

2008

Legislative Policy Statements



FLORIDA GOVERNMENT FINANCE OFFICERS
ASSOCIATION

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2008 FGFOA Legislative Policy Statements

The Florida Government Finance Officers Association (FGFOA) is pleased to present its Legislative Policy Statements for the 2008 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 2008 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 Executive Director, at (850) 222-9684.

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PROPERTY TAX REFORM

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 three percent or the increase in the consumer price index (CPI), whichever is less. The unintended consequences of this law after the passage of time and the escalation of property values are that the property tax burden has shifted to non-homestead properties and created significant disparities in the taxes levied on similarly valued properties.

Although Florida's state and local tax burden ranks 38th among the fifty states (according to the Tax Foundation), many find that the property tax burden has become onerous for newer homeowners and those not protected by Save Our Homes limitations. In addition to Save Our Homes, the assessment methodology utilized to value properties and the wide disparity in property values among different areas of the State have created localized or regional property tax crises in various parts of Florida.

Analysis

Save Our Homes provides a significant tax break for homeowners with a homestead exemption. The longer homeowners reside in their home, the less likely they are to pay a proportionate share for public services. Due to increasing costs for the impacts of growth, mandates, fuel, construction materials, and insurance, as well as a tight labor market that is driving up salaries, the overall annual cost of providing public services has increasingly exceeded the three percent cap provided by Save Our Homes. As a result, the burden to pay for public services has shifted over time toward new homeowners, non-homestead and commercial type properties.

This tax shifting and re-valuing at the time of home sale has contributed to the housing affordability crisis in Florida. Homeowners enjoying the benefit of Save Our Homes face sticker shock when trying to purchase a new home because they have been insulated from the full effect of increased property valuations. Young people can't afford to buy homes because the taxes are so high. Additionally, because of Save Our Homes, there are unequal and very disproportionate taxes paid for similar properties in the same jurisdiction and often in the same neighborhood. This results when one homeowner has occupied the dwelling for a number of years and enjoys an artificially low taxable value while an identical property with a new homeowner pays taxes based on a more current market value. This is a fundamental inequity and violates the concept of fairness in application of taxes. Providing for portability of Save Our Homes will only exacerbate this inequity.

In addition, other issues beyond Save Our Homes need to be addressed in order to stabilize assessed values and provide an equitable tax system. The assessing of property at its highest and best use has created tremendous increases in assessed value for working waterfront properties that have had expensive condominiums built near their properties. The spiraling real estate prices in certain areas of the State as part of a boom and bust cycle has also created a sharp increase in assessed values for non-homestead properties.

Recommendation

The issues of equity in property taxation and providing a predictable and stable tax base should be addressed by the Legislature after careful consideration of all information and input from interested parties, including the Florida Taxation and Budget Reform Commission.

REPEAL OF PUBLIC SERVICE TAX FUEL ADJUSTMENT CHARGE EXEMPTION

Issue

The fuel adjustment charge exemption to the Municipal Public Service Tax is obsolete and is depriving local jurisdictions of a bondable revenue source that is not tied to property taxes.

Analysis

Section 166.231, F.S. authorizes the collection of a public services tax (utility tax) on utility services, yet exempts the separately stated “fuel adjustment charge” portion of the bill, which reflects all increases in the cost of utility services to the ultimate consumer resulting from an increase in the cost of fuel to the utility subsequent to October 1, 1973. Fuel adjustment charges were added to utility bills to identify the increased costs of fuel resulting from the oil embargo in the 1970’s. This exemption has long since become obsolete, yet the increases in fuel charges since October 1, 1973 continue to be exempt even from reasonable cost of living increases.

Recommendation

The Legislature should repeal the fuel adjustment charge exemption from the public services tax to allow municipal public services taxes to grow at the future market rate. Additionally, to prevent the creation of an immediate “windfall” to local jurisdictions by the elimination of this exemption, the Legislature should provide that each jurisdiction roll back its utility tax rate levy on impacted utility services at the effective date of this change, so that the implementation of the new rate on the expanded base during the first year is revenue neutral.

Proposed Bill Language

Section 1. Subparagraph 1. of paragraph (b) of subsection (1) of section 166.231, Florida Statutes, is created to read:

166.231 Municipalities; public service tax.—

(1)(b)1. Effective October 1, 2008, the tax imposed by paragraph (a) shall be applied against all fuel adjustment charges, whether or not separately stated on each bill, provided that each jurisdiction making such assessment has adopted the conversion rate on such impacted utility services provided by the Florida Department of Revenue to effect a tax neutral amount from each impacted utility service to each jurisdiction for the year of implementation.

