

Florida Government Finance Officers Association
(FGFOA)

2010 Legislative Policies and Recommendations



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INTRODUCTION

The Florida Government Finance Officers Association (FGFOA) respectfully presents its 2010 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 2010 legislative policies and recommendations. Please contact Jeannie Garner, FGFOA Executive Director, at (850) 222-9684 or jgarner@flcities.com with any questions, comments, or requests for additional information.

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LEGISLATIVE COMMITTEE OVERVIEW

Committee Members

The FGFOA Board of Directors and Legislative Committee Chairperson are grateful to the following individuals who contributed time and effort to prepare these legislative policies and recommendations: Kim Adams, Ray Britt, Rip Colvin, Jim Cooke, Linda Davidson, Gale Edington, Catherine Edwards, Sharon Fox, Lori Houghton, Bob Inzer, Dave Keller, Crystal Kinzel, Sharon McGuire, Linda Pilcher, Jay Ravins, Carol Rogers, Jackie Sova, Davin Suggs, and Susan Sullivan. Preparation of the policies and recommendations would not have been possible without their dedication, professionalism and cooperation.

Committee Purpose

The overall purpose is to coordinate the development of legislative policies that are consistent with the Board of Directors' initiatives and that assist local governments with implementing long-term financial strategies that are sustainable and resilient. Local governments are being challenged by economic conditions and are seeking assistance in weathering these challenging financial times. Local governments must be afforded the opportunity to establish taxes, rates, user fees, and service charges to meet their residents' needs and to provide financial stability for their organizations. Home Rule authority allows governments the flexibility to develop a mix of financial strategies that align resources with service delivery demanded. These financial strategies should be long-term and incorporate good financial practices that encourage financial resiliency with diverse and flexible resources. These legislative policies and recommendations address legislative reform needed to allow local governments the flexibility needed to develop financial strategies that provide for long-term sustainability and financial resiliency.

Committee Goals

- Monitor state and federal legislative proposals that affect Florida local governments, evaluate proposed legislation that impacts FGFOA member jurisdictions, and make recommendations to affect positive legislative change.
- Prepare an annual legislative policy statement for distribution to members of the Legislature, FGFOA leadership, and other interested parties. Such policy statement should identify pertinent issues; include analysis that supports or opposes proposed or potential legislation, including an analysis of the legislation's impact and alternatives, if any; make recommendations; and provide sample legislative language for proposed law changes.
- Educate and inform FGFOA members on issues affecting them or their jurisdictions by developing articles for the 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 other appropriate legislative committees, and local elected officials.
- Partner with other professional organizations to provide information regarding legislative proposals that have financial implications for local governments.

PROPERTY TAX REFORM

Issue

Several legislative and constitutional property tax initiatives have been enacted over the past few years that have contributed, along with a recessionary economy and declining real estate market, to an inequitable, unstable, and unsustainable tax structure. These initiatives have also reduced the effectiveness of Home Rule authority and local governments' ability to fund necessary operations, including unfunded mandates by the State of Florida.

Analysis

Property taxes, which are authorized by the Florida Constitution, have historically been a significant and stable revenue source for the State of Florida's local governments. However, the revised property tax structure has created significant tax inequities among property owners resulting from the long-term Save Our Homes (SOH) benefits for homesteaded properties.

SOH artificially caps the annual growth in the assessed value of homesteaded properties to three percent or the change in the Consumer Price Index, whichever is lower. Following the enactment of SOH, the almost continuous growth in property values caused the cumulative SOH benefits to grow. Current SOH constitutional provisions include a "recapture rule" approved in 1995 that directs property appraisers to increase assessed values of homesteaded SOH properties if the market value is higher than the assessed value of the property, even in years with a declining market value. These increases are permitted until a property's SOH taxable value equals full market value (100% recaptured).

The recapture rule provisions were intended to stabilize assessed values and provide for a more equitable tax system. In 2008, with significant declines in property values, the "recapture rule" has had its first major effect. Homeowners who have experienced increased assessments may consider such increases unfair when overall property values have declined; however, the only homeowners who are affected by the recapture rule are homeowners who have enjoyed significant SOH tax reductions in previous years.

