

February 20, 2025

STRATEGIC PLANNING WORKSHOP



LEE BOARD OF COUNTY COMMISSIONERS

Commissioner Kevin Ruane – District 1 - Chairman

Commissioner Cecil Pendergrass – District 2 – Vice-Chairman

Commissioner David Mulicka – District 3

Commissioner Brian Hamman – District 4

Commissioner Mike Greenwell – District 5



Municipal Service Taxing Units (MSTUs)

February 20, 2025

Heather J. Encinosa
Nabors, Giblin & Nickerson P.A.
www.ngnlaw.com
hencinosa@ngnlaw.com

Discussion Topics

- (1) Constitutional Design and Background
- (2) Municipal Service Benefit Unit Concept
- (3) Uses of MSTUs – Law Enforcement
- (4) Implementation

Constitutional Design and Background

Constitutional Preemption of Taxation to State

- Prior to 1968 constitutional revision, taxes could be authorized by special act
- Article VII, section 1(a): constitutional preemption of all taxes (except ad valorem taxes) to state
 - “No tax shall be levied except in pursuance of law.”
 - “No state ad valorem taxes shall be levied upon real estate or tangible personal property.”
 - “All other forms of taxation shall be preempted to the state except as provided by general law.”

Constitutional Millage Authority

“Counties, school districts, and municipalities shall, and special districts may, be authorized by law to levy ad valorem taxes and may be authorized by general law to levy other taxes, for their respective purposes, except ad valorem taxes on intangible personal property and taxes prohibited by this constitution.”

Art. VII, §9(a), Fla. Const.

Constitutional Millage Limitations

- Ten mills for municipal purposes.
- Ten mills for county purposes.
- To the extent authorized by law, a county furnishing municipal services may levy additional taxes within the limits fixed for municipal purposes.

Art. VII, §9(b), Fla. Const.

See also Sections 200.071, 200.081, and 200.091 Fla. Stat.

MSTU Concept

The MSTU Concept

- Not a special district
- A levy by a county within the limits fixed for municipal purposes
- No referendum required
- Can include municipal areas with the municipality's consent by ordinance
- Ad valorem tax less than countywide without violating Art. VII, §2, Fla. Const. §125.01(q) and (r), F.S.

MSTU v. MSBU

MSTTU = Property Tax Millage

MSBU = Special Assessment for Benefit

Ad Valorem Benefit Requirement

- Questions of benefits and of unlawful burdens do not arise when the tax is uniform, for a public purpose, and within the power of the Florida Legislature to prescribe
- Lake County v. Water Oak Management Corp., 695 So.2d 667 (Fla. 1997)
- Donnelly v. Marion County, 851 So.2d 256 (Fla. 5th DCA 2003)

Uses of MSTUs – Law Enforcement

Section 125.01(1)(q), Florida Statutes

“...fire protection; **law enforcement**; beach erosion control...and other essential facilities and municipal services from funds derived from ... taxes within such unit only...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 taxing units and the municipality may not exceed 10 mills.”

Lee County MSTUs

ALL HAZARDS	0.0693 Mills
LIBRARY	0.4361 Mills
UNINCORP	<u>0.8398 Mills</u>
AVAILABLE	8.6548 Mills*

*Not including any city millage

Fort Myers Example

FORT MYERS
LIBRARY

6.5255 Mills

0.4361 Mills

6.9616 Mills

AVAILABLE

3.0384 Mills

Law Enforcement MSTU Case Law

Oelrich v. Alachua County,

888 So.2d 628 (Fla. 1st DCA 2004)

- Sheriff alleged County law enforcement MSTU ordinance was invalid based upon several alleged inconsistencies with the Florida Constitution and noted statutes.
- Court affirmed that the formation of an MSTU within the unincorporated area for the purpose of funding municipal law enforcement services provided within the taxing unit is a valid exercise of the County's power and funding these services with MSTU revenues is not inconsistent with general law or the Florida Constitution.

