

ADDITIONAL INFORMATION

COUNCIL ITEM #4
DATE 12-3-12

6:00 P.M. Agenda

Florida Government Finance Officers Association
(FGFOA)

2013 Legislative Policies and Recommendations



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The exemption for disclosing personal information for public safety officers, judges, and a few other positions should be extended to all public employees. Current law should be amended to provide privacy protection to all public employees rather than to only a few classifications of employees.

INTRODUCTION

The Florida Government Finance Officers Association (FGFOA) respectfully presents its 2013 legislative policies and related recommendations. One of the FGFOA's primary roles is to educate interested parties on legislative initiatives that impact local government finances, which can affect local government's ability to serve the public. The legislative policies and recommendations were prepared to provide a clear and unified voice for the organization during the legislative process and to assist decision makers in their deliberations.

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

The FGFOA welcomes all opportunities to discuss the 2013 legislative policies and recommendations. Please contact Jeannie Garner, FGFOA Executive Director, at (850) 222-9684 or jgarner@fcities.com with any questions, comments, or requests for additional information.

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LEGISLATIVE COMMITTEE OVERVIEW

Committee Members

The FGFOA Board of Directors and Legislative Committee Chair are grateful to the following individuals who contributed time and effort to prepare these legislative policies and recommendations: Ken Burke, Michele Ennis, Sharon Fox, Pete Lear, Binh Nguyen, and Shannon Ramsey-Chessman. Preparation of the policies and recommendations would not have been possible without their dedication, professionalism and cooperation.

Committee Purpose

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

Committee Goals

- Monitor state and federal legislative proposals that affect Florida local governments, evaluate proposed legislation that impacts FGFOA member jurisdictions, and make recommendations to affect positive legislative change.
- Prepare an annual legislative policy statement for distribution to members of the Legislature, FGFOA leadership, and other interested parties. This policy statement should identify pertinent issues; include analysis of the legislation's impact; provide recommendations that support, oppose, or suggest alternatives to proposed or potential legislation; and include sample legislative language for proposed law changes.
- Educate and inform FGFOA members on issues affecting them or their jurisdictions by developing articles for the FGFOA newsletter and sending emails to members that explain implications of proposed or adopted legislation.
- Encourage FGFOA members to participate in the legislative process.
- Maintain positive working relationships with the Florida Legislature, the Florida Legislative Committee on Intergovernmental Relations and other appropriate legislative committees, and local elected officials.
- Partner with other professional organizations to provide information regarding legislative proposals that have financial implications for local governments.

PENSION REFORM

Issue

Reform of state and local government pensions has received substantial attention in Florida and across the country over the last several years. Much of the discussion focuses on achieving appropriate funding levels and developing sound actuarial assumptions, but the crux of the issue is the degree to which the costs associated with plans can potentially burden current and future taxpayers. Legislators and local governments need to provide pension plans where pension costs are manageable in the short term and sustainable in the long term.

Analysis

Considerable misinformation has been disseminated from a variety of sources regarding the funding status and future sustainability of the Florida Retirement System ("FRS") Pension Plan. However, according to the State Board of Administration's 2011 Annual Investment Report, the FRS Pension Plan's assets totaled \$128.5 billion while liabilities totaled \$147.6 billion, resulting in a funded ratio of approximately 87.1%. Most objective sources consider a funding ratio above 80% as financially secure.

In addition to the FRS, there are approximately 500 local law defined benefit pension plans in the State of Florida. Each plan is unique and varies as to employee groups covered (special risk, general employees, firefighters, etc.). Statewide legislation would apply uniform standards that would have differing impacts on the local law plans. In some cases, unintended consequences of well-intended legislation would be harmful to the local plans. For example, a limited number of local governments do not participate in Social Security, and employees pay a percentage of their salaries to fund their pension plans.