REVISION OF PUBLIC SERVICE TAX ON UTILITY SERVICES

Issue

The deregulation of the natural gas industry caused both a disparity in how public services tax on natural and manufactured gas is charged, depending upon how the natural gas purchase contract is written, as well as a significant drop in municipal public services tax revenues. This legislation seeks to create a level playing field with regard to the payment of public services tax on natural gas and other utility services brought into a taxing jurisdiction.

Analysis

The deregulation of the natural gas industry created a loophole for large purchasers of natural gas in Florida to escape the payment of public services tax by changing the purchase contract to take possession of the product at the wellhead or from the manufacturer out-of state and paying transportation charges to bring the product into Florida taxing jurisdictions. The product is still transported and distributed by the same pipeline distribution system in place prior to deregulation, but since the purchase is deemed to take place out-of-state, no public services tax is paid in the jurisdiction where consumption actually takes place. This situation places the local natural gas vendor at a financial disadvantage to an out-of-state vendor, who does not have to charge the local public services tax, and jeopardizes a bondable revenue source for local jurisdictions.

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

Recommendation

The Legislature should change the method of taxation to allow the public services tax to be levied in the jurisdiction where utility services are consumed to stabilize this bondable revenue source while providing a level playing field for local utility services vendors.

Proposed Bill Language

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

166.231 Municipalities; public service tax.---

(1)(a) A municipality may levy a tax on the purchase, use or consumption of utility services ~~electricity, metered natural gas, liquefied petroleum gas either metered or bottled, manufactured gas either metered or bottled, and water service.~~ Except for those municipalities in which paragraph (c) applies, the tax shall be levied only upon purchases utility services purchased, used or consumed within the municipality and shall not exceed 10 percent of the payments received by the seller of the taxable item from the purchaser for the purchase of such service. Municipalities imposing a tax on the purchase of cable television service as of May 4, 1977, may continue to levy such tax to the extent necessary to meet all obligations to or for the benefit of holders of bonds or certificates which were issued prior to May 4, 1977. ~~Purchase of electricity means the purchase of electric power by a person who will consume it within the municipality.~~ “Utility service” means electricity for light, heat, or power; and natural or manufactured gas for light, heat, or power, including transportation, delivery, transmission, and distribution of the electricity or natural or manufactured gas. This subsection does not broaden the definition of utility service to include separately stated charges for tangible personal property or services which are not charges for electricity or natural or manufactured gas or the transportation, delivery,

transmission, or distribution of electricity or natural or manufactured gas.

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

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

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

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

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

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

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

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

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

SURTAX ON DEEDS

Issue

The governing body in each county, as defined in s. 125.011(1), F.S., is authorized to levy a discretionary surtax on deeds and other instruments. Under this definition, only Miami-Dade County can levy this tax. The ability to levy this tax should be extended to all counties.

Analysis

Miami-Dade County levies the surtax at the maximum rate of .45 cents for each \$100 or fractional part thereof. The proceeds are collected by the Florida Department of Revenue. The funds are then remitted to the County's governing body and subsequently deposited in a Housing Assistance Loan Trust Fund. The funds can be used to assist in the financing and construction, rehabilitation, or purchase of housing for low and moderate income families.

Under the current statute, the surtax can not be assessed when the interest being conveyed or transferred is a single family residence. There are also other special considerations in which the tax does not apply as stated under s. 201.02 F.S., such as dissolution of a marriage or employee relocations.

The funds used from this revenue source serve an important public purpose, housing for low and moderate income families. This is a critical issue that many cities and counties through out Florida grapple with. The benefits of the tax would be greatly enhanced if it were allowed in other counties, rather than in just one. The distribution of the funds could follow the same structure that is currently being utilized (i.e., collected by the State and then remitted back to the participating county).

Recommendation

The Legislature should expand the Discretionary Surtax on Documents to allow all counties to levy this tax. The revenue derived from this tax will assist communities in meeting the housing needs of both low income and working class families.

The surtax is scheduled to be repealed on October 1, 2011. Thus, unless the Legislature allows the provision to expire, it will need to be addressed in the near future.