Section 30.49, Florida Statutes

- Sheriff to annually prepare and submit proposed budget
- Board may “not amend, modify, increase, or reduce any expenditure at the subobject code level”
- At budget hearings, Board may “amend, modify, increase, or reduce any of all items of expenditure in proposed budget”

Independence of the Sheriff

- Internal operation of the sheriff's office and the allocation of budgeted monies within the six items of the budget is a function belonging to the sheriff

Weitzenfeld v. Dierks, 312 So.2d 194 (Fla. 1975)

- Sheriff authorized to transfer funds between the fund and functional categories and the object and subobject codes after budget approval

Implementation

MSTUs

Creation:	Ordinance
Deadlines:	January 1 or July 1 per Section 200.066, Florida Statutes
Consent:	Municipal consent by ordinance if includes incorporated areas
*Allocation:	Allocation Methodology if unincorporated area only
Millage:	Levied through annual budget process

Section 200.066, Florida Statutes

Ad valorem taxes of newly created municipalities or special districts shall be initially imposed no earlier than the January 1 subsequent to the creation or establishment of the municipality or district. The creation by a county of a municipal service taxing unit under s. 125.01 is not controlled by this section if the boundaries of the municipal service taxing unit conform to the boundaries of existing special districts, include all the unincorporated areas, or include all the incorporated areas of a municipality, and if the taxing unit is created before July 1 if millage is to be imposed in the ensuing county budget.

Allocation Study?

- Lee County Sheriff is chief law enforcement officer of the County
- Countywide Services and Functions
- Absent full municipal consent, need allocation methodology to avoid shifting entire budgetary burden to unincorporated area property owners
- Possible Factors: direct allocations, population, road miles, land area

Statutory Revenue Limitations

- Section 200.065(5), F.S.
- Apply to aggregate millage, including dependent special districts and MSTUs
- Limited to Rolled-Back Rate, adjusted by change in per capita Florida personal income, unless approved by super majority vote (up to 110%) or unanimous vote/referendum (excess of 110%)

Questions?

State of Local EMERGENCY



State of Local Emergency

- Florida Statute 252.38(3)
- Lee County Ordinance 87-01

What Does it Do?

- Informs Governor, FDEM, FEMA of threat to lives & property
- Allows issuing evacuation orders when warranted
- Allows for emergency procurement
- Supports claims for homeowner & travel insurance policies



Extensions & Termination

- Limited to no more than 7 days
- Renewed in 7-day increments
- Extensions are at Board discretion
 - State continues governor's EO until emergency expenses are paid
- Consistent with state's executive order

State of Local EMERGENCY

PURCHASING AUTHORITY



Current County Manager

- Emergency purchasing authority
- 1st Ratification to Board for approval in 45 days
- Ratifications to Board until emergency response is complete

Option 1 Board Chair

- Emergency purchasing authority starts with County Manager
- 1st Ratification to Board for approval in 45 days
- Emergency Purchase Orders after 45 days signed by Chair as Board designee until emergency response completed

Option 2 Board of County Commissioners

- Emergency purchasing authority starts with County Manager
- 1st Ratification to Board for approval in 45 days
- Emergency Purchase Orders after 45 days approved by Board in Special Meetings

SOLE allows shorter advertising times (ex. Boca Grande Rd. Repairs)
County required to follow all Federal requirements

Crowder-Gulf		
RFP220362BJB - Disaster Recovery Services *		
Type	Description	Board Approved
Contract	Debris removal	October 18, 2022
Amendment 1	Reduced cost per mile for alternate disposal & reduced additional services	Not required
Amendment 2	Add concrete removal from public rights-of-way	June 6, 2023
Amendment 3	Add North Captiva Island & Cayo Costa Island	November 19, 2024
Amendment 4	Add Useppa Island	January 21, 2025
* Previous: RFP160257LAC was due to expire 5/10/23. FEMA Rule change 10/21 required new solicitation		

Thompson Consulting Services		
RFP210330BJB - Disaster Debris Monitoring for Lee County		
Type	Description	Board Approved
Contract	Debris monitoring	March 1, 2022
Amendment 1	Invoicing & equipment certification procedures	Not required
Amendment 2	Add North Captiva Island & Cayo Costa Island	November 19, 2024

