman, 403 U.S. 602, 612-133, 91 S.Ct. 2105, 2111, 29 L.ED.2d 745 (1971). Governmental action is permissible only if it meets three conditions:

- (1) it must have a secular purpose; and

Re: Clergy Exemption from Toll Payment on Lee County Toll Bridges

- (2) its primary effect must be one that neither advances nor inhibits religion; and
- (3) it must not foster an excessive governmental entanglement with religion.

Lee County Resolution No. 90-03-25 approving toll exemption for members of the clergy apparently fails the first prong of the test by lacking a secular objective. As the result, there is no need to discuss the second or third prongs of the test. Exemptions benefitting religious organizations must be warranted by some overriding secular purpose that justifies like benefits for nonreligious groups. Any subsidy benefitting religious organizations must result from the natural inclusion of religion within the perimeter of a broad circle of nonsectarian groups also benefitting from the subsidy. These nonsectarian groups typically include charitable, scientific, professional, historical, and patriotic associations.

Below are examples of governmental benefits to religious organizations that the courts have overturned because it failed to establish a secular objective:

Texas Monthly Inc. v. Bullock, 489 U.S. 1 (1989). The United States Supreme Court struck down a Texas Statute exempting sales tax for religious periodicals. The sales tax exemption for religious periodicals failed to apply to all organizations (religious or not) that offer similar benefits as religious groups.

Barense v. Town of Barrington, 955 F. Supp. 151 (1996). The Town of Barrington, a municipality of the State of Rhode Island for approximately sixty (60) years provided churches the service of snow plowing the driveways and parking lots of religious institutions without charge. The no cost snow plowing services were not available to other secular, non-profit entities or other property owners in the town. The United States District Court of New Hampshire held that a municipality does not act in the general interest of its citizenry when it selectively confers upon religious institutions a benefit not made available to other owners of private property. Because the town clearly is providing a benefit to religious entities that is not available to nonreligious entities, and thus is promoting religion over nonreligion violates the Establishment Clause of the First Amendment.

Re: Clergy Exemption from Toll Payment on Lee County Toll Bridges

Foremaster v. City of St. George, 882 F.2d 1485 (1989). Beginning in 1942, the Utility Department of the City of St. George, Utah provided a subsidy for exterior lighting for a Mormon Temple. Each month the City issued a credit on the temple's electric bill, in effect paying for its late night illumination. The Tenth Circuit Court of the United States Court of Appeals, in essence, held that a governmental subsidy given by the City impermissibly subsidized a religious institution and conveys a message of endorsement of religion. Thus, the Constitution required the City to terminate the electric subsidy.

Based upon the above, it is the opinion of this Office that the Lee County Toll Exemption for members of the clergy potentially violates the Constitution of the United States and would not withstand judicial scrutiny if challenged. It is recommended that the Board delete the toll exemption for vehicles driven by members of the clergy, especially in light of the noted legal issues and the previously discussed DOT concerns over operational ramifications. In the alternative, the Board could elect to broaden the toll exemption by offering toll exemptions to all nonprofit charitable organizations within Lee County. If the Board elects the alternative, staff should be directed to review the legality of broadening the current exemptions under the existing Bond covenants, and review the financial and operational impacts to the toll bridges.

xc: Donald D. Stilwell, County Manager
James G. Yaeger, County Attorney
Robert W. Gray, Deputy County Attorney
David M. Owen, Chief Assistant County Attorney
Scott Gilbertson, DOT Director
Carol Goldwasser, Toll Facilities Director