

Florida Government Finance Officers Association
(FGFOA)

2009 Legislative Policies and Recommendations



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INTRODUCTION

The Florida Government Finance Officers Association (FGFOA) respectfully presents its 2009 legislative policies and related recommendations. One of the FGFOA's primary roles is to educate interested parties on legislative initiatives that impact local government finances, which can affect local government's ability to serve the public. The legislative policies and recommendations were prepared to provide a clear and unified voice for the organization during the legislative process and to assist decision makers in their deliberations.

The legislative policies and recommendations were developed by the FGFOA Legislative Committee and approved by the FGFOA Board of Directors. Legislative Committee members represent a wide variety of local governments, including counties, municipalities and special districts. Committee members included professionals from the fields of accounting, auditing, budget and finance who provided a practical perspective of the affects of proposed or potential legislation on local government's finances and operations.

The FGFOA welcomes all opportunities to discuss the 2009 legislative policies and recommendations. Please contact Jeannie Garner, FGFOA Executive Director, at (850) 222-9684 or jgarner@flcities.com with any questions, comments or if additional information is desired.

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LEGISLATIVE COMMITTEE OVERVIEW

Committee Members

The FGFOA Board of Directors and Legislative Committee Chairperson are grateful to the following members who contributed time and effort in preparing this year's legislative policies and recommendations. Preparation of the policies and recommendations would not have been possible without the dedication, professionalism and cooperation of the following individuals:

Debra J. Bautista, Alan S. Braithwaite, Ray W. Britt, Rip Colvin, James Cooke, IV, Gale W. Edington, Sharon R. Fox, Dave Jabosky, Crystal K. Kinzel, Sharon McGuire, David Persaud, and Linda R. Pilcher.

Committee Purpose

- Coordinate the development of the FGFOA's legislative policies and recommendations for approval by the Board of Directors.
- Evaluate proposed legislation during the legislative session that impacts FGFOA member jurisdictions and make recommendations to affect positive change.
- Keep FGFOA members apprised of legislative developments through newsletter articles and emails and encourage member involvement in the legislative process.

Committee Goals

- Monitor state and federal legislative proposals that affect Florida local governments
- Propose policies, recommendations and sample legislative language that support or oppose proposed or potential legislation, including an analysis of the legislation's impact and alternatives, if any.
- Educate and inform FGFOA members on issues affecting them or their jurisdictions by developing articles for each FGFOA newsletter and sending emails to members that explain implications of proposed or adopted legislation.
- Encourage FGFOA members to participate in the legislative process.
- Maintain positive working relationships with the Florida Legislature, the Florida Legislative Committee on Intergovernmental Relations and local elected officials.
- Serve as a resource to legislators, legislative staff, elected officials, Florida Association of Counties and the Florida League of Cities regarding legislative proposals that have financial implications for local governments.

ARTICLE V

Issue

The Legislature, as mandated by the voters in the State of Florida, implemented Article V legislation in 2004.

Analysis

Certain concerns were addressed in the “glitch bill”, however, several concerns remain:

- Fines and fees are not sufficient to sustain local operations.
- Limits on Clerk expenditures disregard local market conditions and locally required levels of service. Clerk’s Offices have little control over revenues or expenditures.
- 2004 legislation created duplicate reporting requirements that are not consistent with existing uniform financial reporting requirements.
- Concerns remain regarding the allocation methodology used to determine the expenditure cap and the return or distribution of surplus funds. The expenditure cap methodology rewards counties with increasing revenues without recognizing the costs associated with collections and other functions, regardless of the ability to increase revenues. Several fine and fee provisions could be amended to provide the ability for a greater percentage of cost recovery.
- Additional changes to fine and fee assessments, reporting requirements and budgetary allocations are needed to provide Clerks the ability to pay all costs related to meeting mandated requirements.

Recommendation

The Legislature should enact follow-up legislation to resolve issues related to the following:

- Collection and distribution of fines and fees
- Providing a central repository to eliminate duplicate reporting requirements
- Reviewing expenditure cap methodologies that allow greater flexibility for Clerks to retain funds for local requirements

Sample Legislative Language

Section 1. Paragraph (c) of subsection (1) of section 28.241 is amended to read:

28.241 (1)(c) Any party other than a party described in paragraph (a) who files a pleading in an original civil action in circuit court for affirmative relief by cross-claim, counterclaim, counter petition or third-party complaint shall pay the clerk of court a fee of \$295. The clerk shall remit the fee to the Department of Revenue for deposit into the General Revenue Fund.

Section 2. Subsection 5 of section 28.24; Florida Statutes, is amended to read:

28.244 (5) Refunds.--A clerk of the circuit court or a filing officer of another office where records are filed who receives payment for services provided and thereafter determines that an overpayment has occurred shall refund to the person who made the payment the amount of any overpayment that exceeds ~~\$5~~ \$10. If the amount of the overpayment is ~~\$5~~ \$10 or less, the clerk of the circuit court or a filing officer of another office where records are filed is not required to refund the amount of the overpayment unless the person who made the overpayment makes a written request.

Section 3. paragraph (a) of subsection (4) and subparagraph 3. of paragraph (c) of subsection (5) of Section 28.36 Florida Statutes, is amended to read:

28.36 Budget procedure. There is hereby established a budget procedure for the court related functions of the clerks of the court.

(4)(a) If the corporation verifies that the proposed budget is limited to the standard list of court-related functions in s. [28.35](#)(4)(a) and a revenue deficit is projected, a clerk seeking to retain revenues pursuant to this subsection shall increase all fees, service charges, and any other court-related clerk fees and charges to the maximum amounts specified by law or the amount necessary to resolve the deficit, whichever is less. If, after increasing fees, service charges, and any other court-related clerk fees and charges to the maximum amounts specified by law, a revenue deficit is still projected, ~~the corporation shall, pursuant to the terms of the contract with the Chief Financial Officer, certify a revenue deficit and notify the Department of Revenue that the clerk is authorized to retain revenues, in an amount necessary to fully fund the projected revenue deficit, which he or she would otherwise be required to remit to the Department of Revenue for deposit into the Department of Revenue Clerks of the Court Trust Fund pursuant to s. [28.37](#).~~ Clerks who experience a revenue deficit shall substantiate to the Clerk of Courts Operations Corporation the reasons for the deficit. Before the increase in the maximum annual budget of any clerk under this paragraph, the Clerk of the Court Operations Corporation must provide the Legislative Budget Commission with a statement of the impact of the proposed budget changes on state revenues and evidence that the respective clerk of the court is meeting or exceeding the established performance standards for measures on the fiscal management, operational efficiency, and effective collection of fines, fees, service charges, and court costs. The Clerk of Courts Operations Corporation shall compile the projected net annual surplus of all clerks and report to the Department of Revenue. If a revenue deficit is projected for that a clerk after retaining all of the projected collections from the court-related fines, fees, service charges, and costs, the Department of Revenue Clerk of Courts Operations Corporation shall certify the amount of the revenue deficit amount to the Department of Revenue and Executive Office of the Governor and request release authority for funds appropriated for this purpose from the Department of Revenue Clerks of the Court Trust Fund. Notwithstanding provisions of s. [216.192](#) related to the release of funds, the Executive Office of the Governor may approve the release of funds appropriated to resolve projected revenue deficits in accordance with the notice, review, and objection procedures set forth in s. [216.177](#) and shall provide notice to the Chief Financial Officer. The Department of Revenue is directed to request monthly distributions from the Chief Financial Officer in equal amounts to each clerk certified to have a revenue deficit, in accordance with the releases approved by the Governor.