No public right-of-way for debris setout;
unimproved paths

Many weather delays

Smaller loads & higher frequency

Need smaller equipment



Monitored Collection
on Unimproved Path

Debris Staging Site

Load Barge

Debris Removal Process

Bridgeless Barrier Islands

Cayo Costa, North Captiva & Useppa

Transport Workers &
Equipment

TO Islands

Transport Debris

FROM Islands

Final Disposal

Debris Management
Site

Offload Barge

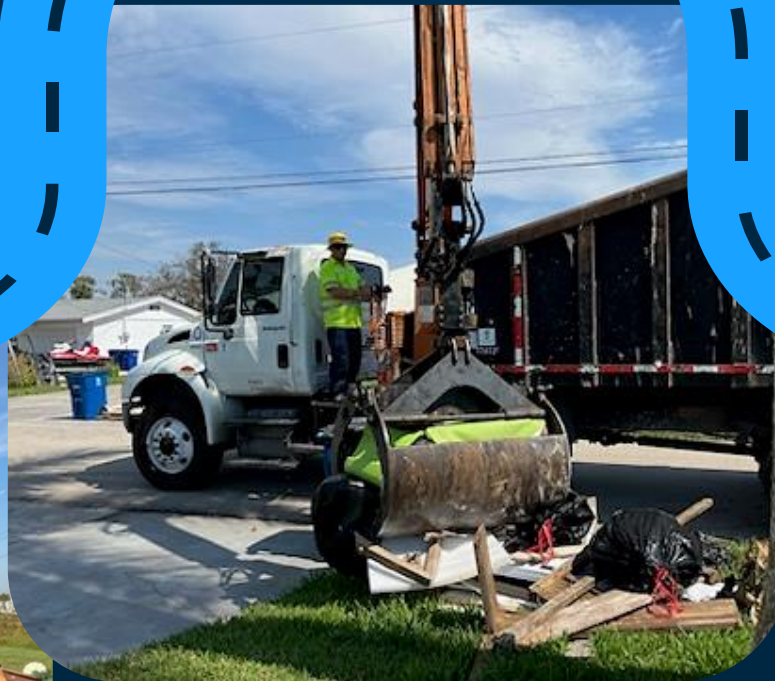
Debris Removal Process

Mainland & Areas with Bridge Connectivity

Unincorporated Lee County

Public Right-of-Way
Set Out

Monitored Collection



Debris Management
Site

Easily accessible
public right-of-
way
for debris setout

Minimal weather
delays - only stop
for lightening

Larger loads
& less
frequency

Final Disposal



FEMA Program and Policy Guide - PAPPG

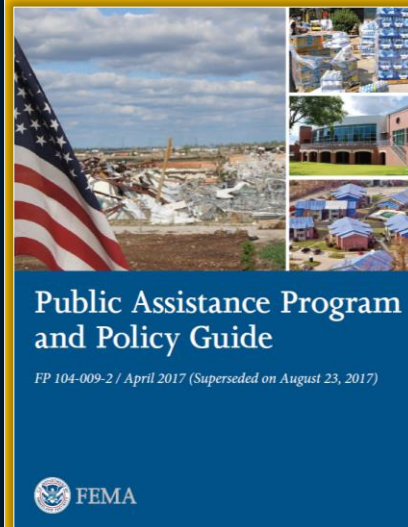
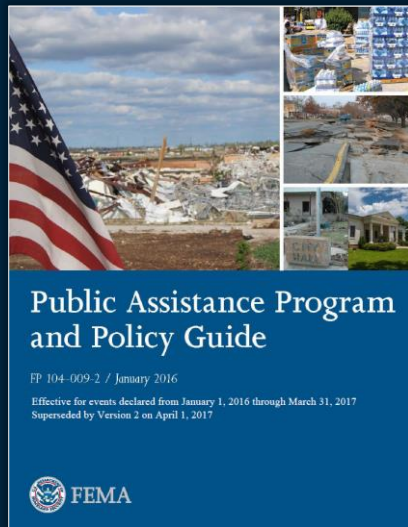
Revised every 3 – 5 years.