Proposed Bill Language

Section 1. Subsection (1) is amended and subsection (4) of section 201.031, Florida Statutes, is created to read:

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

(1) Each county ~~as defined by s. 125.011(1)~~, may levy, subject to the provisions of s. 125.0167, a discretionary surtax on documents taxable under the provisions of s. 201.02, except that there shall be no surtax on any document pursuant to which the interest granted, assigned, transferred, or conveyed involves only a single-family residence. Such single-family residence may be a condominium unit, a unit held through stock ownership or membership representing a proprietary interest in a corporation owning a fee or leasehold initially in excess of 98 years, or a detached dwelling.

(4) Section 3, chapter 83-220, Laws of Florida, as amended by chapter 84-270, Laws of Florida, and chapter 89-252, Laws of Florida, is hereby repealed.

LOCAL OPTION FOOD AND BEVERAGE TAX REVISIONS

Issue

Section 212.0306, Florida Statutes relating to the Local Option Food and Beverage Tax states that any county, as defined in s. 125.011(1) F.S. may impose two separate taxes by ordinance adopted by majority vote. Under this definition, only Miami-Dade County can levy this tax. The ability to levy this tax and provide property tax relief should be extended to all counties.

Analysis

Under the current definition, only Miami-Dade County can levy this tax. Miami-Dade has been levying these taxes since October 1, 1993. With the increasing burden of indigent health care and other social services impacting the general revenues of counties, there is a need to levy this tax to pay for these services and reduce the burden upon local property taxpayers. This property tax relief makes better use of these funds rather than requiring these monies to only be used for additional tourism promotion. The existing one percent tax that may be imposed on other than hotel and motel sales of food, beverages, and alcoholic beverages should continue to be directed to providing services for the victims of domestic violence as well as for programs to assist the homeless or those about to become homeless.

Recommendation

The Legislature should amend Section 212.0306 F.S. to allow all counties, not only Miami-Dade County, the ability to levy these taxes pursuant to statutory requirements. In addition, the two percent tax should be directed for property tax relief to pay for indigent health care and other social services rather than promotion of tourism.

Proposed Bill Language

Section 1. Section 212.0306, subsection (1) and paragraph (a) of subsection (3) are hereby amended to read:

212.0306 Local option food and beverage tax; procedure for levying; authorized uses; administration.—

(1) Any county, as defined in s. 125.011(1), may impose the following additional taxes, by ordinance adopted by a majority vote of the governing body:

(3)(a) ~~The proceeds of the tax authorized by paragraph (1)(a) shall be allocated by the county to a countywide convention and visitors bureau which, by interlocal agreement and contract with the county, has been given the primary responsibility for promoting the county and its constituent cities as a destination site for conventions, trade shows, and pleasure travel, to be used for purposes provided in s. 125.0104(5)(a)2. or 3., 1992 Supplement to the Florida Statutes 1991. If the county is not or is no longer a party to such an interlocal agreement and contract with a countywide convention and visitors bureau, the county shall allocate the proceeds of such tax for the purposes describe in s. 125.0401(5)(a)2. or 3., 1992 Supplement to the Florida Statutes 1991.~~ provide for the cost of indigent health care and related social services.

LOCAL BUSINESS TAX RECEIPT REVISIONS

Issue

Counties and municipalities that levy the local business tax authorized under Chapter 205, Florida Statutes, have been unable to revamp their business tax categories and rates relevant to changes in business and technology advances since October 1, 1995, rendering the current rate schedules inadequate, at best, and obsolete, at worst.

Analysis

The many restrictions placed upon local governments' ability to manage its business tax levies have rendered several of the categories published in 1995 obsolete, and others inadequate for the changes in business trends and technologies which have occurred in the past twelve years. Additionally, the statutory limitation on increases to individual business tax rates and the relationship that all increases must maintain to the total taxes assessed have created rates which are difficult to administer, manage and/or justify over time. Changes to these categories, within the established criteria provided under Sections 205.0535 (2) and (3), Florida Statutes, should be periodically permitted by law.

Recommendation

The Legislature should amend Section 205.0535 such that any county or municipality that has adopted by ordinance a business tax may reclassify and restructure current rates and establish new rate structures once every ten years.

