

# 2006

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## **Legislative Policy Statements**



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**FLORIDA GOVERNMENT FINANCE OFFICERS ASSOCIATION**

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**T**he Florida Government Finance Officers Association (FGFOA) is pleased to present its Legislative Policy Statements for the 2006 Legislative Session. One of FGFOA's roles is to educate interested parties on issues of interest to local governments, which will improve local government's service delivery to the public. The enclosed recommendations, covering a variety of concerns, are prepared as a guide to assist the organization in having a unified effort to get legislation passed on these important issues.

These Legislative Policy Statements were developed by the 2006 Legislative Committee, which represents a variety of local governments including counties, municipalities and special districts. These Committee members are all finance professionals who strive to efficiently manage and operate local government.

We sincerely appreciate the opportunity to outline the FGFOA's positions. If you have any questions about the issues, please call Jeannie Garner, FGFOA Director of Administrative Services, at (850) 222-9684.

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# 2006 PROPOSED FGFOA POLICY STATEMENTS

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# IMPACT FEES

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## BRIEF OVERVIEW

Impact fees are charges imposed by local governments against new development. Such charges represent a total or partial reimbursement of the cost of additional facilities or services necessary as the result of the new development. Rather than imposing the cost of these additional facilities or services upon the general public, the purpose of impact fee is to shift the capital expense burden of growth from the general public to new residents.

Local governments in conjunction with their power to regulate land use and their statutory responsibility to adopt and enforce comprehensive planning impose impact fees. Impact fees have successfully been levied to fund the expansion of water and sewer facilities, the construction of road improvements, the construction of school facilities, and park expansion, among other things.

Impact fees are a unique product of local governments' home rule powers, and the development of such fees has occurred in Florida via home rule ordinance rather than by direct statutory authorization or mandate. Therefore, the characteristics and limitations of impact fees are found in Florida case law rather than statute.

As developed under case law, an impact fee levied by a local government must meet what is referred to as the "dual rational nexus test" in order to withstand legal challenge. First, there must be a reasonable connection, or rational nexus, between the anticipated need for additional capital facilities and the population growth generated by the new development. Second, the government must show a reasonable connection between the expenditures of the funds collected and the benefits accruing to the new development from those expenditures.

There are four characteristics of legally sufficient impact fees. First, the fee is levied on new development or new expansion of existing development. Second, the fee is a one-time charge although collection may be spread out over time. Third, the fee is earmarked for capital outlay only; operating costs are excluded. Fourth, the fee presents a roughly proportional share of the cost of the facilities needed to serve the new development.

## ANALYSIS:

As impact fee case law has evolved, terminology such as "rational nexus" and "rough proportionality" have acquired firm definitions through case law. These concepts provide the basis for the methodologies used to determine amounts of impact fees that should be levied and how the proceeds from impact fees should be used. For most local jurisdictions that are experiencing strong growth, impact fees are the financial linchpin that will enable them to implement financially feasible infrastructure development plans as required by SB 360, the new growth management law. With the exception of those in the building and construction industry, there is nearly universal support for impact fees from local taxpayers.

## **IMPACT FEES (continued)**

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Language in impact fee legislation recently proposed has not been based upon the familiar concepts of “rational nexus” and “rough proportionality”. Impact fee legislation that introduces new terminology that has not been defined in case law threatens the viability of impact fees as we know them, since there would be no certainty as to how fee amounts should be determined or how the fees should be used. If impact fees do not remain in place at current fee levels as viable revenue sources, the ability of local governments to enact financially feasible infrastructure plans will be diminished, and compliance with new growth management requirements may not be possible.

### **RECOMMENDATION:**

The Florida Legislature should not enact any legislation that curtails home rule authority to levy and use impact fees.