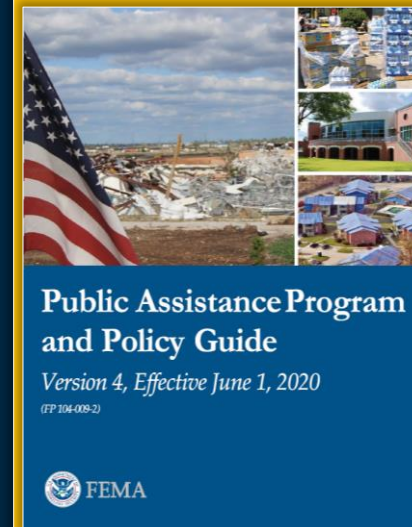
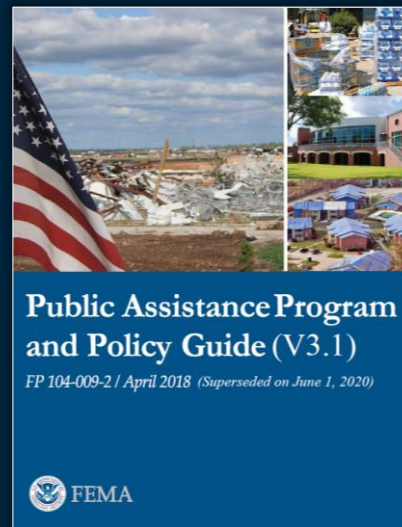
Prepared as agency evolves,
gains experience with
different events.



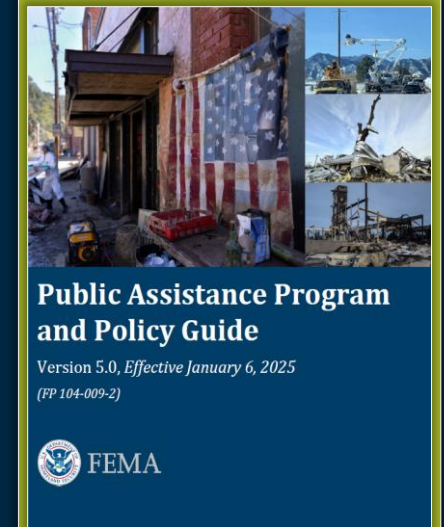
Some disaster issues were an
exception, are now the rule.



2017
IRMA
SEPTEMBER 10



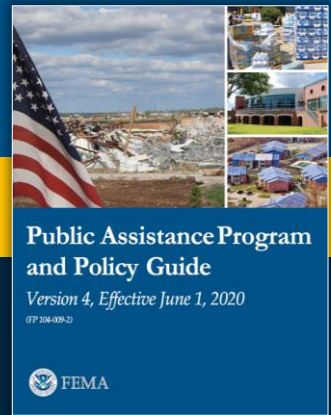
2022
IAN
SEPTEMBER 28, 2022
HELENE
SEPTEMBER 26, 2024
MILTON
OCTOBER 9, 2024



RELEASED
Dec. 2024
Updated Debris
language

DEBRIS LOCATION & COUNTY ACTION

Hurricanes Helene & Milton – PAPPG v4



Private Road / Gated Community

- Public has unrestricted access, frequent use of private road.
 - **No County action required**
- Public has restricted access, infrequent use of private road.
 - **County Action:**
 - Must document, highly recommended to submit to FEMA for prior approval



Private Property

- Very specialized in requiring an entity to go onto private property to remove something that has become immediate threat to community at large
- **County Action:**
 - Very specific approvals required
 - Rights of Entry
 - Hold Harmless Agreements with Property Owners



Commercial Property

- Industrial parks, golf courses, cemeteries, apartments, condos, trailer parks, etc.
- Generally ineligible; commercial enterprises expected to retain insurance
- **County Action:**
 - Obtain approval before work begins

THREE VERY DIFFERENT STORMS

HURRICANE IRMA

1.7 M
CUBIC YARDS
DEBRIS

111
DAYS TO COLLECT

\$37.2M
DEBRIS COSTS

HURRICANE IAN

6.5 M
CUBIC YARDS
DEBRIS

204
DAYS TO COLLECT

\$149.8M
DEBRIS COSTS

HURRICANE MILTON

556,113
CUBIC YARDS
DEBRIS

2/2/25
COLLECTED AS OF

\$23.6M
DEBRIS COSTS (EST.)