(5)(c)3. For county fiscal years 2008-2009 and thereafter, the maximum budget amount for the standard list of court-related functions of the clerks of court in s. [28.35](#)(4) (a) that may be

funded from fees, service charges, court costs, and fines retained by the clerks of the court shall be calculated based on the projected revenues and anticipated costs of the clerk. The total revenue and cost of all clerks and projected surplus to be remitted to the Department of Revenue shall be reported by the Clerk of the Court Operations Corporation to the Department of Revenue and Legislative Budget Commission in accordance with Section 28.36(5)(c). ~~as the re-based budget for the prior county fiscal year adjusted by the projected percentage change in revenues between the prior county fiscal year and the county fiscal year for which the maximum budget amount is being authorized. The re-based budget for the prior county fiscal year shall always be calculated by adjusting the re-based budget for the year preceding the prior county fiscal year by the actual percentage change in revenues between the 12-month period ending June 30 of the year preceding the prior county fiscal year and the 12-month period ending June 30 of the prior county fiscal year.~~

BED TAX ON INTERNET SALES OF LODGING

Issue

Current law allows local governments to impose a bed tax on hotel and motel rooms. Current law is clear regarding the taxes collected by hotels and motels that offer services directly to the public. Current law is not clear regarding the taxes collected when hotels or motels sell rooms through Internet booking services.

Analysis

Many Internet booking services are paying taxes on the amounts paid by the booking service, rather than on the amounts ultimately paid by patrons. Internet booking services often pay a flat rate for rooms purchased in blocks and subsequently resell the rooms at higher rates to the public.

This practice has resulted in lost revenues to local governments, excess profits to Internet booking services and an un-level playing field when all tax savings are passed-on to customers relative to hotels and motels that sell directly to the public.

Recommendation

Bed tax legislation should be amended to clarify that the appropriate taxable amount is the final room rate paid by the patron and not the block rate paid by a booking service.

Sample Legislative Language

Section 1. Subsections (8), (9), (10), and (11) are added to section 212.03, Florida Statutes, to read:

212.03 Transient rentals tax; rate, procedure, enforcement, exemptions.

(8) For purposes of this section and ss. 125.0104, 125.0108, and 212.0305, the term "engaging in the business of renting, leasing, letting, or granting a license to use transient rental accommodations" includes any activity in which a person offers information about the availability of accommodations to a customer, arranges for the customer's occupancy of the accommodations, establishes the total rental price the customer pays for the accommodations, or collects the rental payments from the customer.

(9) The terms "total rent" as used in this section, "total consideration" as used in ss. 125.0104 and 125.0108, and "consideration" as used in s. 212.0305 have the same meaning and include the total amount a customer must pay in order to use or occupy a transient accommodation, including service charges or fees that are a condition of occupancy, except for mandatory fees imposed for the availability of communications services. Charges or fees paid by a customer to the person collecting the rent or consideration as a condition of occupancy are included in the taxable rent or consideration even if the charges or fees are separately itemized on the customer's bill or are for items or services provided by a third party. Charges for items or services provided to occupants of transient accommodations that are not intrinsic to occupancy of the accommodation, are provided only upon the election of the occupant, and are separately itemized are not considered taxable rent.

(10) Persons engaging in activities described in subsection (8) shall register with the department and collect and remit taxes on the total rent charged to their customers, unless the registered owners or operators of the accommodations agree in writing to report and remit taxes on their behalf. Any written agreement must require the person collecting the rent to report total taxable sales and taxes due and pay the taxes collected to the owner or operator by the last day of the month in which the customer pays the rent or the last day of the month in which the customer completes the occupancy of the accommodation. The owner or operator shall report and remit the taxes with the owner or operator's return that is due in the month following the month in which the taxes are paid to the owner or operator. The owner or operator is not liable for any tax, penalty, or interest due as a result of the failure of the person who arranged the occupancy and collected the rent to accurately report and remit the taxes imposed by this section or by ss. 125.0104, 125.0108, and 212.0305. If the owner or operator does not agree to report and remit taxes on behalf of the person who rents the accommodations as provided in subsection (8), that person shall extend his or her annual resale certificate in lieu of paying taxes on the amounts he or she pays to the owner or operator for the accommodations. The department may provide by rule for a single registration by a person engaged in the activities described in subsection (8) rather than require separate registrations for each location where transient rental accommodations are located. Such person may file consolidated returns as provided in s. 212.11(1) (e).

(11)(a) The state shall provide an amnesty for unpaid taxes, penalties, and interest imposed under chapter 125 or chapter 212, Florida Statutes, on transient rentals if the following requirements are met:

1. The rentals subject to amnesty were made prior to July 1, 2008.
2. The rental payments were collected by persons who are not owners, operators, or managers of the transient rental facilities or their agents.
3. The person who collected the rental payments registers with the Department of Revenue to pay taxes on transient rentals on or before July 1, 2008.
4. The person who collected the rental payments applies for amnesty within 3 months after July 1, 2008, pursuant to rules of the Department of Revenue.

(b) The amnesty is not available for taxes, penalties, or interest assessed if the assessment is final and has not been timely challenged, or for any taxes, penalties, or interest that have been paid to the department unless the payment is the subject of an assessment that is not final or that has been timely challenged.

(c) The amnesty is not available for tax billed to or collected from the consumer who pays for occupancy of the transient rental facility. The amnesty applies, however, to such amounts to the extent that the person who collected the rental payments can document that such taxes were remitted to the owner or operator of the transient rental facility.

(d) The Department of Revenue may adopt emergency rules under sections 120.536(1) and 120.54(4), Florida Statutes, to implement the amnesty. Such rules may provide forms and procedures for applying for amnesty, for reporting the rentals for which amnesty is sought, and for ensuring the applicant's ongoing commitment to registration, collection, and remittance of the taxes imposed by state law on transient rentals. Notwithstanding any other law to the contrary, the emergency rules shall remain effective until six months after the date of adoption of the rule or the date of final resolution of all amnesty applications filed pursuant to this section, whichever occurs later.

DISCRETIONARY SURTAX ON DEEDS

Issue

The governing body in each county, as defined in s. 125.011(1), F.S., is authorized to levy a discretionary surtax on deeds and other instruments; however, under the current legislative definition, only Miami-Dade County is authorized to levy this tax. Miami-Dade County levies the surtax at the maximum rate of .45 cents for each \$100 or fractional part thereof.

This surtax can not be assessed when the interest being conveyed or transferred is a single family residence. There are other special situations under s. 201.02 F.S. where the tax does not apply, such as the dissolution of marriage or employee relocations.

Analysis

Funds from this revenue source serve an important public purpose, which is to provide housing for low and moderate income families. Funds can be used to assist in the financing and construction, rehabilitation, or purchase of housing for low and moderate income families.

Proceeds are collected by the Department of Revenue and remitted to the County's governing body and subsequently deposited in a Housing Assistance Loan Trust Fund. Distribution of funds could follow the same distribution structure currently utilized for Miami-Dade.

Recommendation

The Discretionary Surtax should be expanded to allow all counties to levy this tax. Surtax legislation is scheduled to expire on October 1, 2011, which will provide an opportunity to expand the tax to all counties.

Sample Legislative Language

Section 1. Subsection (1) is amended to read:

201.031 Discretionary surtax; administration and collection; Housing Assistance Loan Trust Fund; reporting requirements.—

(1) Each county may levy a discretionary surtax on documents taxable under the provisions of s. [201.02](#), except that there shall be no surtax on any document pursuant to which the interest granted, assigned, transferred, or conveyed involves only a single-family residence. Such single-family residence may be a condominium unit, a unit held through stock ownership or membership representing a proprietary interest in a corporation owning a fee or leasehold initially in excess of 98 years, or a detached dwelling.