During years when market values increased by more than 3%, the assessed value increases for SOH homesteaded properties were limited by the SOH cap. Recent efforts to repeal the recapture rule would be a piecemeal solution that fails to address a comprehensive problem.

In response to robust growth in property values in 2006 and 2007, the Legislature initiated further tax reform to minimize increases in property tax revenues. Tax reform was targeted at limiting millage rates, further increasing property tax exemptions for SOH homesteaded properties and establishing SOH-like limits on growth in property values for non-homesteaded properties.

- In 2007, legislation was enacted that restricted local government property tax revenues through the establishment of "maximum" millage rates.
- In January 2008, Florida voters approved a constitutional amendment, known as Amendment 1, which: (1) increased the homestead exemption by \$25,000; (2) offered portability of the SOH benefit between homesteaded residences; (3) provided a 10 percent annual cap on increases in value for non-homesteaded properties; and (4) established a \$25,000 exemption for tangible personal property.

- In November 2008, Florida voters approved two constitutional amendments providing certain property tax exemptions and limiting certain assessments.
- In November 2010, Florida voters will consider constitutional amendments to: (1) lower the cap approved by voters in January 2008, from 10 percent to 5 percent for annual increases in value for non-homesteaded properties (i.e., commercial businesses, investment property, or second homes); and (2) provide an additional property tax exemption of 25 percent (up to \$100,000) for first-time home buyers to be amortized over a five-year period.

Recommendation

- The Legislature, at a minimum, should place no additional property tax restrictions on local governments or revise the current recapture rule until the impacts of the recently enacted legislation and constitutional changes, including the proposed constitutional amendment to further limit growth in property values for non-homesteaded properties, are known.
- Legislation should be enacted to reduce property tax inequities and stabilize local property tax bases within the framework of comprehensive tax reform.
- The Legislature should allow local governments to retain the authority to adopt budgets based on changing economic and demographic conditions, which may vary widely between regions and over time, within the constraints of statutorily prescribed maximum millage rates and other existing legal constraints.

REVENUE AND EXPENDITURE CAPS

Issue

The idea of placing artificial revenue caps on levels of government in the State of Florida has become a topic of growing interest. Proposals to establish caps on local government revenues and/or spending will hinder local governments' ability to meet demands for services and infrastructure.

Analysis

Legislation has been proposed in recent years that would establish caps on local government revenue and expenditure. Such caps constrain the ability of local governments to provide essential services and to meet the service demands of their constituents. Whether dollar-based or indexed, there is no single structure that can meet the needs of all local governments. Given the varied nature of governments in the State of Florida - large vs. small population, steady vs. volatile growth, coastal vs. inland location, "one size fits all" is an inappropriate approach. 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.

Other proposed legislation limits the ability of local government to make exceptions to statewide standards. As an example, legislation proposed in 2009 (SB 1906 and HB 1263), would have required a local government to obtain approval through a local referendum in order to impose a new tax, fee, assessment, or charge for services.

Future Local and State budgets would have been limited to 2010-11 levels factored by a growth multiplier. The growth multiplier was the increase in population, plus the consumer price index. The proposed legislation would have been particularly problematic for multi-county jurisdictions (e.g., water management districts). Because they include partial counties, a local referendum would not be possible.

Current economic conditions dictate that local governments remain as frugal as possible with their revenues and expenditures. Limiting expenditures is a desirable goal; however, service level changes often do not correlate with price indexes or population growth. For example, development of water supply requires placement of infrastructure prior to the increase in population. Moreover, citizens continue to demand high levels of services, particularly in the areas of fire and police protection, which are largely funded through ad-valorem taxes. Other costs that increase at a faster pace than normal inflation rates include fuel, construction, pensions, and insurance (property and health.) Despite factors beyond their control, local governments continue to meet the challenge of limited revenues. At the same time, proponents in the Florida Legislature continue to push for permanent restrictions on local governments' authority to respond to the needs and conveniences of their citizens. Commonly referred to as a "Tax Payers Bill of Rights" or TABOR, these proposals place various restrictions on the local governments' authority to raise revenues, to levy ad-valorem taxes, and to fund services with fees. Though well intentioned, these proposals presume local governments have total control over their expenditures, which is simply not true. Programs mandated by state and federal governments must often be funded by local governments. Local governments are left with no option but to increase ad-valorem taxes and other revenues to fund these mandates.