EXCEPTIONS

PRIVATE ROADS

- County requested FEMA authorization for specific addresses; Granted

PRIVATE PROPERTY

- No request.

COMMERCIAL PROPERTY

- No request.

PRIVATE ROADS

- County requested FEMA authorization
- State removed outer islands, waterway debris on behalf of County; no cost to County

PRIVATE PROPERTY

- No request.

COMMERCIAL PROPERTY

- FEMA & State identified 'Catastrophic / Extensively Damaged' areas.
- Exempted County from requesting authorization

PRIVATE ROADS

- County requested FEMA authorization
- FEMA & State waived requirement for preapproval for gated communities, included islands.

PRIVATE PROPERTY

- No request.

COMMERCIAL PROPERTY

- FEMA & State waived preapproval requirement

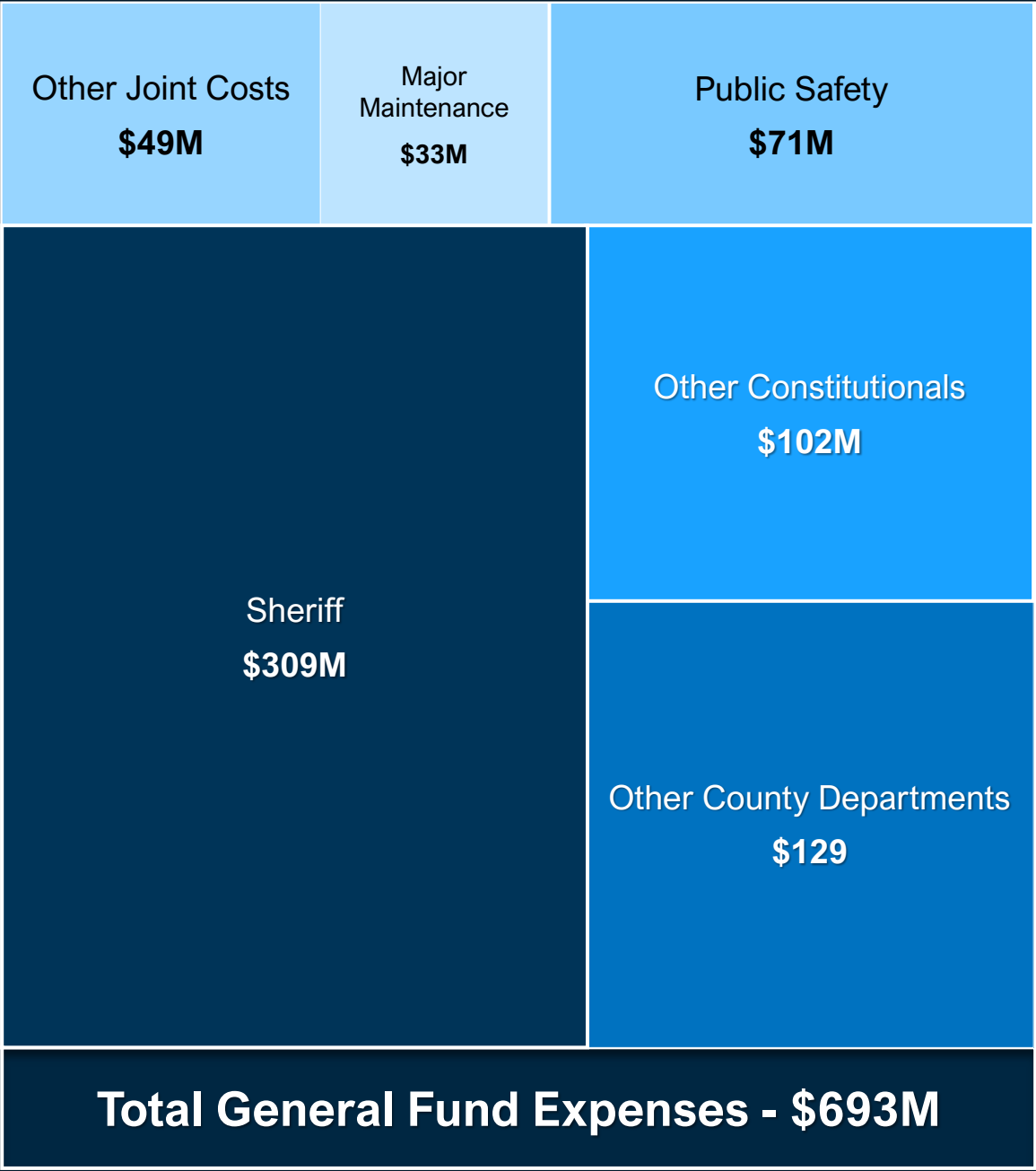
2023/2024 STRATEGIC PRIORITIES STATUS UPDATE