# COMMUNICATIONS SERVICE TAX

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## ISSUE:

The Communications Services Tax Simplification Law was enacted to restructure taxes on telecommunications, cable, direct-to-home satellite, and related services that existed prior to October 1, 2001. The definition of communications services encompasses voice, data, audio, video, or any other information or signals, including cable services that are transmitted by any medium. The law replaced and consolidated seven different state and local taxes or fees with a single tax comprised of two components: a state communications services tax and a local communications services tax. The tax is imposed on retail sales of communications services which originate and terminate in the state, or originate or terminate in the state and are billed to an address within the state. Tax proceeds are transferred to county and municipal governments, the Public Education Capital Outlay and Debt Service Trust Fund, and the state's General Revenue Fund.

A County or municipality may, by ordinance, levy a local communications services tax. The local tax rates vary, depending on the type of local government. The maximum rate for municipalities and charter counties is 5.1 percent or 4.98 percent if the municipality or charter county levies permit fees. The maximum rate for non-charter counties is 1.6 percent. The maximum rates do not include the add-ons of up to 0.12 percent for municipalities and charter counties or up to 0.24 percent for noncharter counties that have elected not to require and collect permit fees authorized pursuant to section 337.401, Florida Statutes.

In addition to this local tax, any local option sales tax that a county or school board has levied pursuant to section 212.055, Florida Statutes, is imposed on communications services in the same manner as the local communications services tax. The tax rate shall be determined by law and proceeds are distributed to local jurisdictions.

## ANALYSIS:

The simplification of the CST was a major accomplishment that required extensive cooperation and negotiation on the part of all interested parties. As part of the final product, local governments were able to continue to rely upon communications based revenue as an important local revenue source. However, each year certain communications providers attempt to gain a competitive advantage by seeking exemptions to the tax. Also, due to changing technology, telephone based communication is likely to diminish and be replaced by newer media. The intent of the original CST simplification was that the taxing mechanism would follow the migrating technology to the new media, and the tax base would be preserved. However, there is increasing pressure from the industry to exclude Voice Over Internet Protocol from the CST, and there has also been discussion of reducing CST rates.

Actions such as these would diminish the reliability of the CST an important source of non ad valorem revenue for local governments.

## **COMMUNICATION SERVICE TAX (continued)**

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### **RECOMMENDATION:**

The Florida Legislature should preserve the application of the CST on the current scope of communication services and at current rates. As technology migrates to new media such as Voice Over Internet Protocol the CST should follow the service so that the tax base grows with local communities and is not diminished.

# COLLECTION OF SALES TAX ON INTERNET TRANSACTIONS

## ISSUE:

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. That represents billions of dollars in lost sales tax revenue to state and local governments nationally. There is no doubt that this trend will continue as more citizens integrate the World Wide Web into their daily activities. With nearly every state and local government facing budget shortfalls, the urgency to collect taxes on remote sales has never been greater.

## ANALYSIS:

To date, the Congress and the Supreme Court have prevented state and local governments from collecting taxes on goods purchased via Internet, catalog, telephone, or other non-physical media. In *National Bellas Hess v. Illinois* (1967) and again in *Quill v. North Dakota* (1992), the Supreme Court ruled that states cannot require vendors to collect and remit taxes on purchases made in states in which the vendors do not have a physical presence, or nexus. The basis for these decisions is that requiring businesses to collect taxes on such purchases would impose an undue burden because of the complexity of and variations in state and local government sales tax rates and structures. Although these court decisions were based on catalog sales and were handed down before the emergence of the Internet and ecommerce, the rulings extend to all remote sales—including those made over the Internet. During the first session of the 107th Congress, legislators proposed “no new Internet access or multiple and discriminatory taxes on the Internet until October 21, 2004.” To the detriment of state and local governments, this moratorium legislation was enacted into law, while lawmakers defeated legislation that would have muted the *Bellas Hess* and *Quill* decisions by allowing states to require retailers to collect and remit taxes on remote sales.