Indeed, many local governments have already begun to take the necessary steps to address long-term financial concerns. Solutions adopted should reflect the varied and diverse needs of local communities across the state. Just as private sector employees and employers reach employment decisions by considering total compensation packages - salary, health insurance, bonus, retirement, and more - so have government sector employees analyzed total compensation in government service, which has historically provided more in retirement benefits than in salary. Changes made to benefits offered to employees should only be made with careful thought as to the implications of breaking an understanding, often collectively bargained, in the employer/employee relationship.

Recommendation

Legislation aimed at reforming pension plans for local government should:

- Ensure that any legislation be made on a prospective basis that provides for existing employees to receive benefits consistent with those promises already made.
- Provide flexibility that allows local governments to respond in a manner that recognizes the unique issues faced by each local plan and community.
- Avoid or eliminate inconsistencies in state statutes that simultaneously mandate the provision of new benefits and compel local governments to reduce pension costs.

PROPERTY TAX REFORM

Issue

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

Analysis

Property taxes, which are authorized by the Florida Constitution, have historically been a significant and stable revenue source for the State of Florida's local governments. Save Our Homes (SOH) artificially caps the annual growth in the assessed value of homesteaded properties to three percent or the change in the CPI, whichever is lower. Following the enactment of SOH, the almost continuous growth in property values caused the cumulative SOH benefits to grow. Current SOH constitutional provisions include a "recapture rule" approved in 1995 that directs property appraisers to increase assessed values of homesteaded SOH properties if the market value is higher than the assessed value of the property, even in years with a declining market value. These increases have been permitted until a property's SOH taxable value equals full market value (100% recaptured). Several legislative and constitutional property tax initiatives have been enacted over the past five years that have reduced the effectiveness of home rule authority and local government's ability to fund necessary operations.

The Legislature has initiated numerous tax reforms to minimize increases in property tax revenues, including:

- In 2007, legislation was enacted that restricted local government property tax revenues through the establishment of "maximum" millage rates.
- In January 2008, Florida voters approved a constitutional amendment, known as Amendment 1, which: (1) increased the homestead exemption by \$25,000; (2) offered portability of the SOH benefit between homesteaded residences; (3) provided a 10 percent annual cap on increases in value for non-homesteaded properties; and (4) established a \$25,000 exemption for tangible personal property.
- In 2011, three other amendment questions were placed on the General Election that would further erode local government revenues by reducing ad valorem tax revenues through increased exemptions. CS/SJR 592 introduced a proposed amendment that provides veterans disabled due to combat injury an additional property tax discount on homestead property. CS/HJR 93 provides for a property tax exemption for surviving spouses of military veterans or first responders who die from service-connected causes. Finally, CS/HJR 169 provides for an additional homestead exemption for low-income seniors who maintain long-term residency on property equal to the assessed value of the homestead property up to a value of \$250,000. All three were approved by voters in November 2012.

The cumulative negative impact of these reforms on the tax base of local government is not yet known. Combined with the impacts of the recession on non-tax local government revenue sources, the market decrease in housing values, and the ongoing impacts of short sales and foreclosure actions in reducing the total taxable value base of local governments, these taxable value growth caps and reductions in the form of additional exemptions are providing a negative impact on the ability of local governments to provide core services, including public safety.

Recommendation

No additional property tax restrictions should be placed on local governments until the full impact of existing limitations is known.

COMMUNICATIONS SERVICES TAX (CST)

Issue

Section 12 of Chapter 2012-70, Laws of Florida, created a Communications Services Tax (CST) Working Group charged with reviewing national and state tax policies relating to the communications industry, including 1) the historical amount of tax revenue generated by the CST and determining the effect that laws passed in the past five years have had on declining CST revenues; 2) the extent to which CST revenues have been relied upon to secure bonded indebtedness; and 3) the fairness of the state's communications tax laws and the administrative burdens contained therein, including the clarity of the laws to communications services providers, retailers, customers, local government entities and state administrators. The CST Working Group was directed to provide a report indicating options both for streamlining the administrative system and for removing competitive advantages within the industry related to the state's structure without unduly reducing revenue to local governments. The loss of revenue to local governments is a significant concern.

