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# the nonprofit margin

Addressing the Costs  
of the Nonprofit Exemption  
in New Orleans

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## THE NONPROFIT MARGIN

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## EXECUTIVE SUMMARY

As the City of New Orleans and other local government entities in Orleans Parish struggle to deliver services and rebuild infrastructure, the impacts of structural problems on government finances are taking center stage. One of those structural problems is the large amount of property off the tax roll.

In 1996, BGR found that a staggering two-thirds of New Orleans' real property value was off the tax roll, and there is little reason to think that the situation has changed dramatically since that time. Exemptions for homesteads and government- and nonprofit-owned property all contribute to the situation. They deprive local government of revenue and drive up the taxes on non-exempt residences and businesses.

In this report, BGR revisits the subject of the nonprofit exemption. For reasons discussed in the full report, there are no reliable numbers on the value and impact of the exemption. Extrapolating from the information that is available, BGR prepared illustrative scenarios of the impact of the exemption. These show that eliminating the exemption would significantly increase government revenue or, in a revenue-neutral scenario, reduce millage rates.

Part of the problem stems from Louisiana's constitution, which exempts a wide range of nonprofit-owned properties, on very lax terms. The exemptions are not clearly defined in either the constitution or state law. Furthermore, the constitution does not even require that exempt property actually be used for the exempt purpose; it merely excludes unrelated commercial property from the exemption. This approach has serious financial consequences for local governments.

It is time to take steps to mitigate the impact of the exemption on government revenue and the taxpayers who foot the bill for the exemption. Options for doing this include:

- Eliminating the exemption completely.
- Tightening eligibility requirements.
- Improving administration of the exemption.
- Establishing a voluntary payment in lieu of

taxes program.

- Creating a state reimbursement fund.
- Taxing nonprofits at a reduced rate.
- Imposing service charges.

There are some compelling arguments for eliminating the nonprofit exemption altogether and making property taxes a cost of doing business. But at this point there is insufficient information to gauge the impact of such a far-reaching change. It is a subject that requires more data and closer financial analysis.

If the exemption is not eliminated, it becomes critical to target the exemption more precisely to nonprofit activities that the government considers deserving of an indirect subsidy. As a threshold matter, each activity should either relieve the government of a burden or provide the public with services and amenities that are important to quality of life. These activities should be carefully defined and limited to ensure that they serve the desired purpose. There should be a compelling and clearly articulated reason for each exemption.

The exemption should be limited to property that is owned by a nonprofit organization, and (subject to an exception for minimal non-exempt uses) the property should be used directly and exclusively for an exempt purpose. Partial exemption should be allowed in limited circumstances.

While the constitution can and should provide broad guidance, the details of the nonprofit exemption should be spelled out through legislation. Local governments, which bear the brunt of property tax exemptions, should have the power to decide which exemptions to allow within their jurisdictions.

Redefining the nonprofit exemption should be accompanied by changes in the administration of exemptions. These changes, such as requiring periodic reapplications for the exemption and inspections to determine whether a property is being used for an exempt purpose, are necessary to ensure that the exemption is benefiting the intended properties.

Tightening the eligibility requirements and improving administration are critical, regardless of what other

steps government officials and voters take. However, these actions alone are insufficient to address the fiscal problems facing local government and the unfair burdens on taxpayers. Addressing local government's fiscal woes will ultimately require a significant contribution from properties that are off the tax roll.

One common method for seeking nonprofit contributions, voluntary payments of lieu of taxes, or PILOTs, is unlikely to yield fair or significant results. If the experience of other cities is a guide, only a handful of institutions are likely to participate in such a program, and the amount generated is unlikely to have a significant fiscal impact. The city would be well-advised to turn its energies to other options.

A couple of New England states reimburse local governments for revenue lost due to nonprofit exemptions. While a state reimbursement program may make sense from a policy perspective, it holds limited promise as a solution to New Orleans' immediate problem. To start, it would require a significant financial commitment from the state in a time of budget deficits. In addition, an effective reimbursement program would require a constitutional amendment.

Another option, taxing nonprofit-owned property where practical at a reduced level, is appealing. It would result in nonprofits paying something toward the city services from which they benefit, while giving them a discount in exchange for the services they provide. Coupled with sound reassessments of nonprofit-owned properties, this approach would significantly expand the tax base and improve fairness. And, unlike service charges, it would do so without increasing the burden on those who are already paying. Unfortunately, taxing nonprofits at a reduced rate would face the extremely challenging hurdle of a constitutional amendment, making it an unlikely short-term solution.

The final approach that this report examines – service charges – offers the most practical approach to solving the revenue and fairness problems. A drainage fee or street maintenance charge, applied according to a rational formula, would require action only at the local level. If properly crafted, it could raise significant revenue to meet local needs. By requiring all property owners to contribute, a well-crafted service charge would distrib-

ute costs more fairly than is currently the case.

In light of all this, BGR makes recommendations in three areas:

- Legal changes at the state level to tighten eligibility for exemptions.
- More aggressive administration of exemptions.
- Revenue-raising measures.