Section 2. Chapter 83-220, Laws of Florida, as amended by chapter 84-270, Laws of Florida, and chapter 89-252, Laws of Florida, is hereby repealed.

LOCAL BUSINESS TAXES

Issue

Counties and municipalities are authorized to levy a local business tax under sections 205.0535 (2) and (3), Florida Statutes. Current law does not authorize counties and municipalities to change, add or delete categories to reflect changes in business structures.

Analysis

Local governments have been unable to restructure their business tax categories or establish new categories to reflect changes in business and technology since October 1, 1995, rendering the current business tax categories inequitable, at best, and obsolete, at worst. Several tax categories that existed in 1995 are obsolete, and other categories are inadequate to properly categorize businesses, because of changes in businesses and technologies over the past thirteen years.

The statutory limitation on changing business tax rates has created rates which are difficult to administer, manage, or justify. The ability to change and add categories would allow local governments to adapt to changes in the business environment.

Recommendation

Current law should be amended to permit any county or municipality to reclassify rates, restructure rates and establish new rates once every ten years.

Sample Legislative Language

Section 1. Subsection (1) of section 205.0535, Florida Statutes, is amended to read:

205.0535 Reclassification and rate structure revisions. (1) ~~By October 1, 2008,~~ Any county or municipality that has adopted by ordinance a local business tax ~~after October 1, 1995,~~ may, once every ten years, by ordinance reclassify businesses, professions, and occupations and may establish new rate structures, if the conditions specified in subsections (2) and (3) are met. A person who is engaged in the business of providing local exchange telephone service or a pay telephone service in a municipality or in the unincorporated area of a county and who pays the business tax under the category designated for telephone companies or a pay telephone service provider certified pursuant to s. 364.3375 is deemed to have but one place of business or business location in each municipality or unincorporated area of a county. Pay telephone service providers may not be assessed a business tax on a per-instrument basis.

PROPERTY TAX RESTRICTIONS

Issue

Numerous legislative and constitutional initiatives have been enacted over the past few years, which have usurped the home rule authority of local governments, reduced local governments' funding flexibility and increased local governments' workloads related to calculating, enacting and reporting property tax and millage rate changes. Proposals to establish caps on local government spending and / or revenues will hinder local governments' ability to meet demands for services and infrastructure. At the same time, the state's outdated tax system based mostly on sales taxes could result in the State shifting more costs to local governments, costs that cannot be absorbed with an ever-shrinking local revenue base.

Analysis

In 1992, Florida voters approved an amendment to the Florida Constitution that limited property value increases for homestead properties, commonly known as "Save Our Homes (SOH)." The SOH property tax exemption limits the increase in taxable values for homestead properties (owner occupied primary residences) to no greater than three percent annually or the increase in the consumer price index (CPI), whichever is less.

In 2007, legislation was enacted that restricted local government property tax revenues and millage rate increases. The legislation mandated that local governments reduce property taxes or face the loss of State revenue sharing equivalent to the mandated property tax revenue decrease. Local legislative voting requirements were also established that require various levels of votes to approve millage rate increases.

On January 29, 2008, Florida voters approved a constitutional amendment, known as Amendment 1, which: expanded the regular homestead exemption from \$25,000 to \$50,000 (excluding school tax levies); allowed portability of SOH between residences; created a tangible personal property tax exemption of \$25,000 for business properties; created a 10% annual assessment cap for non-homestead properties; and required an annual appropriation to "fiscally constrained" counties to offset revenue reductions resulting from Amendment 1.

In November 2008, Florida voters approved two constitutional amendments that will reduce local tax revenue. Amendment 4 (approved by 68.6%) provides a property tax exemption for real property encumbered by perpetual conservation easements or other perpetual conservation protections, applying to property taxes beginning in 2010. Amendment 6 (approved by 70.6%) requires assessment of working waterfront property based upon current use rather than highest and best use.

The effects of recent legislation and constitutional amendments include:

- Reduced local government services
- Reduced stability in local government revenues
- Increased user fees
- Increased government administrative costs related to reacting to initiatives, and
- Increased inequities in sharing the tax burden between long-time homesteaded properties and recently homesteaded properties (without an accumulated SOH exemption) and non-homestead properties (rental and business properties)

The above legislation and constitutional amendments have usurped local governments' home rule authority, reduced local governments' funding flexibility and increased local governments' workloads related to calculating, enacting and reporting property tax millage rate changes.

If current tax inequities are allowed to grow, future generations of first-time home buyers, renters and business owners will be priced-out of the State, due to the increased tax burden on these properties. Ultimately, an unfair tax system will benefit no one, because this type of system leads to significant dissension, mistrust of government and possibly tax revolts. The longer existing taxing inequities are allowed to grow, the more difficult they will be to correct.

Tax reduction is not the same thing as tax reform. Reforming something should make it better, not just lower. Recent tax reduction efforts have benefited one taxpayer class at the expense of other classes, which have not reformed the tax system, but have actually made the system worse by creating greater taxpayer inequities. SOH provides a significant tax reduction for long-time homeowners, but provides no tax relief for rental properties, commercial properties or newly homesteaded properties until the SOH exemption accumulates. The longer a homeowner resides in the State, the more likely he or she will pay a disproportionate share of the costs of providing basic public services relative to all other property owners and renters.

With the escalation of property values, the SOH Exemption has created significant disparities in taxes levied on similarly situated properties. Even with recent property value declines, significant tax differences exist between similarly valued properties, which are unfair and unsustainable in the long-term. While Florida's average state and local tax burden ranks 47th overall among the 50 states (according to the Tax Foundation), the SOH Exemption and Amendment 1 have significantly increased the property tax burden for new homeowners and others who are ineligible for SOH, such as renters and businesses. This tax burden inequity will continue to grow, due to the recently adopted portability provision of SOH.

At the same time property tax inequities have grown, the cost of providing public services has consistently exceeded the maximum allowable annual SOH increase. Local government costs have been affected by population growth, unfunded mandates (federal and state), and cost increases in fuel, public safety salaries, construction, pensions and insurance (property and health). The statewide assessment methodology (highest and best use) and disparities in property values between different areas of the State have created additional tax inequities.

At the same time costs are rising, long-time homeowners with the SOH Exemption continue to request additional government services, because these homeowners are not required to pay their fair share for providing the services. The tax burden inequity created by SOH and Amendment 1 violates the fundamental concept of fairness in the application of taxes and creates an unintended consequence of creating a higher demand for government services. The tax burden shift has contributed to Florida's housing affordability crisis. While many homeowners enjoy significant SOH benefits and are insulated from the full impact of increased property valuations, more new homeowners cannot afford to purchase homes because their share of taxes is too high. This trend is unsustainable.

Recommendation

Legislation should be enacted to reduce property tax inequities and stabilize local tax bases. At a minimum, the Legislature should seek no additional property tax restrictions and allow local governments to retain authority to adopt budgets based on changing economic and demographic conditions, which may vary widely between regions and over time.

PUBLIC SERVICE TAX ON UTILITY SERVICE

Issue

Deregulation of the natural gas industry has created a tax avoidance opportunity, depending upon how purchase contracts are written. This tax avoidance opportunity has resulted in a significant reduction in public service tax revenues to local governments, which has created an un-level playing field for certain companies, depending on whether a company can effectively employ the tax avoidance mechanism.