Analysis

The development of the CST was a well-considered consensus effort of the state, local governments and communications service providers 12 years ago, intended to simplify the administrative burden for both the communications industry and local governments. The CST combined seven different state and local taxes and fees and employed the Florida Department of Revenue (DOR) to receive and distribute the resulting tax revenues as well as redistributing revenues which audits revealed to be paid incorrectly. This is something the DOR already does for the state's sales and gross receipts taxes.

Initially, the resulting CST revenues produced a reliable, stable, bondable source of local government funding; leveled the playing field for communications service providers such that like services were taxed in a like manner, no matter the delivery method or technology employed; and provided a single entity (DOR) for the communications industry to report for collection purposes and to which to be accountable. Additionally, the combination of the seven different state and local taxes and fees, when applied to the broader taxable base, resulted in an overall lower tax rate on communications services. Consequently, the CST became a critical revenue source for local governments, and Communications Services Tax revenues are bonded by many jurisdictions.

Legislative and technological changes that have occurred over the past few years have resulted in an erosion of CST revenues to the state and local governments, diminishing the reliability of this revenue stream for the repayment of existing debt. These changes have also resulted in like services being taxed differently depending on the service provider or method of sale, causing the very discrimination that the Communications Services Tax Simplification law was intended to prevent – such as prepaid vs contracted phones, for example.

Recommendation

In light of the fact that any changes to the CST revenue stream not carefully conceived could cause serious financial harm to local government, legislation aimed at reforming the Communications Services Tax should:

- Be developed through consensus by a working group comprised of local governments, the communications industry and the state
- Allow the CST to remain a locally-controlled revenue stream
- Be carefully crafted to stabilize the currently diminished local government share of CST revenues and augment revenues by eliminating certain loopholes that have been realized
- Remove competitive advantages by providing similar tax treatment to similar services, no matter the technology utilized nor method of delivery
- Provide transparency, such that the tax can easily be recalculated by the customer and audited by DOR

LOCAL BUSINESS TAXES

Issue

A number of legislative initiatives were brought forward during the last legislative session concerning local business taxes. One that passed exempted certain businesses from being subject to the tax and thereby reduced revenues to local governments. Several others that did not pass would have repealed the authority of municipalities to levy the local business tax. These initiatives would have reduced the effectiveness of Home Rule authority and local governments' ability to fund necessary operations, including public safety. In addition, local business taxes have been pledged as a repayment source on existing outstanding debt.

Analysis

Florida Statutes allow counties (FSS 205.032) and municipalities (FSS 205.042) to levy local business taxes, subject to certain conditions. These local business taxes are currently used by counties and municipalities to provide resources for a variety of services, including public safety and economic development. They have also been pledged as the principal funding source for repayment of debt. Loss of this source of revenue where it is used already as a pledge against debt could negatively impact the municipal bond market and result in downgrade of credit ratings for Florida local governments and difficulty in debt repayment. Several municipalities are heavily reliant on this revenue source. Counties and municipalities have had the ability to levy this tax in compliance with the broad principle of home rule. The amount of local business taxes and the classifications of businesses were determined by the local governments, and now are not eligible for revision.

For the 2008-09 fiscal year, Florida municipalities generated \$120.7 million in local business taxes, and for the 2009-10 fiscal year counties generated \$28.4 million in local business taxes. The data comes from the most recent compilations done by the Office of Economic and Demographic Research.