Proposed Bill Language

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

205.0535 Reclassification and rate structure revisions.—

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

FINANCIAL REPORTING

Issue

Florida's local governments are bound by the financial reporting requirements found within Chapter 218, Part III, Florida Statutes. All local governments are required by Section 218.32, F.S., to file their annual financial report (AFR) with the Department of Financial Services. Local governments that are required to file an audit pursuant to Section 218.39, F.S., are required to file their AFR with the department no later than 12 months after fiscal year end. Non-audited entities are required to

file their AFR with the department no later than April 30 of each year.

Local governments that meet the audit thresholds contained within Section 218.39(1), F.S., are required to file an annual financial audit with the Auditor General no later than 12 months after fiscal year end.

The Florida Legislature proposed SB 560, related to local government taxes and spending. Contained within the bill was a provision entitled *Truth in Spending* which required local governments to electronically post, within three months of fiscal year end, all revenues received and expenditures made, in a format prescribed by the Department of Revenue, on the local government's website if one is available, or if not, on the county government's website. Although the measure did not ultimately pass, the President of the Florida Senate directed the Committee on Community Affairs to conduct a study on *Transparency in Local Government Revenues and Expenditures*, which may result in further legislation along these lines.

Analysis

An alternative to posting incomplete information on the internet would be to shorten the time frame for local governments to file their annual reports with the State, from 12 months to 9 months after fiscal year end, and electronically post their annual financial report submitted to the Department of Financial Services on the internet.

Recommendation

The Legislature should amend Sections 218.32 and 218.39, F.S., to require local governments to file their annual financial reports and annual financial audit reports no later than nine months after fiscal year end. The Legislature should further amend Section 218.32, F.S., to require that local governments electronically post their annual financial report on the internet.

Proposed Bill Language

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

218.32 Annual financial reports; local governmental entities.

(1)(d) Each local governmental entity that is required to provide for an audit in accordance with s. 218.39(1) must submit the annual financial report with the audit report. A copy of the audit report and annual financial report must be submitted to the department within 45 days after the completion of the audit report but no later than nine ~~12~~ months after the end of the fiscal year.

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

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

governmental entity.

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

218.39 Annual financial audit reports.--

(1) If, by the first day in any fiscal year, a local governmental entity, district school board, charter school, or charter technical career center has not been notified that a financial audit for that fiscal year will be performed by the Auditor General, each of the following entities shall have an annual financial audit of its accounts and records completed within nine ~~12~~ months after the end of its fiscal year by an independent certified public accountant . . .

PUBLIC RECORDS

Issue

Section 119.07(4) (d), F.S., exempts personal information about public safety officers, judges, code enforcement officers, and certain other personnel from being available to the general public. This is personal information that is not necessary for the provision of governmental services. This same exemption of personal information should be maintained for all public 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.

All Florida public employees have the right to expect protection from harassment stemming from workplace situations. All Florida public employees should have the same protection from intrusion by the public in their personal lives with regard to personal information that has no bearing on their job performance. Unfortunately, public employees are vulnerable to unscrupulous individuals who can access public records to harass employees.

Recommendation

The Legislature should amend Section 119.07(4) (d), F.S, to provide the same protection to all public employees' personnel records with regard to information that is personal in nature.

Proposed Bill Language

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

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

(4)(d)2. The home addresses, telephone numbers, and photographs of current or former ~~employees human resource, labor relations, or employee relations directors, assistant directors, managers, or assistant managers~~ of any local government agency or water management 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.

BED TAX ON INTERNET SALES OF LODGING

Issue

The 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 hotels 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 Legislature should amend current law 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.

Proposed Bill Language

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

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

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

(10) Persons engaging in activities described in subsection (8) shall register with the department and collect and remit taxes on the total rent charged to their customers, unless the registered owners or operators of the accommodations agree in writing to report and remit taxes on their behalf. Any written agreement must require the person collecting the rent to report total taxable sales and taxes due and pay the taxes collected to the owner or operator by the last day of the month in which the customer pays the rent or the last day of the month in which the customer completes the occupancy of the accommodation. The owner or operator shall report and remit the taxes with the owner or operator's return that is due in the month following the month in which the taxes are paid to the owner or operator. The owner or

operator is not liable for any tax, penalty, or interest due as a result of the failure of the person who arranged the occupancy and collected the rent to accurately report and remit the taxes imposed by this section or by ss. 125.0104, 125.0108, and 212.0305. If the owner or operator does not agree to report and remit taxes on behalf of the person who rents the accommodations as provided in subsection (8), that person shall extend his or her annual resale certificate in lieu of paying taxes on the amounts he or she pays to the owner or operator for the accommodations. The department may provide by rule for a single registration by a person engaged in the activities described in subsection (8) rather than require separate registrations for each location where transient rental accommodations are located. Such person may file consolidated returns as provided in s. 212.11(1)(e).