To overcome the sticking point in the *Bellas Hess* and *Quill* decisions, i.e., the compliance burden on vendors due to the complexity of various state and local sales taxes, a group of public and private entities formed the Streamlined Sales Tax Project, or SSTP, in March 2000 with the goal of simplifying state and local tax systems. More than 40 states joined the SSTP, along with state and local government associations, retailers, and retail associations. The participants developed a set of recommendations for the terms of an agreement that would simplify the myriad tax systems across the country and create equity in business practices between “bricks and mortar” vendors and remote vendors.

The first step in moving the agreement forward was to establish a group of implementing states—Streamlined Sales Tax Implementing States, or SSTIS. Of the 45 states that impose sales and use tax, 34 joined the SSTIS through legislative enactment or executive order. The District of Columbia is also a member of the SSTIS. Throughout 2002, the SSTIS met and reviewed proposals developed by the SSTP in consultation with the business community. On November 12, 2002, the SSTIS officially approved the provisions of an agreement outlining a uniform system for the administration and collection of sales taxes.

The Streamlined Sales and Use Tax Agreement include the following provisions:

## **COLLECTION OF SALES TAX ON INTERNET TRANSACTIONS (continued)**

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- Centralized state administration of sales tax collection and the distribution thereof to local jurisdictions
- An electronic registration system for all vendors
- State and local governments limited to a single general sales tax rate

### **RECOMMENDATION:**

The Florida Legislature should adopt the Streamlined Sales and Use Tax Agreement.

# **EXPANSION OF HOMESTEAD EXEMPTIONS**

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## **ISSUE:**

In 1992, Florida voters approved an amendment to the Florida Constitution, popularly known as "Save Our Homes," which limits the increase in assessed value for properties receiving the Homestead Exemption to no more than 3% or the increase in the consumer price index (CPI). Save Our Homes does not cover new construction, and it doesn't apply when a property sells. The new owner's property is assessed at market value, or the equivalent selling price.

At this time, several joint resolutions have been introduced in the State Legislature that would seek to amend Section-4 Article VII of the State Constitution by allowing residents to maintain their Save Our Homes limitation when moving to another homestead property within 12 months.

## **ANALYSIS:**

Save Our Homes provides a significant tax break for homeowners. The longer a homeowner resides in their home, the less likely they are to pay their fair share for public services. Due to increasing costs for fuel, construction materials, and insurance, the overall cost of providing public services has increasingly exceeded 3%. As a result, the burden to pay for public services has shifted towards non-homestead and commercial type properties.

Allowing residents to transfer their Save our Homes limitation to new properties will further enhance the tax burden on commercial and seasonal properties. The cost of owning or carrying out a business in Florida will significantly increase, which potentially could lead towards relocation and job losses. Moreover, the increased burden on non-homestead properties could lead towards a precipitous decline in seasonal visitors and erode other sources of revenue.

## **RECOMMENDATION:**

The Florida Legislature should oppose any changes to the Save Our Homes valuation cap on homestead properties, or to any other homestead exemption provisions. In light of the increasing inequities in taxable valuations for similar properties, and the likelihood that any further expansion of the homestead exemption would exacerbate these inequities, FGFOA recommends that the issue of equitability in property taxation be referred to the Century Commission and/or the Budget and Taxation Reform Commission for comprehensive study.

# **PUBLIC RECORDS**

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## **ISSUE:**

Section 119.15(6)(b) F.S. sets the standards to create, revise or maintain a public records exemption. Section 119.071 (4)(d)(2), F.S. , which is set to be repealed October 2, 2006, exempts from public inspection personal information about local government and water management district employees involved in hiring, firing or managing employees. This exemption should be extended and revised to include all local government and water management district employees.

## **ANALYSIS:**

The standard applicable to this public records exemption is to allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption. Except for considering an individual's candidacy and qualifications for employment, personal and familial information is not necessary to provide government services. The government services, recommendations, opinions or other considerations involving an employee fulfilling their responsibilities can be made available for public inspection without potentially interrupting their personal or familial life.