In recent years, there have been significant changes to the landscape of revenues for local governments. Notably, declining property values have naturally reduced related property tax revenues. Restrictions on millage rates and property tax structures have further limited revenues. As a result, any perceived need for revenue caps has been greatly diminished as evidenced by the recent defeats in Maine and Washington.

Recommendation

Governing bodies should be able to adopt budgets developed at a local level by action requiring a simple majority vote. Legislation should not be proposed establishing local government revenue or expenditure caps nor should legislation be proposed to require extraordinary action beyond a majority vote of a governing body to increase local government revenues or adopt budgets.

While we believe revenue and expenditure caps are not necessary, any TABOR or other proposal to cap local government revenue must satisfy the following principles:

1. Include a complete prohibition of unfunded mandates on local governments.
2. Apply to all levels of government in Florida, including the state.
3. Not penalize local governments that have been fiscally frugal.
4. Focus on a single limitation such as overall revenues or ad-valorem tax revenues.
5. Exempt the following revenue sources:
 - a) Proprietary funds;
 - b) State and Federal funds;
 - c) Referendum expenditures, if any;
 - d) One time revenues (e.g., sale of municipal properties);
 - e) Revenues not subject to control of the receiving government; and
 - f) Revenues committed to repayment of debt proceeds.
6. Specify that any growth multiplier must:
 - a) Be jurisdiction specific.
 - b) Avoid using a stagnant point in time. A five to ten year running average when moving into a recessionary period should act as a “smoothing” mechanism.
 - c) Not incorporate the consumer price index (CPI) into the growth multiplier. CPI is based on consumer goods and is not reflective of the costs incurred by governments. Instead, the U.S. Department of Commerce Bureau of Economic analysis Index for Real Government Consumption and Gross Investment should be used as an inflation index.
 - d) Not use population growth as the sole factor in the multiplier. Population growth alone is not indicative of inflation associated with the cost of services provided by local governments.

PREMIUM TAXES FOR PUBLIC SAFETY PENSION BENEFITS

Issue

Insurance premium taxes levied by the State under Chapters 175 and 185 are designated to fund local government public safety pension benefits. Legislation in 1999 made several fiscally unsustainable changes to Chapters 175 and 185, including:

- Non-excess (unrestricted) premium taxes were “frozen” as a fixed dollar amount in perpetuity, and all additional taxes collected were defined as “excess premium taxes.”
- New pension benefits are mandated to be provided in perpetuity as long as “excess premium taxes” are received.
- Local taxes must be raised in perpetuity to compensate for the annual percentage decline in “frozen” premium taxes.

Analysis

Before 1999, premium taxes could be used to provide any public safety pension benefit. This funding was provided to recognize the additional risks faced by public safety employees and rewarded these employees with “extra benefits.”

In 1999, the following changes were made to premium tax legislation:

- Premium taxes were “frozen” at a fixed dollar amount, which means that frozen non-excess premium taxes will decline every year as a percentage of pension plan costs.
- Any premium taxes received above the frozen dollar amount were restricted in perpetuity and must be used to provide “extra benefits” (new benefits) in perpetuity.
- All plans must now provide a standard set of “minimum benefits,” which means benefit flexibility has been reduced.
- Every individual pension benefit item must meet the standard “minimum benefit” in order for a pension plan to be deemed as having met “minimum benefits.”

Pension costs do not remain static. Pension costs rise as salaries rise, as pension plans add new members and as actuarial assumptions change.

Based on current law, frozen premium taxes will always remain static; therefore, frozen premium taxes will continue to decline as a percentage of salaries. The 1999 legislation created perpetual tax increases to pay for the perpetual benefit increases, which is contrary to recently passed tax reform legislation and proposed tax reform legislation.