Section 2. The amendments to section 212.03, Florida Statutes, made by this act are intended to clarify existing law.

Section 3. Amnesty for registration and remittance of tax.-

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

(a) The rentals subject to amnesty were made prior to July 1, 2008.

(b) The rental payments were collected by persons who are not owners, operators, or managers of the transient rental facilities or their agents.

(c) The person who collected the rental payments registers with the Department of Revenue to pay taxes on transient rentals on or before July 1, 2008.

(d) The person who collected the rental payments applies for amnesty within 3 months after July 1, 2008, pursuant to rules of the Department of Revenue.

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

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

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

SALES TAX ON INTERNET TRANSACTIONS

Issue

Transactions conducted over the Internet put local vendors at a disadvantage due to the fact that sales tax is not being collected on these transactions. Appropriate sales taxes should be paid on all transactions in order to provide a level playing field for all businesses.

Analysis

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. To overcome this sticking point, 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. As a result of the SSTP, a Streamlined Sales and Use Tax Agreement was developed and adopted by a number of states.

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.

Recommendation

The Florida Legislature should adopt the Streamlined Sales and Use Tax Agreement. Once a state becomes a full member participant, retailers in that state may voluntarily use the system to collect and remit remote sales taxes.

ARTICLE V

Issue

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

Although the Legislature has made attempts to address some of the concerns expressed by local governments, several matters remain unresolved including 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 necessary to sustain local operations.

Also, the limits on Clerk expenditures disregard local market conditions and locally required levels of service. Clerk's Offices have little control over revenues or expenditures. The 2004 legislation created duplicative reporting requirements that are not consistent with existing uniform financial reporting requirements to which the Clerks and counties adhere.

Concerns remain regarding the allocation methodology used in determining the expenditure cap and the return or distribution of surplus funds. Currently, the methodology for expenditure caps rewards counties with increasing revenues without recognizing the costs associated with collections and other functions regardless of the ability to increase revenues. Several fines and fees should be amended to provide specific ability for assessments and greater cost recovery.

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 fiscal constraints that have yet to be addressed.

Additional review of fine and fee assessments, reporting requirements, and budgetary allocations is necessary to provide Clerks the ability to meet mandated requirements.

Recommendation

The Legislature should enact follow-up legislation to the Article V "glitch" bill to resolve issues related to the collection and distribution of fines and fees, provide for a central repository to eliminate duplicate reporting requirements, and review expenditure cap methodologies to allow greater flexibility for Clerks to retain funds to meet local requirements.

Proposed Bill Language

Section 1. Paragraph (a) of subsection (4) and subparagraph 3. of paragraph (c) of subsection (5) of section 28.36 Florida Statutes, are amended to read:

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

(4)(a) If the corporation verifies that the proposed budget is limited to the standard list of court-related functions in s. [28.35](#)(4)(a) and a revenue deficit is projected, a clerk seeking to retain revenues pursuant to this subsection shall increase all fees, service charges, and any other court-related clerk fees and charges to the maximum amounts specified by law or the amount necessary to resolve the deficit,

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

(5)(c)3. For county fiscal years 2008-2009 and thereafter, the maximum budget amount for the standard list of court-related functions of the clerks of court in s. 28.35(4)(a) that may be funded from fees, service charges, court costs, and fines retained by the clerks of the court shall be calculated based on the projected revenues and anticipated costs of the clerk. The total revenue and cost of all clerks and projected surplus to be remitted to the Department of Revenue shall be reported by the Clerk of the Court Operations Corporation to the Department of Revenue and Legislative Budget Commission in accordance with Section 28.36(5)(c).~~as the rebased budget for the prior county fiscal year adjusted by the projected percentage change in revenues between the prior county fiscal year and the county fiscal year for which the maximum budget amount is being authorized. The rebased budget for the prior county fiscal year shall always be calculated by adjusting the rebased budget for the year preceding the prior county fiscal year by the actual percentage change in revenues between the 12-month period ending June 30 of the year preceding the prior county fiscal year and the 12-month period ending June 30 of the prior county fiscal year.~~

INDEXING MOTOR FUEL RATES

Issue

All municipal and county fuel taxes are established as a fixed amount per gallon. As the cost of providing transportation related services increases, fuel taxes remains flat. The shortfall in revenue growth has caused cities and counties to raise property taxes to meet their transportation infrastructure needs.