During the last legislative session, the Legislature passed Chapter 2012-102, Laws of Florida, which resulted in amending Section 205.066, Florida Statutes, and creating Section 205.067, Florida Statutes, granting exemptions to employees of others and broker associates and sales associates, respectively, and reducing revenues to local governments around the State. Also, HB 1063, HB 4025 and SB 760 were all introduced, which, if passed, would have repealed the authority of local governments to levy the local business tax. The repeal of the local business tax would result in the elimination of approximately \$150 million in revenues to local governments. This loss of revenues would require further reductions or elimination of services, or increases in the millage rate to compensate for such losses. An increase in the millage rate would therefore represent a tax shift from businesses to property owners, including residential and homesteaded property owners. To provide an estimate of the relationship of local business taxes to ad valorem revenues, the amounts stated above represent 2.8% of total ad valorem revenues for municipalities, and 0.3% for counties, for those respective years. A repeal of local business taxes is contrary to the spirit of Home Rule.

Furthermore, a more diverse revenue base is healthier for the long-term fiscal health of local governments as opposed to a less diverse revenue base, where a negative impact to one or a few revenue streams can be crippling to the revenues collected. The impact of the recession upon the ad valorem tax is a clear example, and a good reason why a more diverse revenue base is needed rather than a less diverse base even more dependent upon the ad valorem tax.

Recommendation

No legislation should be enacted that eliminates or further restricts or reduces the revenues generated by the local business tax. No legislation should be enacted which constrains the use of this revenue to more limited purposes.

SEPTEMBER 30 FISCAL YEAR-END FOR CLERK OF CIRCUIT COURT REMITTANCES TO STATE AND COUNTY

Issue

The current statutory language in essence results in two fiscal years for Florida Clerks of Circuit Court: June 30 for the remittance of state funds and September 30 for the remittance of county funds. This results in about four months of work preparing to close the two fiscal years versus only about two months of work preparing to close a single September 30 fiscal year.

Analysis

Having two fiscal years results in two fiscal year-end close outs. This increases the workload for Clerk's Accounting, Payroll, Purchasing, and operational staff involved in year-end closings. Prior to current law, "closing the books" required two months of work, but since it now has to be done twice, four months of work is required, resulting in time-consuming and unnecessarily duplicative work with no discernible benefit.

With only a September 30 year-end, financial staff would be able to concentrate on their core duties—collecting and disbursing fines, fees and service charges; paying employees; purchasing items for operations—in the most efficient manner.

Recommendation

Legislation should be introduced that would eliminate the double year-end closings and provide for a single year-end.

Sample Legislative Language

Revise Section 218.36, Florida Statutes, "County Officers; Record and Report of Fees and Disposition of same" as follows (see underlined text):

(2) On or before the date for filing the annual report, each county officer shall pay into the county general fund all money in excess of the sum to which he or she is entitled under the provisions of chapter 145. On or before the date for filing the annual report, the Clerk of the Circuit Court shall also pay into the Clerks of Court Trust Fund any unexpended budget balance of state appropriations for court-related functions. Whenever a tax collector has money in excess, he or she shall distribute the excess to each governmental unit in the same proportion as the fees paid by the governmental unit bear to the total fee income of his or her office. Any excess held by a property appraiser shall be divided into parts for each governmental unit which was billed and which paid for the operation of the property appraiser's office in the same proportion as the governmental units were originally billed. Such part shall be an advance on the current year's bill, if any.

STREAMLINE CLERK OF CIRCUIT COURT FUNDING / BUDGETING PROCESS

Issue

The Florida Constitution requires adequate funding of the court system. The Clerks of Circuit Court play a key role in having an effective and efficient court system. However, the established funding and budgeting process are interfering with the Clerks' efficient delivery of these services to the court system.

Analysis

The budgeting model established for funding Clerks needs improvement. Historically, Florida Statutes required Clerks to fund their offices with fines, fees and services charges specified by statutes and to send any excess collections to the state. In 2009, the Legislature changed this by requiring Clerks to transmit all collections to the state and to deposit monies designated to fund their operations into a state trust fund, only to have these monies redistributed to the Clerks who originally collected the funds. This subjected the monies deposited into the state trust fund to a statutorily required 8% service charge.