Long-term implications

Public safety employees could receive lower pension benefits if current legislation is not changed, because cities will eventually be able to save money by rejecting all premium taxes and reducing pension benefits to reasonable levels. The following table presents an example of the current legislation's effect on a city's funding requirements. As depicted, the effect becomes significant after 30 years.

In year 30 of the example, the city would be better off rejecting future premium taxes because the city would then be able to save money by not increasing benefits further or even reducing benefits. As long as premium taxes continue to be accepted, new benefits must be provided and the premium tax percentage of salary will continue to decline.

Current Legislation – Frozen Premium Tax As A Dollar Amount

		Year 1 (base yr.)	Year 10	Year 20		Year 30
Salaries (5% annual increase)		\$10,000,000	\$15,513,282	\$25,269,502		\$41,161,356
Pension contribution (as a percent of salary)	25%	2,500,000	3,878,321	6,317,375	25.0%	10,290,339
Frozen Premium Tax	<u>5%</u>	<u>500,000</u>	<u>500,000</u>	<u>500,000</u>	<u>1.2%</u>	<u>500,000</u>
Net employer cost	20%	<u>\$2,000,000</u>	<u>\$3,378,321</u>	<u>\$5,817,375</u>	23.8%	<u>\$9,790,339</u>

Recommendation

The 1999 premium tax legislation should be repealed and Chapters 175 and 185 should be reinstated as originally written. This will stop mandated perpetual pension benefit increases and return pension benefit discussions to the collective bargaining process.

While we believe the best solution is to repeal 1999-1 legislation, another alternative would be to freeze premium taxes as a percentage of salaries rather than as a fixed dollar amount. Once a plan meets all minimum benefits, all premium tax revenue should become unrestricted and be allowed to pay for any pension benefit costs. The percentage of salary related to new benefits should be added to the frozen percentage.

- This permits frozen taxes to grow in proportion to plan costs and salaries.
- This eliminates the perpetual tax increases that result from the percentage decline in premium taxes.
- This eliminates the perpetual increase in benefits created by “excess premium taxes.”

The following table presents an example of the effects on a city's funding requirements:

Frozen Premium Tax as a Percentage of Salary

		Year 1 (base yr.)	Year 10	Year 20		Year 30
Salaries (5% annual increase)		\$10,000,000	\$15,513,282	\$25,269,502		\$41,161,356
Pension contribution (as a percent of salary)	25%	2,500,000	3,878,321	6,317,375	25%	10,290,339
Frozen Premium Tax	<u>5%</u>	<u>500,000</u>	<u>775,664</u>	<u>1,263,475</u>	<u>5%</u>	<u>2,058,068</u>
Net employer cost	20%	<u>\$2,000,000</u>	<u>\$3,102,657</u>	<u>\$5,053,900</u>	20%	<u>\$8,232,271</u>

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 and in addition to those in existence for firefighters on March 12, 1999. 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 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 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 and in addition to those in existence for police officers on March 12, 1999. Local law plans created by special act before May 23, 1939, shall be deemed to comply with this chapter.~~

TRANSPARENCY

Issue

Over the past few years, the Legislature has proposed several pieces of legislation focused on making the financial operations of local governments more transparent, including posting budget documents and unaudited financial statements on the local government's web site, and shortening the timeframe for filing required reports. Increased transparency will likely result in a related cost that will be paid for by the public and, therefore, any legislation providing for improved transparency should only include requirements that are reasonable and cost-effective.

Analysis

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 requirements, without proper consideration of the related costs, may result in significant financial burdens for local governments without equivalent benefit to citizens.

The FGFOA supports transparency in local government budgeting and financial reporting because local governments have a responsibility to provide useful, understandable, and timely 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.