Analysis

The State of Florida imposes a total of 14.9 cents per gallon tax on motor fuel; this total consists of a two cents constitutional fuel tax, a one cent county fuel tax, a one cent municipal fuel tax, and a 10.9 cents state fuel sales tax. Only the state fuel sales tax (10.9 cents) is indexed to the CPI. Indexing motor fuel taxes to the CPI helps road budgets keep pace with inflation.

In addition to the State taxes, counties may levy an additional one cent to twelve cents of tax per gallon of motor fuel. Eleven of the twelve cents are required by law to be shared with municipalities via interlocal agreements or a default methodology. The 1st Local Option Fuel Tax – six “Original Cents”- is applicable to all motor and diesel fuels sold at wholesale in a county. The 2nd Local Option Fuel Tax – provides up to five additional cents on all motor fuel but exempts diesel fuel or “special fuels”. The “Ninth Cent Fuel Tax”, formerly the “voted gas tax”, may also be levied by counties. The revenues derived from the local option fuel taxes 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. Local option fuel taxes are also not indexed to inflation.

Recommendation

The Legislature should provide for indexing all fuel taxes in the same manner as the 10.9 cent state fuel sales tax. The ability to index fuel tax rates to the CPI is needed to generate additional revenues to keep up with the increased costs of providing the transportation-related infrastructure and services for which the tax was originally levied.

Proposed Bill Language

Section 1. Paragraphs (d), (e), and (f) of subsection (1) of section 206.41, Florida Statutes, are amended to read:

206.41 State taxes imposed on motor fuel.

(1) The following taxes are imposed on motor fuel under the circumstances described in subsection (6):

(d) 1. An additional tax of 1 cent per net gallon may be imposed by each county on motor fuel, which shall be designated as the “ninth-cent fuel tax.” This tax shall be levied and used as provided in s. 336.021.

(2) Beginning January 1, 2009, and on January 1 of each year thereafter, each county may provide by ordinance that the tax rate set forth in subparagraph 1. be adjusted by the percentage changed in the average of the Consumer Price Index issued by the United States Department of Labor for the most recent 12-month period ending September 30 and rounded to the nearest tenth of a cent, as determined by the Department of Revenue. However, the tax rate may not be less than 1 cent per gallon.

(3) All impositions and rate changes of the tax shall be levied before July 1 to be effective January 1 of the following year.

(4) A certified copy of the ordinance that authorizes the indexing of the tax authorized by subparagraph 2. must be furnished by the county to the Department of Revenue within 10 days after the adoption of the ordinance indexing the tax.

(5) The department shall notify each terminal supplier, position holder, wholesaler, and importer of the tax rate applicable under this paragraph for the 12-month period beginning January 1.

(e) 1. An additional tax of between 1 cent and 11 cents per net gallon may be imposed on motor fuel by each county which shall be designated as the ‘local option fuel tax.’ This tax shall be levied and used as provided in s. 336.025.

2. Beginning January 1, 2009 and on January 1 of each year thereafter, counties may provide by ordinance that the tax rate set forth in s. 336.025 (1) (a) and (b) be adjusted by the percentage change in the average of the Consumer Price Index issued by the United States Department of Labor for the most recent 12-month period ending September 30 and rounded to the nearest tenth of a cent, as determined by the Department of Revenue. However, the tax rate may not be less than the rate per gallon levied pursuant to subparagraph 1.

3. All impositions and rate changes of the tax shall be levied before July 1 to be effective January 1 of the following year.

4. A certified copy of the ordinance that authorizes the indexing of the tax authorized by subparagraph 2. must be furnished by the county to the Department of Revenue within 10 days after the adoption of the ordinance indexing the tax.

5. The department shall notify each terminal supplier, position holder, wholesaler, and importer of the tax rate applicable under this paragraph for the 12-month period beginning January 1.

COLLECTIVE BARGAINING OF PUBLIC SAFETY PENSION BENEFITS

Issue

Each year, the Legislature considers bills to improve public safety retirement benefits and many times legislation is passed that increases the costs to local governments without providing a new revenue source from which to pay these improved benefits. Changes in public safety pension benefits should only be collectively bargained at the local level.