Analysis

Deregulation of the natural gas industry has created a loophole for large purchasers of natural gas to escape the payment of public services tax by changing the purchase contract. Purchasers have switched their contracts so that a purchase occurs at the wellhead or from the manufacturer out-of state, and the purchaser then pays transportation charges to bring the product into Florida.

The product is still transported and distributed by the same pipeline distribution system in place prior to deregulation, but since the purchase is deemed to take place out-of-state, no public services tax is paid in the jurisdiction where consumption occurs. This situation places local natural gas vendors at a financial disadvantage to out-of-state vendors who do not pay the tax. This situation also jeopardizes a bondable revenue source for local governments.

The Florida Department of Revenue faced the same situation with the gross receipts tax, which resulted in legislation that rectified the problem by changing the gross receipts tax on utility services to include the use or consumption of utility services imported in this state, as well as the transportation and delivery charges for such utility services.

Recommendation

Current law should be amended to allow the public services tax to be levied in the jurisdiction where a product is consumed. This change will stabilize revenues and provide a level playing field for local utility services vendors relative to out-of-state vendors.

Sample Legislative Language

Section 1. Paragraph (a) of subsection (1) is amended and paragraphs (d) – (h) of subsection (1) of section 166.231, Florida Statutes, are created to read:

166.231 Municipalities; public service tax. ---

(1)(a) A municipality may levy a tax on the purchase, use or consumption of utility services ~~electricity, metered natural gas, liquefied petroleum gas either metered or bottled manufactured gas either metered or bottled,~~ and water service. Except for those municipalities in which paragraph (c) applies, the tax shall be levied only upon purchases utility services purchased, used or consumed within the municipality and shall not exceed 10 percent of the payments received by the seller of the taxable item from the purchaser for the purchase of such service. Municipalities imposing a tax on the purchase of cable television service as of May 4, 1977, may continue to levy such tax to the extent necessary to meet all obligations to or for the benefit of holders of bonds or certificates which were issued prior to May 4, 1977. ~~Purchase of~~

electricity means the purchase of electric power by a person who will consume it within the municipality. "Utility service" means electricity for light, heat, or power; and natural or manufactured gas for light, heat, or power, including transportation, delivery, transmission, and distribution of the electricity or natural or manufactured gas. This subsection does not broaden the definition of utility service to include separately stated charges for tangible personal property or services which are not charges for electricity or natural or manufactured gas or the transportation, delivery, transmission, or distribution of electricity or natural or manufactured gas.

(d) The tax shall be levied against the total amount of revenues received by a distribution company for its sale of utility services if the utility service is delivered to the retail consumer by a distribution company and the retail consumer pays the distribution company a charge for utility service which includes a charge for both the electricity and the transportation of electricity to the retail consumer. The distribution company shall report and remit to the municipality in the manner prescribed by ordinance.

(e)1. Each distribution company that receives payment for the delivery of electricity to a retail consumer in this state is subject to tax on the exercise of this privilege as provided by this paragraph unless the payment is subject to tax under paragraph (d). For the exercise of this privilege, the tax levied on such distribution company's receipts for the delivery of electricity shall be determined by multiplying the number of kilowatt hours delivered by the index price and applying the rate in paragraph (a) to the result.

2. The index price is the Florida price per kilowatt hour for retail consumers in the previous calendar year, as published in the United States Energy Information Administration Electric Power Monthly and announced by the Department of Revenue on June 1 of each year to be effective for the 12-month period beginning July 1 of that year. For each residential, commercial, and industrial customer class, the applicable index posted for residential, commercial, and industrial will be applied in calculating the revenues to which the tax applies. If publication of the indices is delayed or discontinued, the last posted index shall be used until a current index is posted or the department adopts a comparable index by rule.

3. Tax due under this paragraph shall be administered, paid, and reported in the same manner as the tax due under paragraph (d).

(f)1. Every distribution company that receives payment for the sale or transportation of natural or manufactured gas to a retail consumer in a municipality is subject to tax on the exercise of this privilege as provided by this paragraph. For the exercise of this privilege, the tax levied on such distribution company's receipts for the sale or transportation of natural or manufactured gas shall be determined by dividing the number of cubic feet delivered by 1,000, multiplying the resulting number by the index price, and applying the rate in paragraph (a) to the result.

2. The index price is the Florida price per 1,000 cubic feet for retail consumers in the previous calendar year as published in the United States Energy Information Administration Natural Gas Monthly and announced by the Department of Revenue on June 1 of each year to be effective for the 12-month period beginning July 1 of that year. For each residential, commercial, and industrial customer class, the applicable index posted for residential, commercial, and industrial will be applied in calculating the gross receipts to which the tax applies. If publication of the indices is delayed or discontinued, the last posted index shall be used until a current index is posted or the department adopts a comparable index by rule.

3. Tax due under this paragraph shall be administered, paid, and reported in the same manner as the tax due under paragraph (d).

(g) Any person who imports into the municipality electricity, natural gas, or manufactured gas, or severs natural gas, for that person's own use or consumption as a substitute for purchasing utility, transportation, or delivery services taxable under this chapter and who cannot demonstrate payment of the tax imposed by this chapter is subject to tax on the exercise of this privilege as provided by this paragraph an amount equal to the cost price of such electricity, natural gas, or manufactured gas times the rate set forth in paragraph (a), reduced by the amount of any like tax lawfully imposed on and paid by the person from whom the electricity, natural gas, or manufactured gas was purchased or any person who provided delivery service or transportation service in connection with the electricity, natural gas, or manufactured gas. For purposes of this paragraph, the term "cost price" has the meaning ascribed in s. 212.02(4).

(h) Any person other than a co-generator or small power producer who produces for his or her own use electrical energy which is a substitute for electrical energy produced by an electric utility as defined in s. 366.02 is subject to the tax imposed by this section. The tax shall be applied to the cost price of such electrical energy as provided in s. 212.02(4) and shall be paid in the manner prescribed by ordinance. The provisions of this paragraph do not apply to any electrical energy produced and used by an electric utility.

REVENUE AND EXPENDITURE CAPS

Issue

Proposals have been made to establish caps on local government spending and / or revenues as a way to limit the growth in property taxes. These proposals establish arbitrary restrictions on local elected officials' authority, which will hinder local governments' ability to meet demands for services and infrastructure. At the same time, the state's outdated tax system based mostly on sales taxes could result in the State shifting more costs to local governments, costs that cannot be absorbed with an ever-shrinking local revenue base.

Analysis

Legislation was proposed in 2008 that would have established local government revenue and expenditure caps. HJR 7125 from 2008 proposed a constitutional amendment imposing a local government revenue cap. Had this proposal passed and an amendment been adopted, local government revenues would have been capped at the amount of a specified fiscal year plus a growth factor based upon population and inflation growth plus one percentage point. The Legislature would have been empowered to determine how the cap would be implemented, including which revenues and which local governments would be exempted from the cap.

SB 2412 and HB 715 from 2008 would have prohibited local government from taking any of the following actions unless the action was approved by at least a 3/5^{ths} vote, or a majority plus one, whichever is greater:

- levy a new tax, special assessment, non-ad valorem assessment, or impact fee;
- increase an existing tax rate, special assessment, non-ad valorem assessment or impact fee;
- expand a tax base or geographic area subject to a tax, special assessment, non-ad valorem assessment or impact fee; or
- eliminate an exemption from a tax, special assessment, non-ad valorem assessment or impact fee

Florida's state and local tax burden ranks 47th overall among the 50 states (according to the Tax Foundation), which indicates revenue and expenditure caps are not needed relative to other states. Establishing artificial caps will likely result in the reduction or denial of services that are paid for with user fees and taxes.