Several bills relating to transparency have been filed over the last few years, but not enacted by the Legislature, as follows:

- In 2007, the Legislature proposed SB 560, related to local government taxes and spending, which contained a provision entitled, *Truth in Spending*. The bill would have required local governments to post within three months of fiscal year end, all revenues and expenditures, in a format prescribed by the Department of Revenue, on the local government's web site if available, or if not, on the county government's web site. In addition, the bill would have required local governments to provide electronic access to budget information and certain local governments to post contracts on their web sites.
- In 2008, the Legislature proposed SB 392, which would have required certain local governments to electronically post contract information, and SB 2648, which would have required certain local governments to prepare a written budget narrative, budget document, and budget summary in a prescribed format, and make these items available to the public in physical form at designated facilities and in electronic form through the government's web site, or a substitute web site if one was not maintained by a government.
- In 2009, the Legislature proposed SB 1368, which would have imposed minimum budget preparation standards for local governments and required them to make the budget available to the public through local governments' web sites. The bill also would have shortened the timeframe for filing annual financial reports and annual financial audit reports from 12 months to 9 months after fiscal year end.

In 2009, the Florida Legislature did pass SB 1796 (Chapter 2009-74) related to Transparency in Government. According to the Summary of Conference Committee Action (May 6, 2009), the bill:

“...requires a website be established for public access to government entity financial information. The initial phase will include appropriations data and expenditure data for all branches of state government. The Joint Legislative Auditing Committee will oversee the website and will propose additional phases of information to be made available. The committee will provide a proposal by March 1, 2010, to be submitted to the Speaker of the House and the President of the Senate, that will include a schedule of additional phases of information by the type of information to be provided for specific governmental entities, including local government units, community colleges, state universities and other government entities that receive state appropriations. The proposal will include timeframes for additional phases as well as a proposed development entity for the additional information.”

The Joint Legislative Auditing Committee (JLAC) formed a Transparency Work Group, and JLAC staff held workshops to meet the task of providing a proposal to the Presiding Officers related to the schedule of additional phases of information. Numerous ideas were discussed during the workshops, including the types of information that certain local governmental entities would be required to post or have posted, including individual financial transactions, invoices, and contracts. Ultimately, the Transparency Work Group moved away from including local governmental entities in its schedule at this time, choosing to focus on district school boards and charter schools. However, this issue should be closely monitored.

Legislation is expected to be filed for the 2010 legislative session that will again propose shorter timeframes for filing annual financial reports and annual financial audit reports, and additional budgetary reporting requirements. The FGFOA favors shortened time frames for filing financial reports, and the posting of such reports to web sites, as an alternative to posting line-item details of financial information on a government's web site due to the volume, complexity, and format of such information. The FGFOA is also not opposed to requirements to post budget information on web sites as long as such requirements do not impose significant financial burdens on local governments and do not alter existing budget authority of local governments. Making financial reports and budgets readily accessible to the public should satisfy most citizens' needs.

Recommendations

Transparency legislation proposed in 2010 should not impose significant financial burdens on local governments, and budget transparency requirements should allow local governments flexibility in the budget presentation format and should not alter existing budget authority of local governments. Such legislation should also amend sections 218.32 and 218.39, Florida Statutes, to require local governments to file annual financial reports and financial audit reports no later than nine months after fiscal year end, and to provide public access to such reports through their web sites.

In addition, the FGFOA should closely monitor and participate in Joint Legislative Auditing Committee activities as it continues to work on the implementation of SB 1796.

ARTICLE V

Issue

The Legislature, as mandated by the voters in the State of Florida, implemented Article V legislation in 2004. The Legislature needs to fully fund the state court system and maintain the independence of the functions, funding, and processes of the elected Clerks.

Analysis

During the 2009 legislative session, the judiciary attempted to take over the elected Clerks' court related functions. The Clerks' funding was diverted to a State appropriation methodology with limited funds, and the Clerks' fiscal operations were significantly impacted by a change to the State funding cycle and reporting processes. Consequently, several concerns regarding Article V remain, as follows:

- The current process of remitting fines and fees collected to the State and awaiting State appropriation for operations is inefficient and insufficient to meet the Clerks' operational needs. Insufficient budgetary allocations and limited cash flow does not provide Clerks the ability to pay costs related to mandated requirements.
- Fines and fees are not sufficient to sustain local operations and the State is not providing sufficient funding for court functions. Also, limits on Clerks' expenditures disregard local market conditions and locally required levels of service. Revenues caps have been established based on statewide collection levels rather than based on local activity. As a result, Clerks are unable to be adequately responsive to their particular court's needs.
- The requirement under Section 29.008, Florida Statutes, that counties must increase spending for court systems by 1.5% each year places additional local burden on the courts without sufficient revenues.
- 2004 legislation created duplicate reporting requirements that are not consistent with existing uniform financial reporting requirements.
- The change to the State's funding cycle during the 2009 legislative session adds confusion to reporting, creates inconsistencies between the Clerks' court related and Board functions, and creates multiple reconciling and reporting burdens.
- The requirement under Section 28.36, Florida Statutes, to prepare court related budgets two years in advance (the 2010-11 fiscal year budget was due Oct 1, 2009) is an unrealistic expectation, particularly in the current economic climate of uncertainty. Unit costs, case information, and revenue/expenditure projections for the 2010-11 fiscal year budget that is based on data from the 2006-07 and 2007-08 fiscal years does not provide sufficient current data to anticipate costs, particularly with frequent legislative changes.
- 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 and the return or distribution of surplus funds. Due to

unrealistic legislative time frames, the unit cost methodology is being rushed, based upon flawed peer group classification and comparisons, without an opportunity to analyze or evaluate operations and local nuances. These methodologies were implemented during the 2009 legislative session without benefit of adequate research and analysis to determine the impact of such changes on operations of Clerks, Judges, Sheriffs and other law enforcement officials, Public Defenders, State Attorneys, and other court related offices.

Recommendation

The Legislature should maintain the independence of the elected Clerks by providing that financial matters relating to the court processes remain with the Clerks and not be transferred to, nor combined, with the judicial process functions. Additionally, the Legislature should enact legislation that:

- Provides for the collection and distribution of fines and fees to revert to the pre-2009 session method of Clerks retaining budgeted funding and remitting excess to the State. This would provide for timely operational cash flow and allow Clerks to better manage operations based upon their collected revenues. Collections and distribution should allow greater flexibility for Clerks to retain funds to meet local needs.
- Establishes fines and fees at a level to sustain the Clerks' operations and/or provides for the State to pay a greater share of court costs. Several fine and fee provisions could be amended to provide the ability for a greater percentage of cost recovery.
- Eliminates the requirement that counties must increase spending for court systems by 1.5% each year.
- Establishes a central repository for reporting (i.e. the Clerk of Courts Operations Corporation) to eliminate duplicate reporting requirements and conflicting information.
- Provides for the Clerks' budgetary fiscal year to coincide with the county fiscal year.
- Repeals the requirement for the Clerk to prepare a budget for Court functions two years in advance.
- Delays implementation of expenditure cap methodology, and unit cost methodology and peer group classification, until their potential impact on the operations of Clerks, Judges, Sheriffs and other law enforcement officials, Public Defenders, States Attorney Offices, and other court related offices can be adequately researched, analyzed, and evaluated.

BED TAX ON INTERNET SALES OF LODGING

Issue

Current law authorizes five separate tourist development taxes on transient rental transactions. It is the Legislature's intent that every person who rents, leases, or lets for consideration any living quarters or accommodations in any hotel, apartment hotel, motel, resort motel, apartment, apartment motel, rooming house, mobile home park, recreational vehicle park, or condominium for a term of six months or less is exercising a taxable privilege, unless such person rents, leases, or lets for consideration any living quarters or accommodations which are exempt according to the provisions of section 212, Florida Statutes. Current application of the existing law has not included transient rentals facilitated by online booking companies.

Analysis

The use of online hotel booking companies has increased greatly over the past several years. Internet intermediaries contract to pay discounted rates to hotels for rooms that are then sold over the Internet to the intermediaries' customers at higher prices. Under current practices, state and local sales tax and local tourist-related taxes are collected and remitted by the hotels on the discounted rates paid by the Internet intermediaries to the hotels and not on the higher amounts paid by the customers occupying the rooms. As a result, state and local governments are not receiving both sales tax and tourist-related tax revenues on the entire cost of the transient rental paid by customers. 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 enforce that the appropriate taxable amount is the final room rate paid by the patron and not the discounted rate paid by a booking service.