## **RECOMMENDATION:**

The Florida Legislature should maintain the exemption set forth in Section 119.071 (4)(d)(2), F.S. and also revise the law to afford the same protection to all public employees' personnel records, with regard to information that is considered personal in nature. Proposed language amending F.S. 119.071(4)(d)(2) is provided below.

*The blacklining below describes changes in the law, not changes in this document (this italicized sentence will be removed after review of the document is complete)*

The home addresses, telephone numbers, social security numbers, and photographs of current or former local government agency or water management district employees the names, home addresses, telephone numbers, social security numbers, photographs, 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. This subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2011, unless reviewed and saved from repeal through reenactment by the Legislature.

# **INTERIM SERVICE FEES**

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## **ISSUE:**

Newly developed properties often are not charged their fair share of the cost of government services. There may be a delay of more than two years between the time that a newly constructed building is occupied and the time that property taxes on the improved property are due and payable. During this time, the occupants of the property receive services from local governments and school districts (at the expense of other taxpayers) and only pay taxes based on the value of their property before improvements. Florida law does not authorize local governments to address this inequity. Interim Service Fees have been enacted locally in an effort to assess a fair charge on new buildings, but the Florida Supreme Court struck down such fees because there is no specific statutory authority to enact the fees.

## **ANALYSIS:**

Sound estimates of the cost of the services that governments and schools must provide to occupants of newly constructed buildings before property taxes are paid on the improvements are not available, but the cost could exceed \$100 million annually. In some cases, a newly constructed dwelling could be occupied in January, children living in the house could be enrolled in school, and the residents of the new home would be receiving county and/or municipal services for up to 27 months before the property taxes are due (on March 31 of the year two years later) on the improved value of the parcel. Interim Service Fees should not be confused with impact fees, which are for capital improvements. Interim Service Fees (or Interim Improvement Surcharges as they were titled in 2004 in CS for SB 320) would be levied primarily to offset the cost of recurring operating expenses, such as police and fire protection, streets maintenance, and recreation programs.

## **RECOMMENDATION:**

The Florida Legislature should enact legislation authorizing local governments to implement Interim Service Fees.

# **BED TAX ON INTERNET SALES OF LODGING**

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## **ISSUE:**

Florida Statutes allow local governments to impose a bed tax on hotel and motel rooms. The law needs to be clarified to ensure that Internet providers of rooms remit the tax collected on amounts paid by patrons versus the flat fee amounts paid to get the rights to offer the rooms.

## **ANALYSIS:**

The law is clear regarding the various hotel and motels offering their services directly to patrons for use of their facilities. The confusion comes however, when providers of rooms to patrons through the Internet pay the hotels and motels a flat rate for rooms purchased in a block and subsequently mark the price up when patrons actually pay for the room. The Internet-based providers may or may not be collecting taxes charged at the increased rate. The taxes are currently being submitted to the hotels and motels at the block rate so the differential between that rate and the actual rate to the consumer is untaxed.

## **RECOMMENDATION:**

The Florida Legislature should amend the current laws on bed taxes clarifying that the taxable amount is the room rate paid by the patron for lodging; not the block rate paid by the Internet booking service.

## **ARTICLE V**

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### **ISSUE:**

The Florida Legislature as mandated by the voters in the State of Florida enacted Article V legislation that was implemented in 2004. The State Legislature also enacted a glitch bill to address some of issues and concerns which were raised as a result of the original bill.

Although the Florida Legislature has made attempts to address some of the concerns expressed by local governments, several matters remain unresolved. Concerns remain about the allocation methodology used in the distribution of fines and fees. Legislation should be enacted to provide the level of fines and fees to local governments enjoyed prior to the enactment of Article V

Also, there are arbitrary limits on Clerk expenditures, and there are arbitrary requirements that require counties to spend progressively more money each year on court activities regardless of whether those activities will actually cost more money or not. The 2004 legislation also created duplicative reporting requirements that are not consistent with existing uniform financial reporting requirements to which clerks and counties adhere.