Infrastructure	Enhance EMS	Fiscal	Regional Mitigation Sites
Roads & Bridges <ul style="list-style-type: none"> Expedited road projects Communicating project timelines Continuing traffic optimization & modeling efforts Working on SR-80 corridor redevelopment plan 	Add additional EMS stations	Develop five and ten-year revenue projections	Regional Mitigation Sites are essential because: <ul style="list-style-type: none"> Provide wetland & wildlife mitigation for county Capital Improvement projects, and much needed restoration in Conservation 20/20 sites. Paying full price of wetland & wildlife mitigation credits at a private bank will increase construction costs for CIP projects. If the county were required to purchase wetland credits, millions of dollars would go to lands that the county does not own and are located outside Lee County.
Regional Water Supply <ul style="list-style-type: none"> Compare septic vs. sewer implementation costs to understand total cost picture to guide decisions Investigate FGUA alternatives 	Hire additional EMS positions	Clearly communicate expense management steps, debt pay down to date and population increases	
	Purchase additional ambulances	Begin to investigate alternatives to fill predicted future shortfall	
Civic Center <ul style="list-style-type: none"> Commitment to maintaining agricultural uses of the Civic Center property Continuing the process to restore and improve the property 	Develop a 5-year plan to assess additional equipment, staffing and EMS stations	Investigate additional revenue sources	
	Continue using & investigating alternative care delivery methods (telehealth or urgent care)	Provide clear budget guidance based on revenue projections	

In Progress

Complete

<https://strategicpriorities.leegov.com/>



General Fund Revenues

FY19-20 - FY24-25

Property Taxes

Other Revenues

Federal / State Funding - \$21M Avg.