Sample Legislative Language

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

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

(8)(a) For purposes of this section, ss. 125.0104, 125.0108, and 212.0305, and chapter 67-930, Laws of Florida, as amended, the business of renting, leasing, letting, or granting a license to use transient rental accommodations includes charging or receiving a payment consisting of, in any part, an amount collected for the benefit of an owner, owners representative, or operator of a transient rental accommodation located in this state for the occupancy, use, or possession of the accommodation, or the right to occupy, use, or possess the accommodation during the course of engaging in any of the following activities:

1. Offering information regarding the availability of transient rental accommodations located in this state;

2. Disclosing or establishing the amount paid for transient rental accommodations located in this state;

3. Assisting in making a reservation for transient rental accommodations located in this state; or

4. Participating in arranging for the occupancy of transient rental accommodations located in this state on behalf of another person.

(b) The terms "total rental charged" as used in this section, "total consideration" as used in ss. 125.0104 and 125.0108, "consideration" as used in s. 212.0305, and "rent" as used in chapter 67-930, Laws of Florida, as amended, have the same meaning and include amounts charged or received by a dealer in connection with an activity described in paragraph (a) and amounts charged or received for the benefit of an owner, owners representative, or operator of a transient rental accommodation located in this state for the occupancy, use, or possession of an accommodation, or the right to occupy, use, or possess an accommodation. Such amounts include cash, credits, property, goods, wares, merchandise, services, or other things of value, without deduction for separately identified charges, surcharges, fees, or reimbursements, unless specifically excluded under paragraph (c).

(c) The terms "total rent" as used in this section, "total consideration" as used in ss. 125.0104 and 125.0108, "consideration" as used in s. 212.0305, and "rent" as used in chapter 67-930, Laws of Florida, as amended, do not include:

1. Mandatory charges imposed for the availability of communications services; or
2. Separately stated taxes that are remitted to the taxing authority imposing the tax.

(9)(a) A person who engages in activities described in paragraph (8)(a) shall register with the department and each self-administering local government and collect and remit taxes on the total rent pursuant to this section, total consideration pursuant to ss. 125.0104 and 125.0108, consideration pursuant to s. 212.0305, and rent pursuant to chapter 67-930, Laws of Florida. An owner, owner's representative, or operator providing transient accommodations in this state may not enter into an agreement with any person intending to engage in the business activities described in paragraph (8)(a) concerning such accommodations unless such person has registered as a dealer pursuant to this chapter, has provided a resale certificate and has agreed in writing with the owner, owner's representative, or operator to truthfully collect and remit tax on the total amount due on the rental of transient accommodations located in this state.

(b) The department may provide by rule for a single registration with the department by a dealer engaged in the activities described in paragraph (8)(a) for all political subdivisions for which the tourist development tax is collected by the department. The department need not require separate registrations for each location where transient rental accommodations are located for a dealer who is not an owner or operator. However, a dealer engaged in the activities described in paragraph (8)(a) must register with each political subdivision that collects its own tourist development tax. Such dealer may file consolidated returns pursuant to s. 212.11(1)(e).

(c) Each dealer engaged in the activities described in paragraph (8)(a) shall add the amount of the taxes imposed by this section and ss. 125.0104, 125.0108, and 212.0305 and chapter 67-930, Laws of Florida, as amended, to the total rent and shall state the taxes separately from the price of the tangible personal property or services on all invoices. The tax shall be due and payable at the time of receipt of the payment in the manner provided for dealers pursuant to this chapter. The combined amount of taxes due under ss. 125.0104 and 125.0108, and chapter 67-930, Laws of Florida, as amended, shall be stated and identified as local tax, and the tax imposed pursuant to this section shall be stated and identified as sales tax.

Section 2. Paragraph (m) is added to subsection (2) of section 212.06, Florida Statutes, to read:

212.06 Sales, storage, use tax; collectible from dealers; "dealer" defined; dealers to collect from purchasers; legislative intent as to scope of tax.