The costs of providing local public services have consistently exceeded normal inflation rates, due to a variety of factors, including the rising costs of fuel, public safety salaries, construction, pensions and insurance (property and health). Local government costs have also been adversely affected by population growth and unfunded mandates (federal and state). Establishing artificial revenue or expenditure caps could result in the reduction or denial of services because many costs are not directly controllable by local governments.

Recommendation

Legislation should not be proposed establishing local government revenue or expenditure caps or requiring extraordinary legislative action beyond a majority vote of a governing body to increase local government revenues or adopt budgets.

SALES TAX ON INTERNET TRANSACTIONS

Issue

The Supreme Court has ruled that states cannot require businesses to collect and remit sales taxes if a business does not maintain a physical presence, or nexus in the state. The basis for this decision was that requiring Internet-based businesses to collect and remit sales taxes would impose an undue burden on the businesses because of the many variations in state and local government sales tax rates, exemptions and structures nationwide.

Analysis

Many Internet-based businesses have a competitive advantage over in-state businesses, since sales tax is usually not collected on Internet transactions if a business does not maintain a physical presence in the State. This results in billions of dollars in lost revenue as well as lost opportunities to businesses that provide jobs throughout the state. Sales taxes should be paid on all transactions regardless of how a sale is made in order to provide a level playing field for all businesses.

The National Governors Association estimates that within the next 10 years, the amount of retail goods sold over the Internet will exceed \$1 trillion annually. These sales could generate billions of dollars in sales tax revenue to state and local governments. These sales also represent lost opportunities to in-state businesses that provide jobs throughout the state.

In March 2000, a group of public and private entities formed the Streamlined Sales Tax Project (SSTP) with the goal of simplifying state and local tax systems in order to encourage Internet-based businesses to collect and remit sales taxes on all transactions. As a result, the SSTP developed a Streamlined Sales and Use Tax Agreement and sales tax collection system, which has been adopted by 19 states.

Once a state complies with the Agreement, businesses in that state may voluntarily use the related sales tax system to collect and remit remote sales taxes. The system reduces the sales tax collection burden on Internet-based businesses because the system provides details of all sales tax rates and exemptions within each state.

Recommendation

The Legislature should adopt laws and the Department of Revenue should adopt rules and regulations to comply with the Streamlined Sales and Use Tax Agreement.

“SAVE OUR HOMES” RECAPTURE RULE

Issue

Proposals have been made to repeal “recapture rule” related to the Save Our Homes assessment cap. Repealing this rule is not in the best interest of citizens or local governments.

Analysis

In 1992, Florida voters approved an amendment to the Florida Constitution, popularly known as “Save Our Homes” (SOH). SOH limits the annual increase in assessed value for properties receiving the Homestead Exemption to no more than 3% or the increase in the consumer price index (CPI), whichever is less.

In 1995, the Governor approved a rule allowing annual increases in assessed values using the above criteria even in years when a property's assessed value declined. This provision, known as the “recapture rule,” directs property appraisers to increase assessed values for properties assessed at less than full market value up to the assessed value. These increases are permitted until a property's SOH taxable value equals full market value (100% recaptured).

Based on the significant property value declines over the last few years, this coming year represents the first time the “recapture rule” will have a major effect. Homeowners who have experienced increased assessments may consider such increases unfair when overall property values have declined; however, the only homeowners who will be affected by the recapture rule are homeowners who have enjoyed significant SOH tax reductions.

During years when market values increased by more than 3%, increases in assessed values were limited by the SOH cap (3% or the CPI increase, whichever is less). Just as SOH mitigates increases in property taxes when assessed values increase, the recapture rule mitigates decreases in property taxes when assessed values decrease. Moreover, because the recapture rule does not allow assessed values to exceed fair values, SOH combined with the recapture rule can never result in higher values than would have otherwise existed.

The recapture rule provisions were intended to stabilize assessed values and provide for a more equitable tax system. Repealing the recapture rule without considering all other factors will contribute to uncertainty and will fail to fully address the larger issue of property tax reform because the volatility of real estate prices in certain areas has created dramatic differences between assessed valuations, particularly for non-homestead properties.

Notwithstanding any impact that SOH and the recapture rule may have on revenues, governments must continue to provide services. When market values decline, demand for services does not necessarily decline and, may in fact, increase. If it is appropriate to limit revenue increases through SOH during times of escalating values, then it is also appropriate to limit revenue decreases during times of declining values through the recapture rule.

Recommendation

The Legislature should oppose any bills that support repealing the SOH recapture rule because the recapture rule promotes tax equity, provides a more stable tax base and provides needed funding for essential services.

COLLECTIVE BARGAINING FOR PUBLIC SAFETY PENSION BENEFITS

Issue

Legislation has been enacted that improved local government pension benefits without providing new revenues to pay for the improved benefits.

Analysis

Pension plan changes are best determined through the collective bargaining process. Local governments and their employees are better able to identify desired pension benefit improvements, which include making trade-offs between higher benefits and higher wages.

Local governments should be provided the flexibility to negotiate different levels of pension benefits for each public safety bargaining unit in order to provide the best mix of benefits based on the diverse needs of each local government and each bargaining unit. State legislative mandates for pension benefits circumvent the collective bargaining process and may result in benefits that are not in the best interest of public safety employees or local governments.

Local governments are required to conduct actuarial studies before pension plan changes are adopted; however, the State is not required to conduct such studies when mandating new public safety benefits for local governments. The requirement to estimate the cost of benefit improvements provides vital information on the cost and funding requirements for improvements, which should be considered before pension improvements are enacted.

Recommendation

Legislation should be enacted that requires any local government public safety pension benefit improvements to be negotiated locally between employees and local governments.

Sample Legislative Language

Section 1. Subsection (3) of section 175.021, Florida Statutes, is created to read:

175.021 Legislative declaration.—

(3) Benefit improvements for all municipal and special district pension plans existing now or hereafter under this chapter, including chapter plans and local law plans, shall be negotiated locally through the collective bargaining process between the local unit of government and the respective firefighters' bargaining units.

Section 2. Subsection (3) of section 185.01, Florida Statutes, is created to read:

185.01 Legislative declaration.—

(3) Benefit improvements for all municipal and special district pension plans existing now or hereafter under this chapter, including chapter plans and local law plans, shall be negotiated locally through the collective bargaining process between the local unit of government and the respective police officers' bargaining units.

CONSULTANTS COMPETITIVE NEGOTIATION ACT

Issue

Currently, local governments are not permitted to request price proposals before selecting a provider for certain professional services.

Analysis

Section 287.055, Florida Statutes, titled the Consultants Competitive Negotiation Act (the "Act"), governs state and local agencies' procurement of architecture, engineering, landscape architecture, mapping and surveying services. The Act diminishes a local government's leverage in negotiations and is in conflict with other standard competitive procurement practices that routinely consider price in a purchase decision, including the actual construction projects that will result from the services mentioned above.

While price should not be the main award criteria, price is a valid criteria to consider when spending public funds. A common procurement principle that supports considering price as award criteria is called a "Best Value" selection process. This process includes:

- Defining a firm(s) whose proposal provides the greatest overall benefit (value) in accordance with stated qualitative (quality) and quantitative (price) requirements.
- Providing the ability to compare prices among pre-qualified firms, which will result in more competitive pricing.
- Providing a weighting of price of not more than 50% of the award criteria to ensure that qualifications and experience remain significant criteria in the selection process.