Section 28.36(10)(b), Florida Statutes, requires the Clerks to "true up" in the fourth quarter of the court fiscal year ending June 30, based on the results of actual "service units" versus projected "service units." This provision leaves the Clerks unprepared for the cyclical fluctuations in case filings and the cyclical nature of workload on continuing cases. Due to the fact that projected case counts are estimated nearly 18 months prior to the beginning of the fiscal year (July), the required adjustment is based on stale data that does not provide allowances for arbitrary and unpredictable patterns in case filings. For example, foreclosure case filings recently dwindled as a result of investigations into the foreclosure filing practices of some larger legal firms. At some point foreclosure filing may spike upward. Making personnel and other expenditure cutbacks based on a temporary decline in foreclosure activity hinders the Clerks' ability to quickly adjust when foreclosure cases return to a higher volume. Recovery from such cutbacks will take a significant amount of time as training personnel on the intricacies of the Clerk function further delays the court system and increases the backlog of cases. Prudent business practices suggest making reductions based on workload decline when all the relevant facts and circumstances are known. In this and similar scenarios, it is impossible to know the relevant facts and circumstances under the time parameters specified in the current statute.

Furthermore, Florida Statutes currently provide for funding based on service units, but do not provide a definition of service units. Section 28.36(4), Florida Statutes, provides that service units be developed by the Clerks of Court Operations Corporation (CCOC). Service units developed by the CCOC need to encompass new cases, continuing cases not closed from previous years, cases reopened for subsequent adjustment or correction (which frequently occurs in family cases and felony cases), appeals and clerical demands for summons' preparation, garnishments, child support issues, pro se assistance, cashiering, bad debts collection effort, driver's license suspension for nonpayment of traffic citations, jury coordination and a myriad of other required processes. By improving the funding and budgeting process for Clerks, it should improve efficiency and lower overall costs.

Recommendation

Legislation should be enacted that returns Clerks to the revenue-based budgeting model used prior to 2009. In addition, since the Legislature has enacted legislation setting service units as a determinate factor for funding, the Legislature should define service units.

SALES TAX ON INTERNET TRANSACTIONS

Issue

The Supreme Court has ruled that states cannot require businesses to collect and remit sales taxes if a business does not maintain a physical presence, or nexus in the state. The basis for this decision was that requiring Internet-based businesses to collect and remit sales taxes would impose an undue burden on the businesses because of the many variations in state and local government sales tax rates, exemptions, and structures nationwide. As a result, states and local governments are missing out on sales tax from such sales, and businesses physically located within the State are placed at a competitive disadvantage.

Analysis

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

According to the "Report and Recommendations of the Florida Tax Watch Government Cost Savings Task Force for Fiscal Year 2012-2013", the Center of Business and Economic Research at the University of Tennessee estimated Florida's sales tax losses from uncollected remote sales at \$1.48 billion for the 2011-12 fiscal year. The Tax Watch Report further estimates another \$100-200 million in losses in local taxes, based upon data from the US Census Bureau. These sales also represent lost opportunities to in-state businesses that impact job creation, economic development, and tax fairness throughout the state.

In March 2000, a group of public and private entities formed the Streamlined Sales Tax Project with the goal of simplifying state and local tax systems in order to encourage Internet-based businesses to collect and remit sales taxes on all transactions. As a result, the Project developed a Streamlined Sales and Use Tax Agreement (SSUTA) and sales tax collection system, which has been adopted by 24 states.

Once a state complies with the SSUTA, businesses in that state may voluntarily use the related sales tax system to collect and remit remote sales taxes to the states in which their customers reside. The system reduces the sales tax collection burden on Internet-based businesses because the system provides details of all sales tax rates and exemptions within each state. Although legislation was filed for the 2012 regular legislative session (SB 1514 and HB 861) to bring Florida in compliance with the SSUTA, it did not pass.

Recommendation

Legislation should be enacted, and the Department of Revenue should adopt rules and regulations, consistent with the Streamlined Sales and Use Tax Agreement to stop discrimination against Florida brick and mortar businesses.