### **ANALYSIS:**

Even though the 2005 “glitch bill” addressed some of the problems that were inadvertently created by the 2004 Article V legislation, there are still numerous glitches that have yet to be addressed.

### **RECOMMENDATION:**

The Florida Legislature should enact another Article V “glitch” bill to address issues related to the collection and distribution of fines and fees.

# **NATURAL GAS PUBLIC SERVICE TAX REVISION**

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## **ISSUE:**

With the deregulation of the natural gas industry, municipalities are experiencing a loss of utility taxes from natural gas sales. Large users of natural gas are able to purchase directly from the wellhead at out-of-state locations. Because title to the natural gas passes to the purchaser at this point, the sale is deemed to take place out-of-state, not in local municipalities. Consequently, no utility tax is paid in the jurisdiction where consumption actually takes place. In addition, local natural gas providers are facing unfair competition from untaxed sellers.

## **ANALYSIS:**

The existing tax structure for natural gas has been in place for many years. With the segregation of the purchase, transmission, and distribution functions for large users, this structure has become outdated and inequitable. The method of taxation should be changed to allow the tax to be levied in the jurisdiction where it is consumed, in the same manner as most goods and services.

This could be accomplished with a tax assessed at the point of delivery for consumption. The rate could be set initially to raise no more or no less revenue than a like sale under the current method. If the rate is set correctly, no increase in tax will be assessed on the industry. The tax structure should allow for taxing of transmission and distribution, as well as the natural gas.

## **RECOMMENDATION:**

The Florida Legislature should enact legislation that would restructure the public service (utility) tax levied on the sale of natural gas. The legislation may include a maximum allowable rate that local governments can assess, as in the current regulations. The tax code on the sale of natural gas should be consumption-based, taxed at the point of delivery for consumption, to generate revenues comparable to current receipts.

# INDEXING MOTOR FUEL RATES

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## ISSUE:

Since all municipal and county fuel taxes are established as a fixed amount per gallon, as the cost of providing transportation related services increases due to inflation, the corresponding funding source—fuel taxes—remains flat. The shortfall in revenue growth has caused cities and counties to add additional fuel taxes to meet their transportation funding needs.

## ANALYSIS:

The State of Florida imposes three-cents per gallon tax on motor fuel for counties (Constitutional Gas Tax and County Gas Tax) and a one-cent per gallon fuel tax for municipalities (Municipal Gas Tax). These state taxes are indexed to the CPI, so that the income from gas taxes grows as inflation occurs, and this helps road construction and maintenance budgets to keep pace with normal inflation.

Local option gas taxes, which provide additional funds for county and municipal road construction and maintenance, are not indexed. Counties may levy an additional one-cent to 12-cents per gallon fuel tax, which is typically shared with municipalities via Inter Local Agreements. The 1st Local Option Gas Tax – 6-“Original Cents”- is applicable to all motor and diesel fuels sold at wholesale in a county. The 2nd Local Option Gas Tax – provides up to 5 additional cents on all motor fuel but exempts diesel fuel or “special fuels” the “Ninth Cent”, formerly the “voted gas tax”, may also be levied by counties. The fuel tax revenues are used to fund transportation related expenditures such as the purchase of transportation facilities, road and street rights-of-way, construction, reconstruction, maintenance of roads and streets, and transportation-related public safety activities. Currently, 14 counties are levying the maximum optional fuel tax of 12-cents per gallon.

In 1983, the State recognized this problem as it relates to the funding of State transportation projects and converted the State fuel tax from a fixed amount per gallon to a percentage of sales (sales tax method). The fuel tax was initially applied at the State’s general sales tax rate of 5% and later increased to 6%. Over the succeeding years, the State Legislature has modified the sales tax rate to meet changes in fuel prices and to better respond to the State’s escalating transportation costs. Currently, the State converts the sales tax rate to a “floor tax” rate as an amount per gallon of fuel sold, which is indexed to all items of the consumer price index (CPI).