Recommendation

Legislation should be enacted permitting price to be considered in the selection of architectural, engineering, landscape architectural, mapping and surveying services. A Best Value selection process should be permitted to allow local governments to select proposals that provide the greatest level of overall benefits (the best value), which considers both qualitative (quality) and quantitative (price) criteria in the evaluation process. The existing qualification-based selection method could be retained as an optional method.

Sample Legislative Language

An act relating to Procurement of Personal Property and Services; amending s. 287.055 F.S.; adding a definition of best value selection and providing for applicability to best value selections.

Section 1. Paragraph (m) of subsection (2), paragraph (d) of subsection (5) and subsection (12) of section 287.055, Florida Statutes, are created to read:

(2)(m) A "best value" selection means a selection of a firm(s) proposal that provides the greatest overall benefit to the agency in accordance with the requirements of a public

solicitation process.

(5) COMPETITIVE NEGOTIATION.—

(d) In accordance with subsection (f) 2. an agency may contract with a firm(s) under an as-needed contract basis for a defined term with a defined price per hour or per service performed in order to provide timely project related services as needed. The method of solicitation and selection of the firm(s) shall be in accordance with section (3) PUBLIC ANNOUNCEMENT AND QUALIFICATION PROCEDURES. and section (4) COMPETITIVE SELECTION. As the need for specific project related services arises during the contract term, the agency may simultaneously solicit cost proposals from one or more of the previously qualified firms...

(12) APPLICABILITY TO BEST VALUE SELECTIONS

(a) This section is not applicable to the selection of a firm(s) on a best value basis by any agency, except as provided for in this subsection. Agencies shall make such selections in accordance with the agencies' procurement ordinances, rules, policies and procedures.

(b) Every agency may adopt enabling legislation governing the selection of a firm(s) on a best value basis. Procedures for the best value selection process shall include, at a minimum, the following:

1. The agency shall prepare and distribute a public solicitation consistent with the requirements of Sections (3) and (4) (a).

2. A distinct two step selection process shall be followed, which shall include, as a minimum, the following:

a. Under the first step, competing firms shall be evaluated in the manner set forth under subsection (4) (b), except as otherwise set forth in this section. Proposals for compensation to be paid under the contract will not be solicited or accepted during this step.

b. Under the second step, the firm(s) selected under subsection 2.a shall be requested to submit a compensation proposal, which shall be evaluated along with any other information requested in order to make a best value selection(s).

3. The criteria, procedures and standards for evaluation of proposals shall be published in the public solicitation. In no instance shall the evaluation criteria pertaining to compensation exceed fifty percent (50%) of the total weight of the criteria.

PREMIUM TAXES FOR PUBLIC SAFETY PENSION BENEFITS

Issue

Insurance premium taxes are levied by the State to fund a portion of local government public safety pension benefits. Legislation approved in 1999 has restricted premium tax revenue increases to only paying for “extra benefits,” in perpetuity.

Analysis

Before the 1999 legislation was adopted, premium taxes were used to provide public safety pension benefits at levels that were higher than general employee benefits. This practice recognized the additional risks faced by high hazard occupations and rewarded employees who took these risks with higher benefits, which were called “extra benefits.”

The definition of “extra benefits” was re-defined to mean benefits that were greater than the benefits currently provided to police officers and firefighters in each local plan. Thus, the benefit relationship to a general employee was removed and a separate benefit floor was created for each local government plan.

The 1999 legislation also required all existing premium taxes to be “frozen” at the existing dollar levels. The “frozen” taxes can be used to pay for benefits that existed at the time the legislation passed, but no future revenue would ever become available to pay for existing benefits.

Pension costs do not remain static in dollar terms, but increase in dollars as salaries increase. This means that, as salaries rise, pension costs rise. Freezing premium tax revenue reduces the value of this revenue as a funding source to pay regular, ongoing pension benefit costs. The public must pay for these increased costs because current legislation prohibits the use of premium tax growth to fund cost increases.

Since no new premium taxes are available to pay increasing pension costs, this legislation has created a perpetual tax increase to replace declining premium tax revenue. The legislation also results in perpetual benefit increases as long as excess premium taxes are received, regardless of the current level of benefits provided or whether the public can afford to pay for the benefit increases in the future.

Recommendation

Legislation should be enacted that authorizes the use of all premium tax revenue received above the currently “frozen” levels to fund any public safety pension benefit costs.

Sample Legislative Language

Section 1. Subsection (1) of section 175.351, Florida Statutes, is amended to read:

175.351 Municipalities and special fire control districts having their own pension plans for firefighters. For any municipality, special fire control district, local law municipality, local law special fire control district, or local law plan under this chapter, in order for municipalities and special fire control districts with their own pension plans for firefighters, or for firefighters and police officers, where included, to participate in the distribution of the tax fund established

pursuant to s. 175.101, local law plans must meet the minimum benefits and minimum standards set forth in this chapter.

(1) PREMIUM TAX INCOME.--If a municipality has a pension plan for firefighters, or a pension plan for firefighters and police officers, where included, which in the opinion of the division meets the minimum benefits and minimum standards set forth in this chapter, the board of trustees of the pension plan, as approved by a majority of firefighters of the municipality, may:

(a) Place the income from the premium tax in s. 175.101 in such pension plan for the sole and exclusive use of its firefighters, or for firefighters and police officers, where included, where it shall become an integral part of that pension plan and shall be used to pay the cost of providing benefits to the firefighters included in that pension plan; or

(b) Place the income from the premium tax in s. 175.101 in a separate supplemental plan to pay extra benefits to firefighters, or to firefighters and police officers where included, participating in such separate supplemental plan. The premium tax provided by this chapter shall in all cases be used in its entirety to provide extra benefits to firefighters, or to firefighters and police officers, where included. However, local law plans in effect on October 1, 1998, shall be required to comply with the minimum benefit provisions of this chapter only to the extent that additional premium tax revenues become available to incrementally fund the cost of such compliance as provided in s. [175.162](#) (2)(a). When a plan is in compliance with such minimum benefit provisions, as subsequent additional premium tax revenues become available, they shall be used to provide extra benefits. For the purpose of this chapter, "additional premium tax revenues" means revenues received by a municipality or special fire control district pursuant to s. [175.121](#) which exceed that amount received for calendar year 1997, and the term "extra benefits" means benefits in addition to or greater than those provided to general employees of the municipality. Local law plans created by special act before May 23, 1939, shall be deemed to comply with this chapter.

Section 2. Subsection (1) of section 185.35, Florida Statutes, is amended to read:

185.35 Municipalities having their own pension plan for police officers. For any municipality, chapter plan, local law municipality, or local law plan under this chapter, in order for municipalities with their own pension plans for police officers, or for police officers and firefighters where included, to participate in the distribution of the tax fund established pursuant to s. 185.08, local law plans must meet the minimum benefits and minimum standards set forth in this chapter.