Analysis

Local governments must conduct an actuarial study before any retirement plan changes are adopted; however, the State is not required to follow this requirement. The requirement to accurately calculate the cost of any benefit changes provides vital information regarding the true impact of changes, which should be considered before legislation is adopted.

Retirement plan changes are best determined through the collective bargaining process between local governments and the respective bargaining units. Local governments and their employees are better able to identify appropriate benefit levels based on specific local needs, which include making legitimate trade-offs between providing higher benefits and higher wages. Local governments should be provided the flexibility to negotiate different levels of minimum benefits for each public safety bargaining unit to provide the best mix of benefits, based on the diverse needs of each local government and bargaining unit. Legislatively mandating additional benefits circumvents the collective bargaining process between local governments and public safety employees.

Recommendation

The Legislature should enact legislation which provides that any public safety benefit improvement be negotiated locally between the affected employees and the respective local government entity. The Legislature should not take action on any bills modifying public safety employees' pension benefits.

Proposed Bill Language

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

175.021 Legislative declaration.—

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

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

185.01 Legislative declaration.—

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

PREMIUM TAXES TO FUND POLICE AND FIREFIGHTER PENSION BENEFITS

Issue

Taxes on insurance premiums are used to fund a small portion of police officer and firefighter pension benefits. Legislation approved in 1999 mandated that this revenue source may only be used to fund “extra benefits” that exceed the current level of benefits for that bargaining unit. This has limited the value of the premium tax revenues as a source to fund pension benefits and places a greater burden on citizens to fund mandated police and firefighter pension benefits.

Analysis

Before the 1999 law was approved, the premium taxes were levied for the purpose of funding a benefit level to police officers and firefighters at a higher level than general employees. This recognized the additional risk regularly faced in these high hazard occupations. After intense lobbying by police and fire unions, this long standing practice with regard to the definition of “extra benefits” was legislatively determined to mean benefits greater than the benefits currently being provided to police officers and firefighters, and the premium taxes were frozen at the same dollar level of tax revenue each year regardless of the escalating costs of the previously funded benefit. This means that even though benefit costs were rising, premium taxes were not available to pay for the additional costs. The only way to release the “unfrozen” premium tax revenue is to provide an increased benefit. This creates an upward spiral of costs. Costs are not static, but increase as wages increase. Because local governments are not permitted to use the premium taxes to fund increased costs for existing benefits, other local revenue sources must be used to pay for pension benefits cost increases.

Recommendation

The Legislature should enact legislation authorizing that premium taxes in excess of the frozen amount be used to fund any fire or police pension benefit above the established minimums.

Proposed Bill 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 extra 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 plans 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 extra benefits to the police officers included in that pension plan; or

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

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

REVISIONS TO THE CONSULTANTS COMPETITIVE NEGOTIATION ACT

Issue:

Section 287.055 F.S., the Consultants Competitive Negotiation Act (the “Act”), governs state and local agency procurement of architecture, engineering, landscape architecture, mapping and surveying services. Currently, local governments are not allowed to receive a price proposal before making a provider selection for the services. In addition, the Act makes it difficult to manage or add to a series of similar projects in a cost effective manner.

Analysis:

Current law does not allow direct price competition on services covered by the Act. It diminishes the leverage in negotiations and is not in step with current competitive procurement practices. A Best Value Selection approach defines a firm(s) whose proposal provides the greatest overall benefit to the agency in accordance with the requirements of a formal solicitation. The applicability of best value selections provide for local agencies to adopt rules or ordinances governing the selection of a firm on a best value basis within certain process minimums.

Recommendation:

The Legislature should enact legislation that provides for price to be considered as part of the evaluation to select the provider of architectural, engineering, landscape architectural, mapping and surveying services.

Proposed Bill Language

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

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

(2)(m) “A best value selection” means a selection of a firm(s) whose proposal provides the greatest overall benefit to the agency in accordance with the requirements of a formal solicitation.

(d) In accordance with subsection (f) 2., an agency may contract with several firms under one contract for a defined term in order to provide timely project related services. The method of solicitation and selection of the firms shall be in accordance with section (3) PUBLIC ANNOUNCEMENT AND QUALIFICATION PROCEDURES. – and (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 under contract.

(12) APPLICABILITY TO BEST VALUE SELECTIONS

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

(b) Every agency shall adopt rules or ordinances governing the selection of a firm(s) on a best value basis. Procedures for the use of a best value selection process shall include as a minimum, the following:

1. The preparation and distribution of a public solicitation consistent with the requirements of Sections (3) and (4) (a).