The ability to index local government fuel tax rates to the CPI is needed to generate additional revenues to keep up with the increased costs of providing the services for which the tax was originally levied.

## RECOMMENDATION:

The Florida Legislature should provide for indexing local government fuel taxes levied per gallon based on changes in the CPI (all items). As the tax rate increases or decreases based on the change in the CPI, the actual tax levied should be adjusted as the tax reaches half-cent intervals.

# **PUBLIC EMPLOYEE PENSION BENEFITS**

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## **ISSUES:**

Many proposed changes to employee pension laws have a significant financial impact affecting the local government that sponsors the retirement plan. The actuarial costs of such legislation must be assessed before the legislation is considered to determine its impact upon local governments and local taxpayers. In addition, mandating additional benefits upon local governments by the Legislature circumvents the normal collective bargaining process. Indeed, many costs are hidden costs of administration that do not necessarily show up as an actuarial cost. Vigilance is still needed even in cases where the actuarial analysis states that there will be no cost to the plan. The cost to local governments in terms of administrative costs should be assessed and reported on prior to the passage of any legislation.

## **ANALYSIS:**

State law requires a governmental unit to conduct an actuarial analysis of any proposed pension benefit revisions prior to the governing body voting on the changes. This lets the local officials know, before they vote, the true impact upon their taxpayers and constituents. The State Legislature should have the same benefit of knowing the true cost of the legislation upon which they are being requested to act. An actuarial study should be conducted to determine the fiscal impact across the State prior to the formal consideration of a bill proposing pension benefit changes.

Another area of concern is the circumvention of the normal collective bargaining process. Pension benefit changes should be negotiated through collective bargaining between the local government and the appropriate bargaining unit. Local governments are closer to the issue and are better able to negotiate benefits, which will be paid from local budgets. If the State feels it must mandate additional benefits, then a revenue source should be provided by the State to fund the mandated benefit.

## **RECOMMENDATION:**

The Florida Legislature should enact legislation requiring an actuarial study by an independent actuary or the State Division of Retirement Actuary of any proposed legislative changes to all public employee pension benefits to be completed at least 90 days prior to formal consideration by the Legislature. Any additional benefit, including an expansion of the presumptions of police, fire or general employees regarding in the line of duty illnesses or conditions, mandated by the Legislature should also provide a new State revenue source to be remitted to local government to pay for any legislatively enacted benefits.

# **PROVIDING AUTHORITY TO LOCAL GOVERNMENTS TO ESTABLISH PROCEDURE FOR ISSUING BONDS FOR TRANSPORTATION CAPITAL PROJECTS**

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## **ISSUE:**

Local governments are granted authority in Florida Statutes to issue bonds to finance capital projects, however, the language in Section 336.025(1) (c) can be interpreted to limit the issuance of bonds to no more than once per year.

## **ANALYSIS:**

Local governments issue bonds or other financing arrangements to fund capital projects with an expected life exceeding one year. Local governments manage the planning, procurement and cash flow involved with the capital projects. The law as currently written is interpreted by some attorneys as limiting the frequency a local government can issue bonds supported by the Local Option Fuel Tax.

## **RECOMMENDATION:**

The Florida Legislature should approve the proposed amendment to F.S. 336.025(1)(c) as shown below and authorize local governments to act in their own capacity to issue bonds supported by the Local Option Fuel Tax.