(1) PREMIUM TAX INCOME.--If a municipality has a pension plan for police officers, or for police officers and firefighters where included, which, in the opinion of the division, meets the minimum benefits and minimum standards set forth in this chapter, the board of trustees of the pension plan, as approved by a majority of police officers of the municipality, may:

(a) Place the income from the premium tax in s. 185.08 in such pension plan for the sole and exclusive use of its police officers, or its police officers and firefighters where included, where it shall become an integral part of that pension plan and shall be used to pay the cost of providing benefits to the police officers included in that pension plan; or

(b) May place the income from the premium tax in s. 185.08 in a separate supplemental plan to pay extra benefits to the police officers, or police officers and firefighters where included, participating in such separate supplemental plan. The premium tax provided by this

chapter shall in all cases be used in its entirety to provide extra benefits to police officers, or to police officers and firefighters, where included. However, local law plans in effect on October 1, 1998, shall be required to comply with the minimum benefit provisions of this chapter only to the extent that additional premium tax revenues become available to incrementally fund the cost of such compliance as provided in s. 185.16(2). When a plan is in compliance with such minimum benefit provisions, as subsequent additional tax revenues become available, they shall be used to provide extra benefits. For the purpose of this chapter, "additional premium tax revenues" means revenues received by a municipality pursuant to s. 185.10 which exceed the amount received for calendar year 1997, and the term "extra benefits" means benefits in addition to or greater than those provided to general employees of the municipality. Local law plans created by special act before May 23, 1939, shall be deemed to comply with this chapter.

SIDEWALK LIABILITY

Issue

Local governments face escalating claims for sidewalk-related injuries caused by the careless or reckless actions of individuals. The current legal climate has created a strong disincentive for constructing new sidewalks to enhance public safety and improve the quality of life.

Analysis

The lack of clear liability mitigation standards has encouraged frivolous liability claims related to careless sidewalk usage, including skateboarding or roller skating. Minimal changes in sidewalk alignments are expected as the result of the normal aging process and individuals should be expected to exercise due care. The Legislature has established a precedent for addressing this type of liability issue by creating a reasonable standard of care for sidewalk liabilities.

Recommendation

Legislation should be enacted that provides a clear and reasonable sidewalk liability standard.

Sample Legislative Language

A new Section is proposed:

Sidewalks on public lands; limitation on liability (1). As used in this section, the term:

(a) "Actual notice" means notification to the sidewalk provider and acknowledged by the sidewalk provider in accordance with designated procedures by any person using the applicable designated procedures and containing at least the following information:

1. Identification of the sidewalk location with such specificity that the location of the sidewalk can be identified by the sidewalk provider.

2. A clear description of the nature of the sidewalk damage.

3. Appropriate contact information, as available, sufficient for the sidewalk provider to contact the person making the notification, such as the name and address, electronic mail address, or phone number of the person making the notification.

(b) "Designated procedures" means the procedures designated by a sidewalk provider to provide actual notice as defined in paragraph (a).

(c) "Person" means any legal or natural person as defined in s. 1.01(3).

(d) "Sidewalk" means any infrastructure that is owned or maintained by or for a sidewalk provider for the purposes of separating motorist, other non-pedestrian, and pedestrian traffic.

(e) "Sidewalk provider" means the state or any of the state's officers, agencies, or instrumentalities or any political subdivision as defined in s. 1.01 responsible for maintenance of a sidewalk.

(f) "Damaged sidewalk" means any sidewalk that has deflections greater than 2 inches.

Sidewalks that are closed by the sidewalk provider for any purpose, including construction, maintenance, or special events, shall not be considered a damaged sidewalk.

(2) A sidewalk provider is not liable and may not be held liable for any civil damages for personal injury, wrongful death, or property damage affected or caused by a sidewalk, regardless of whether the damaged sidewalk is alleged or demonstrated to have contributed in any manner to the personal injury, wrongful death, or property damage, unless the provider failed to comply with the provisions of subsection (3).

(3) In order for any sidewalk provider to have the benefit of the limitation on liability on a damaged sidewalk set forth in subsection (2), the sidewalk provider must have complied with the following:

(a) After a sidewalk provider receives actual notice of a damaged sidewalk, investigates the report and determines that the sidewalk needs to be restored, such information shall be noted in the sidewalk provider's business records.

(b) If, upon investigation, the sidewalk provider determines that the nature of the repair or replacement cannot be achieved within a 90-day period, the sidewalk provider shall make a determination as to the time in which it can complete the corrective action and denote such time in its business records. Corrective action can include the removal of sidewalk infrastructure.

(c) A sidewalk provider must repair any damaged sidewalk within 90 days after receiving actual notice that the sidewalk is damaged.

(d) A sidewalk provider may not take more than 120 days to complete the corrective action after receiving actual notice unless such longer delay is related to actions necessary for repairs or that an event related to a tornado, a severe weather event, or other unforeseen event gives rise to a declared state of emergency, in which case the sidewalk provider shall be subject to the time periods set forth in paragraph (b).

(e) For a sidewalk provider operating in a county affected by a state of emergency declared by federal, state, or local authorities, the 120-day period shall be extended to 365 days after the cessation of the emergency or such longer period of time that may be dictated by the circumstances.

(4) In any civil action for damages arising out of personal injury, wrongful death, or property damage when a sidewalk provider's fault regarding the provision or maintenance of sidewalks is at issue, if the sidewalk provider is immune from liability pursuant to this section or is not a party to the litigation, such sidewalk provider may not be named on the jury verdict form or be deemed or found in such action to be in any way at fault or responsible for the injury or death or damage that gave rise to the damages.

(5) In no event shall a sidewalk provider's noncompliance with the provisions of subsection (3) create a presumption of negligence on the part of the sidewalk provider in any civil action for damages arising out of personal injury, wrongful death, or property damage.

(6) In the event that there is any conflict between this section and s. 768.81, or any other section of the Florida Statutes, this section shall control. Further, nothing in this section shall impact or waive any provision of s. 768.28.

UNFUNDED MANDATES

Issue

Article VII, section 18(a) of the Florida Constitution was adopted with the expectation of reducing unfunded mandates on local governments; however, unfunded mandates have continued to proliferate.

Analysis

Exceptions within the State Constitution have resulted in continued proliferation of unfunded mandates, which has thwarted achieving the amendment's original intent. While there are several valid exceptions listed in the State Constitution, two exceptions have proved problematic in achieving the amendment's original intent because they have been too easily met or have been interpreted too loosely, which has effectively rendered current enabling legislation useless in reducing unfunded mandates.

One of these exceptions is a provision whereby if the Legislature has authorized a new funding source that was not available on February 1, 1989, the mandate is considered to be fully-funded. While this provision appears reasonable on its face, it has been interpreted as providing the legislature the ability to designate any growth in existing revenue after that February 1, 1989, as a "new funding source."

This interpretation means that any existing revenue source can be "capped" in perpetuity with any growth above the cap qualifying as "new revenue." This interpretation is not reasonable, since any revenue source that has been capped is most likely declining in real dollar terms relative to the costs it was originally funding.

The other exception is a provision whereby if a statutory mandate is approved by 2/3 of the membership in each house of the Legislature, the mandate is considered to be fully funded. The 2/3 majority exception has been routinely achieved, rendering it ineffective at reducing mandates.

The remaining exceptions within the State Constitution are considered reasonable.

Recommendation

A constitutional amendment should be placed on the ballot by the Legislature to eliminate the above exceptions. The remaining exceptions within the State Constitution should be retained.

PUBLIC PERSONNEL RECORDS

Issue

Current law exempts certain public employees' personal information from public disclosure, but all other public employees' personal information remains open for inspection, thus subjecting these employees to instances of possible harassment.

Analysis

Section 119.07(4) (d), Florida Statutes, exempts the disclosure of personal information related to certain public employees, including: public safety officers, judges, code enforcement officers and a few other positions. The rationale for this disclosure exemption is that providing access to personal and familial information is unnecessary to evaluate or monitor the provision of government services, except when related to evaluating an individual's qualifications for employment.

Information related to evaluating an employee's fulfillment of their job responsibilities and duties should be made available for public inspection; however, all public employees should receive this protection and not such selected employees. Public employees have a right to protection from harassment stemming from the workplace, which could result if personal information such as telephone numbers, family member names, etc. is disclosed. Unfortunately, public employees are vulnerable to unscrupulous individuals who have access to public records for the purpose of harassing employees.