(2)(m) "Dealer" also means any person who pursuant to an agreement with an owner, owner's representative, or operator of a transient rental accommodation located in this state and incident to the sale, lease, or rental of such transient accommodations, receives a payment consisting of, in any part, an amount subject to tax under subsection (1) during the course of engaging in any of the following activities

1. Offering information regarding the availability of transient rental accommodations located in this state;

2. Disclosing or establishing the amount paid for transient rental accommodations located in this state;

3. Assisting in making a reservation for transient rental accommodations located in this state; or

4. Participating in arranging for the occupancy of transient rental accommodations located in this state on behalf of another person.

Sections 3, 4, and 5 are added to section 212.06, Florida Statutes, to read:

Section 3. The Department of Revenue may adopt emergency rules to implement this act. These rules may prescribe the necessary forms and procedures that apply to the transient rentals tax including provisions to ensure the timely registration, collection, and remittance of the taxes imposed by state law on transient rentals. Notwithstanding any other law, the emergency rules shall remain in effect for 6 months after the date of adoption of the rules or the date of final adoption, whichever occurs later.

Section 4. For transactions that occurred prior to the effective date of this act, it is not the intent of the Legislature to affect the interpretation of tax liability under the law applicable to those transactions.

Section 5. This act shall take effect July 1, 2010.

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 for economic growth in this 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.

According to a recent Florida TaxWatch press release, “A University of Tennessee study showed the state (of Florida) is losing at least two billion dollars each year in rightfully-owed, but largely uncollected sales and use tax on purchases by Floridians outside the state via the Internet, mail and phone order. The study estimated Florida’s local governments’ loss of revenue exceeding \$327 million over a six year period.” These sales also represent lost opportunities to in-state businesses that impact job creation, economic development, and tax fairness throughout the state.

In March 2000, a group of public and private entities formed the Streamlined Sales Tax Project 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 Project developed a Streamlined Sales and Use Tax Agreement (SSUTA) and sales tax collection system, which has been adopted by 20 states. Three states are taking actions to adopt the SSUTA.

Once a state complies with the SSUTA, businesses in that state may voluntarily use the related sales tax system to collect and remit remote sales taxes to the states in which their customers reside. 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.

Although legislation was filed for the 2009 Regular Legislative Session (SB 1134 and HB 329) to bring Florida in compliance with the SSUTA, it was not considered. Due to the recession’s continued impact on the State’s budget, legislators should give serious consideration to recently filed bills (SB 204 and HB 165) in the coming 2010 legislative session to bring Florida in compliance with the SSUTA. This would enable the State to collect taxes that otherwise would not have been received from remote sellers and which can be used to provide economic growth by preserving jobs.

Recommendation

The Legislature should adopt laws, and the Department of Revenue should adopt rules and regulations, that allow Florida to comply with the SSUTA.

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 criterion to consider when spending public funds. A common procurement principle that supports considering price as award criteria is called a "Best Value" 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.

A "Best Value" selection process should include:

- 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.

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 (g) and (m) of subsection (2), paragraph (d) of subsection (5) and subsection (12) of section 287.055, Florida Statutes, are amended or created to read:

(2)(g) A "continuing contract" is a contract for professional services entered into in accordance with all the procedures of this act between an agency and a firm whereby the firm

provides professional services to the agency for projects in which the estimated construction cost of each individual project under the contract does not exceed \$2 million, for study activity if the fee for professional services for each individual study under the contract does not exceed \$200,000, or for work of a specified nature as outlined in the contract required by the agency, with the contract being for a fixed term or with no time limitation except that the contract must provide a termination clause. ~~Firms providing professional services under continuing contracts shall not be required to bid against one another.~~

(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) 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).

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 evaluated during this step.

b. Under the second step, the firm(s) selected under subparagraph (b)2.a shall be evaluated along with any other information requested, including proposed compensation, in order to make a best value selection(s). In no instance shall the evaluation criteria pertaining to compensation exceed fifty percent (50%) of the total weight of the criteria.

3. The criteria, procedures and standards for evaluation of proposals shall be published in the public solicitation.

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)1.f. 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.