*The blacklined section below shows proposed changes in statute language, not changes in this document (this italicized sentence will be removed after review of the document is complete)*

(c) Local governments may issue bonds for transportation capital projects, including construction or reconstruction of roads and sidewalks. Local governments may use the services of the Division of Bond Finance of the State Board of Administration pursuant to the State Bond Act to issue any bonds through the provisions of this section and may pledge the revenues from local option fuel taxes to secure the payment of the bonds. In no case may a jurisdiction issue bonds pursuant to this section using the services of the Division of Bond Finance of the State Board of Administration more frequently than once per year. Counties and municipalities may join together for the issuance of local option fuel tax bonds using the services of the Division of Bond Finance of the State Board of Administration

# CREDIT CARD FEES AND SURCHARGES

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## ISSUE:

The use of credit cards for payment of state and local government taxes, fines, and other charges is a convenient payment option for citizens and is a means of accelerating payment to these governments. Currently, major credit card companies do not allow state and local governments to collect usage fees for involuntary assessments paid by credit cards. Federal legislation is required to permit state and local governments to pass on surcharges and usage fees to cardholders. At the State level, legislation is needed to allow local governments to deduct surcharges and usage fees from the amount of taxes owed.

## ANALYSIS:

To maximize revenues, state and local governments are continually looking for new ways to cut the cost of collecting and processing payments from citizens and to expedite deposit of these payments. In addition, many citizens are requesting the convenience and flexibility that the use of credit cards permits for payment of government related expenses.

Many states have passed legislation authorizing the acceptance of credit cards for government payments. The most frequent uses are for fines, motor vehicle fees, recreation services, and parking fees. Some jurisdictions also accept credit cards for tax payments. A provision of the Taxpayer Relief Act of 1997 (P.L. 105-34) authorizes payment of federal income taxes by credit card, but prohibits the federal government from paying fees or surcharges.

Section 215.322 (5), Florida Statutes authorizes local governments in Florida to accept payments by credit cards and to surcharge the user an amount sufficient to pay the service fee charges of the credit card company. The major credit card companies prohibit such a practice. Also, local governments in Florida are not permitted to deduct credit card usage fees from the amount of taxes owed. Local governments should have the option of deducting credit card usage fees from taxes owed as a cost of collection.

As a matter of policy, the major credit card companies do not allow governments or businesses to pass on the usage fees imposed by credit card vendors, normally between 1.5% and 2% of the amount charged, to citizens and customers utilizing this payment option. State and local governments, however, are responsible for the collection of taxes, fines, forfeitures, and other involuntary assessments and, unlike businesses, are unable to adjust their "pricing" to cover the costs of collection. Florida law does not permit local governments to deduct such usage fees from the amount of taxes owed.

State and local governments have responded to these prohibitions on collecting surcharges in a number of ways. Some use outside vendors to process credit card transactions, and the credit card companies have generally not opposed passing on the fees in this case. Some continue to pass on surcharges until the credit card operators discover this and clamp down on the jurisdiction. Many use their compensating balances at the financial institution processing the transactions to pay for the fees. Other jurisdictions have simply ceased use of credit cards altogether.

## **CREDIT CARD FEES AND SURCHARGES (continued)**

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The credit card companies have granted a number of exceptions (referred to as “unique transactions”) from their general prohibition on collection of surcharges. Some of these have been granted on an ad hoc basis, but others are specifically enumerated. Among these exceptions are transactions at gambling casinos and truck stops. Payment of taxes has also been identified as a ‘unique transaction’, but surcharges for this purpose have not been permitted. All that is required is that card users be notified in advance that the fee will be included in the total transaction amount.

State and local governments have questioned the criteria used in granting exemptions at these establishments while essentially denying users of governmental services the same opportunity. Since the option of payment by credit card is essentially a convenience to the government’s customer and a user-specific fee, it is unfair to pass those costs on to other taxpayers. Finally, the resulting cost savings do not offset the transaction fee imposed.

### **RECOMMENDATION:**

The Florida Legislature should support the enactment of federal legislation that will allow state and local governments to charge surcharges on credit cards. In addition, the State Legislature should also enact laws that will permit local governments to deduct credit card usage fees from taxes owed.