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

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

b. Under the second step, the firms selected under subsection 2.a shall be asked to submit a compensation proposal for the proposed work, which shall be evaluated along with the information evaluated under subsection 2.a and any other information the agency chooses to request with the compensation proposal to make a best value selection(s).

3. The criteria, procedures and standards for the evaluation of proposals considered under subsections 2.a and 2.b respectively, shall be published in the public solicitation. In no instance shall the criterion pertaining to compensation exceed 50 percent of the total weight of the published evaluation criteria.

4. In the case of valid public emergencies, for the agency head to declare an emergency and authorize negotiations with the best firm available at that time.

UNFUNDED MANDATES

Issue

Article VII, section 18(a) of the Florida Constitution defines the parameters within which legislation imposing unfunded mandates on local governments may be enacted by the Florida Legislature. Although this provision was approved by voters with the expectation that it would ensure a large measure of protection for local government financial resources, unfunded mandates have proliferated even after this constitutional amendment was enacted.

Analysis

According to this constitutional provision, no county or city is bound to follow any general law that requires the county or city to spend funds or to take an action requiring the expenditure of funds UNLESS the Legislature:

- 1) Has determined that the law fulfills an important state interest; and
- 2) Unless one of the following exists:
 - funds were appropriated that are estimated to be sufficient to fund the mandate;
 - the Legislature authorizes (or has authorized) a new revenue source (to be enacted locally by simple majority vote) that was not available on 2/1/89 and that generates an amount of revenue deemed sufficient for the mandate;
 - the law was approved by 2/3 of the membership in each house of the Legislature;
 - the law is required to comply with a federal requirement.

These exceptions have resulted in a continuing proliferation of unfunded mandates, to the extent that the original intent of the constitutional amendment has not been realized.

Recommendation

It is recommended that a proposed constitutional amendment be placed on the 2008 General Election Ballot which provides that no county or city is bound to follow any rule, law, or provision of either which is an “unfunded mandate,” without sufficient resources.

Proposed Bill Language

Article VII, section 18 (a) is hereby amended to read:

(a) No county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the legislature has determined that such law fulfills an important state interest and unless: funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure; the legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure by a simple majority vote of the governing body of such county or municipality; ~~the law requiring such expenditure is approved by two thirds of the membership in each house of the legislature; the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or the law is either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance.~~

CREDIT AND DEBIT CARD FEES AND SURCHARGES

Issue

The use of credit and debit 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 or debit cards. Federal legislation is required to permit state and local governments to pass on surcharges and usage fees to cardholders.

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 and debit cards permits for payment of government-related expenses.

Many states, including Florida, have passed legislation authorizing the acceptance of credit and debit cards for state and local 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.

Section 215.322(5), F.S., authorizes local governments in Florida to accept payments by credit and debit cards and to surcharge the user an amount sufficient to pay the service (merchant) fee charges of the credit card company. The major credit card companies prohibit such a practice in their contracts with merchants, including governments. Local governments in Florida are not permitted to deduct credit and debit card merchant fees from the amount of taxes owed. 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. Local governments should have the option of charging a convenience fee in addition to the base level of taxes or fees, to cover the extra cost of the merchant and other usage fees incurred in order to accept credit and debit cards as a payment mechanism.

As a matter of policy, the major credit card companies do not allow governments or businesses to pass on the merchant and usage fees (normally between 2.0 percent and 3.5 percent of the amount charged) imposed by credit card vendors 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 and fees 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, particularly if the transactions occur over the internet. However, the credit card companies have consistently prohibited the use of this process for over the counter transactions. Many jurisdictions have simply ceased acceptance of credit and debit cards altogether.

Credit Card Fees and Surcharges (continued)...

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.

State and local governments have questioned the criteria used in granting exceptions at these establishments while essentially denying users of governmental services the same opportunity. Since the option of payment by credit or debit 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.

Recommendation

The FGFOA should support the enactment of federal legislation that will allow state and local governments to impose convenience fee surcharges on credit and debit card payments. It is recommended that this position be relayed to all members of the Florida Congressional Delegation and to the Government Finance Officers Association and other governmental associations in order to enact federal legislation that requires the major credit card companies to allow convenience fee surcharges to be collected on all credit and debit card payment transactions to state and local governments.