CARES / ARPA / FTA / Ian Loan

General Fund Revenues

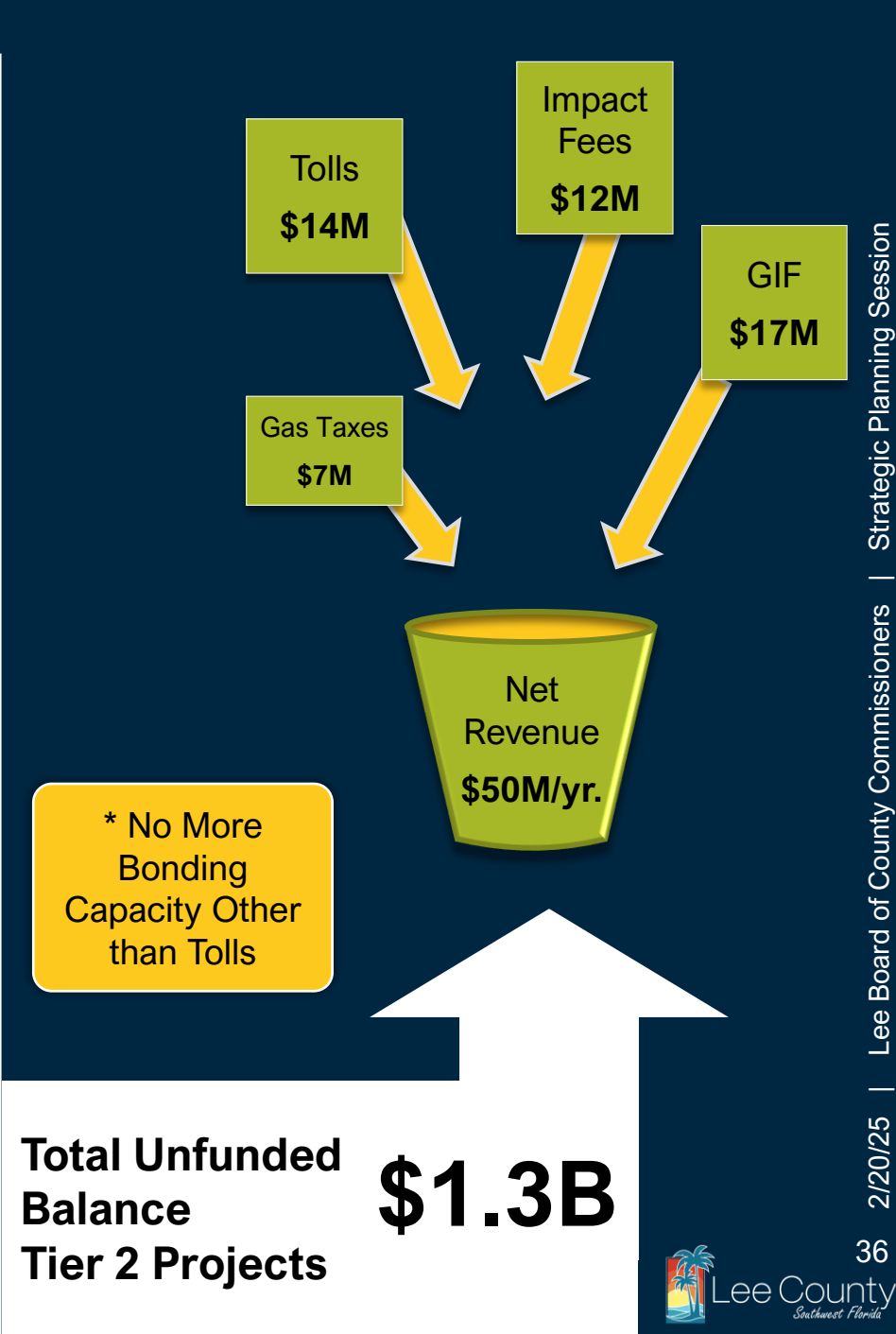
FY25-26

Property Taxes

Other Revenues

ARPA Funding – EMS Salaries - \$1.85M

2. Buckingham Rd. \$79M		9. Veterans Chiquita - Skyline \$34M	5. Corkscrew Three Oaks - I75 \$16M	15. Orange River Bridge \$7M	8. Joel Blvd. 17 th St W – SR80 \$81M	13. Broadway St Alva Bridge \$34M
3. Hickory Bridge \$102M		14. Corkscrew Verdana Village – County line \$183M			7. Corkscrew Alico – Verdana Village \$86M	12. Ortiz Lockett – Palm Beach \$44M
10. Sunshine 23 St W – Lee Blvd. \$57M	6. Burnt Store Rd. Van Buren to Charlotte Line \$268M		11. Sunshine Lee Blvd – 75 th St. W \$210M		4. Ortiz MLK – Lockett & Lockett 4L \$52M	
1. Sunshine Blvd. \$70M						



February 20, 2025

STRATEGIC PLANNING WORKSHOP



LEE BOARD OF COUNTY COMMISSIONERS

Commissioner Kevin Ruane – District 1 - Chairman

Commissioner Cecil Pendergrass – District 2 – Vice-Chairman

Commissioner David Mulicka – District 3

Commissioner Brian Hamman – District 4

Commissioner Mike Greenwell – District 5