Recommendation

Section 119.07(4) (d), Florida Statutes should be amended to provide privacy protection to all public employees rather than providing protections to only a few classifications of employees.

Sample Legislative Language

Section 1. Subparagraph 2. of paragraph (d) of subsection (4) of section 119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of public records.—

(4)(d)2. The home addresses, telephone numbers, and photographs of current or former employees ~~human resource, labor relations, or employee relations directors, assistant directors, managers, or assistant managers~~ of any local government agency or ~~water management~~ special district ~~whose duties include hiring and firing employees, labor contract negotiation, administration, or other personnel-related duties;~~ the names, home addresses, telephone numbers, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. [119.07](#)(1) and s. 24(a), Art. I of the State Constitution.

TRANSPARENCY

Issue

Proposed “transparency” legislation introduced in 2008 was not sufficiently evaluated for reasonableness before being proposed. This legislation imposed additional reporting requirements on local governments that were not cost-effective and may not have achieved the desired transparency improvements in local government finances.

Analysis

Proposed legislation in 2008, referred to as “Transparency” legislation, required local governments to prepare a written budget narrative in a prescribed format, prepare their budget document in a prescribed format and provide a budget summary in a prescribed format. Had this legislation passed, local governments would have been required to make these items available to the public in physical form at designated facilities and in electronic form through the government's website, or a substitute website if one was not maintained by a government.

This legislation exempted certain local governments from certain requirements if a local government received the Distinguished Budget Presentation Award and/or the Certificate of Achievement for Excellence in Financial Reporting from the Government Finance Officers Association (GFOA). Municipalities with budgets of less than \$1 million were also exempt from certain provisions.

The goal of all financial reporting transparency requirements should be to improve the availability, usefulness and understandability of financial information. Requiring local governments to adhere to additional reporting formats places a large financial burden on governments and may not result in any benefit to citizens.

While it is beneficial for local governments to make financial documents available to the public, it is not necessarily beneficial to require financial documents to be prepared in a prescribed format that may vary from the adopted format of a local government. Legislation that prescribes rigid presentation formats may result in the need for a local government to prepare multiple documents, which would impose additional financial burdens on the governments.

The FGFOA supports the concept of transparency in local government budgeting and financial reporting, because local governments have a responsibility to provide useful and understandable financial information to the public. The FGFOA also supports making local government financial documents available to the public, in both a physical and an electronic format as long as there is a clear, positive cost-benefit relationship of providing the information. Providing any information to the public has a related cost that will be paid for by the public; therefore, transparency requirements must be reasonable and cost-effective.

Recommendation

Legislation proposed in 2009 that includes “transparency” financial reporting requirements should ensure that such requirements are reasonable and cost-effective.

TRUTH IN SPENDING

Issue

Proposed “truth in spending” legislation introduced in 2008 was not sufficiently evaluated for reasonableness before being proposed. This legislation imposed additional reporting requirements on local governments that were not cost-effective and may not have achieved the desired truth in spending disclosure improvements.

Analysis

In 2007, the Florida Legislature proposed SB560, which was related to local government taxes and spending. Contained within the bill was a provision entitled, *Truth in Spending*, which required local governments to post within three months of fiscal year end, all revenues received and expenditures made, in a format prescribed by the Department of Revenue, on the local government’s website if available, or if not, on the county government’s website. Although this legislation did not pass, the Committee on Community Affairs was directed to conduct a study on *Transparency in Local Government Revenues and Expenditures*, which resulted in a report dated November 2007 that included the following recommendations:

“That any directive be modeled after the Missouri Accountability Portal with a link on the local government home page that directs the user to Budget Information, Annual Financial Reports, and Contract Information, with drill-downs provided on each portal.....If the committee does decide to require transparency at the local government level, some consideration should be given to the cost of development, operation and maintenance of websites, and contracting with local governments that don’t have a website. The committee may want to consider implementing local government transparency through a pilot project that consists of a selection of technologically advanced and technologically deficient large, medium, and small counties, cities, special districts, regional taxing authorities, and school districts, or may want to consider implementing transparency on a staggered schedule similar to the requirements of the legislation which passed the Senate during the 2007 Regular Session.”

Although legislation filed in 2008 did not contain the *Truth in Spending* language, similar legislation may be introduced in the 2009 Legislative Session.

The usefulness of posting line-item details of financial information on a government’s web site is questionable, due to the volume, complexity and format of the information. This requirement would also increase costs for local governments at a time when revenues are declining.

Section 218.31, Florida Statutes, requires local governments to file an annual financial report (AFR) with the Department of Financial Services (DFS). Local governments that are required to file an audit report pursuant to Section 218.39, Florida Statutes, must file their AFR with the DFS no later than 12 months after fiscal year end. Non-audited entities must file an AFR with the DFS no later than April 30 each year. Local governments that meet the audit thresholds contained in Section 218.39(1), Florida Statutes, must file a financial audit report with the Auditor General no later than 12 months after fiscal year end. Some legislators questioned the timeliness of these reporting requirements and favored a shorter period. Legislators also questioned the ability for local taxpayers to easily access these reports.

An alternative to posting incomplete or voluminous information on a government’s web site would be to: (1) shorten the time frame for local governments to file their annual reports with the State, from 12 months to 9 months after fiscal year end and (2) require governments to

electronically post their annual financial reports on their web sites, which would not require significant extra work.

Recommendations

Sections 218.32 and 218.39, Florida Statutes should be amended to require local governments to file annual financial reports and financial audit reports no later than nine months after fiscal year end.

Section 218.32, Florida Statutes should also be amended to require all local governments to provide a link on their web site to the Department of Financial Services web site, which contains all local AFR's.

Sample Legislative Language

Section 1. Paragraphs (d) and (e) of subsection (1) are amended, and paragraph (g) of subsection (1) of section 218.32, Florida Statutes, is created to read:

218.32 Annual financial reports; local governmental entities.

(1)(d) Each local governmental entity that is required to provide for an audit in accordance with s. 218.39(1) must submit the annual financial report with the audit report. A copy of the audit report and annual financial report must be submitted to the department within 45 days after the completion of the audit report but no later than nine ~~42~~ months after the end of the fiscal year.

(e) Each local governmental entity that is not required to provide for an audit report in accordance with s. 218.39 must submit the annual financial report to the department no later than nine months after the end of the fiscal ~~April 30 of each~~ year. The department shall consult with the Auditor General in the development of the format of annual financial reports submitted pursuant to this paragraph. The format shall include balance sheet information to be utilized by the Auditor General pursuant to s. 11.45(7) (f). The department must forward the financial information contained within these entities' annual financial reports to the Auditor General in electronic form. This paragraph does not apply to housing authorities created under chapter 421.

(g) Each local governmental entity shall provide a link to the Department of Financial Services' website to view its annual financial report submitted to the Department of Financial Services under s. 218.32, no later than nine months after fiscal year end. If the local governmental entity does not have an official website, the county government's official website will provide the required link for that local governmental entity.

Section 2. Subsection (1) of section 218.39, Florida Statutes, is amended to read:

218.39 Annual financial audit reports.

(1) If, by the first day in any fiscal year, a local governmental entity, district school board, charter school, or charter technical career center has not been notified that a financial audit for that fiscal year will be performed by the Auditor General, each of the following entities shall have an annual financial audit of its accounts and records completed within nine ~~42~~ months after the end of its fiscal year by an independent certified public accountant.