BED TAX ON INTERNET SALES OF LODGING

Issue

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

Analysis

The use of online hotel booking companies has increased greatly over the past several years. Online travel companies contract to pay discounted rates to hotels for rooms that are then sold over the Internet to the intermediaries' customers at higher prices. Under current practices, state and local sales tax and local tourist-related taxes are collected and remitted by the hotels on the discounted rates paid by the Online travel companies to the hotels and not on the higher amounts paid by the customers occupying the rooms. As a result, state and local governments are not receiving both sales tax and tourist-related tax revenues on the entire cost of the transient rental paid by customers. This practice has resulted in lost revenues to local governments, excess profits to Internet booking services, and an un-level playing field for customers of hotels and motels in Florida.

Recommendation

Legislation should be enacted to clarify that the tax is due on the total amount paid by the consumer and that it is irrelevant as to which medium a consumer chose to book the room, and to ensure fair and equitable tax treatment among all taxpayers in this state.

Sample Legislative Language

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

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

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

1. Offering information regarding the availability of transient rental accommodations located in this state;
2. Disclosing or establishing the amount paid for transient rental accommodations located in this state;
3. Assisting in making a reservation for transient rental accommodations located in this state; or
4. Participating in arranging for the occupancy of transient rental accommodations located in this state on behalf of another person.

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

(c) The terms "total rent" as used in this section, "total consideration" as used in ss. 125.0104 and

125.0108, "consideration" as used in s. 212.0305, and "rent" as used in chapter 67-930, Laws of Florida, as amended, do not include:

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

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

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

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

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

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

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

1. Offering information regarding the availability of transient rental accommodations located in this state;
2. Disclosing or establishing the amount paid for transient rental accommodations located in this state;
3. Assisting in making a reservation for transient rental accommodations located in this state; or
4. Participation in arranging for the occupancy of transient rental accommodations located in this state on behalf of their customers.

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

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

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

Section 5. This act shall take effect July 1, 2013.

ALLOWING PRICE IN THE CONSULTANTS COMPETITIVE NEGOTIATION ACT

Issue

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

Analysis

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

The National Institute of Governmental Purchasing, Inc, supports legislation amending Section 287.055, Florida Statutes, to provide public purchasing officials the option of evaluating top firms based on a best overall basis that takes compensation and qualifications into account when evaluating potential professional service providers for award of government contracts. While price should not be the primary factor for award, price should be permitted as one of the factors considered when obtaining these services. Such a change would give State and local governments the discretion to include or exclude price considerations during the competitive selection process.

Recommendation

The Legislature should enact legislation that would allow the option to include pricing as a consideration prior to selection of a service provider.

PUBLIC PERSONNEL RECORDS

Issue

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

Analysis

Section 119.071(4)(d), Florida Statutes, exempts the disclosure of personal information related to certain public employees, including: public safety officers, judges, code enforcement officers and a few other positions. The rationale for this disclosure exemption is that providing access to personal and familial information is unnecessary to evaluate or monitor the provision of government services, except when related to evaluating an individual's qualifications for employment. However, all public employees should receive this protection and not just selected employees.

Information related to evaluating an employee's fulfillment of their job responsibilities and duties should be made available for public inspection; personal information should not. Harassment, in this digital age, includes not only the potential for physical harm but also that of identity theft. Public employees have a right to protection from personal harm of any sort stemming from the workplace, which could result if personal information, such as telephone numbers, family member names, addresses, emergency contact names, etc. is disclosed. Unfortunately, transparency in government has rendered public employees especially vulnerable to unscrupulous individuals who have access to public records. The Federal Trade Commission cites that as many as nine million Americans have their identities stolen each year. Identity thieves may drain their victims' accounts, damage their credit, and even endanger their medical treatment. It is unreasonable to subject employees to these types of personal threats, simply because they choose jobs that serve the public.

Recommendation

Section 119.071(4)(d), Florida Statutes, should be amended to provide privacy protection to all public employees rather than providing protections to only a few classifications of employees.

Sample Legislative Language

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

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

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