## RECOMMENDATIONS

### Establishing a New Framework for Exemptions

BGR recommends revising the legal framework for granting exemptions, so that the constitution spells out the broad parameters for exemptions and the State Legislature specifically defines them. The constitution should:

- Require a clear and identifiable quid pro quo for exemptions. Nonprofits benefiting from exemptions should relieve the government of a burden or provide important public benefits.
- Limit the realm of possible exemptions to property of nonprofits formed exclusively for religious, educational, charitable, cultural or burial purposes, and engaged solely in those activities.
- Require the Legislature to establish the parameters of exemptions in a targeted manner that further defines, but in no case expands, the universe of possible exemptions set forth in the constitution.
- Prohibit the Legislature from defining exemptions that have the effect of exempting specific entities, rather than groups of entities.
- Eliminate exemptions for organizations devoted primarily to the interests of a private membership.
- Impose a strict use requirement limiting the

exemption to property owned by an eligible nonprofit that is directly and, subject to the exception in the next sentence, exclusively used for an exempt purpose. When a small portion of a property otherwise dedicated to an exempt purpose is used for a related and supporting non-exempt purpose, the exemption should be pro-rated.

- Allow the governing authority of the local government to opt out of some or all exemptions.

### **Improving Administration of Exemptions**

The Orleans Parish assessor should:

- Place the burden of demonstrating eligibility on the applicant.
- Require nonprofit property owners to reapply for their exemption on a regular basis and terminate the exemption for those who do not comply with this requirement.
- Conduct regular inspections of exempt property to confirm compliance with applicable eligibility criteria.
- Re-assess exempt property as frequently as non-exempt property to allow analysis of the cost of exemptions.
- Internally classify nonprofit exemptions in a manner that corresponds to all eligible purposes set forth in the constitution and state statutes.

### **Revenue-Raising Options**

- Where appropriate and fair, local government entities should impose carefully crafted service charges or fees to fund services, such as drainage and street maintenance. Those charges should apply to all property owners in the city, including nonprofit property and government property, with exemptions only for property owned by the entity imposing the charge. In devising charges, the government entity should attempt to distribute them on a fair basis, taking

into account factors such as size and use.

- The Legislature and voters should amend the constitution to impose a reduced tax on nonprofit property, to the extent feasible. This can be done by assessing the property at a lower percentage than that for land or residential property.



## INTRODUCTION

These are tough fiscal times for the City of New Orleans. Upon taking office last May, the Landrieu administration faced a projected deficit of \$80 million for the 2010 fiscal year. To close the gap, the city furloughed employees and directed one-time money into the operating budget. To produce a balanced budget for 2011, the city doubled the sanitation service charge and increased property taxes by 7.74 mills.

One significant contributor to the city's fiscal woes is the large amount of property off the tax roll due to nonprofit, government and homestead exemptions. The exemptions limit the revenue-generating capacity of local government and increase tax rates far beyond what would be necessary if the property were in the hands of non-exempt owners.

In 1996, BGR published a study that found a staggering two-thirds of New Orleans' property value off the tax roll.<sup>1</sup> Three years later, BGR explored the exemption issue further with a detailed analysis of Louisiana's nonprofit exemption. BGR's report identified weaknesses in both the legal framework establishing the exemption and the administration of the exemption. The report made sweeping recommendations to the Legislature, the Louisiana Tax Commission and local assessors aimed at rationalizing the state's exemption system.<sup>2</sup>

In the decade since BGR made those recommendations, little has changed with respect to the scope and administration of the nonprofit exemption. In this report, BGR examines the fiscal impact of the exemption, revisits the legal and administrative weaknesses it identified earlier and makes fresh recommendations for reform. The report also explores additional options for mitigating the fiscal impact of the nonprofit exemption and makes recommendations for raising revenue.

## BACKGROUND

### The Impact of Exemptions Generally

According to the 2011 property tax roll, the total assessed value of real property in Orleans Parish is \$3.9

billion. Of that amount, \$1.7 billion – or 43% of the total – is off the tax roll. Government entities own more than half of the tax-exempt property. Most of the balance is evenly split between property shielded by the homestead exemption and the nonprofit exemption. Each of these two exemptions protects approximately 10% of the city's real property value from taxation.

The percentage of assessed real property value currently off the tax roll is significantly lower than the two-thirds that was off the roll in 1996. This would, if based on accurate numbers, indicate a move in the right direction. Unfortunately, the numbers are inaccurate, mainly because tax-exempt property, in contrast to taxable property, is not regularly reassessed.

Since 1996, the total assessed value of taxable real property in Orleans Parish has increased by 146%, rising from \$902 million to \$2.2 billion. The assessed value of all exempt real property, on the other hand, has remained virtually unchanged. And the assessed value of nonprofit-exempt real property has inexplicably fallen by nearly 20%, even as the number of parcels with the exemption has increased by 60%. Had the assessed value of tax-exempt property increased at the same rate as non-exempt property through regular reassessment, 60% of the city's assessed real property value would be off the tax roll.<sup>3</sup>

In addition, the tax-exempt roll contains obvious errors. For example, the portion of Tulane University's campus between St. Charles Avenue and Freret Street has a land value of \$58 million. The adjacent and larger parcel, owned by Loyola University, inexplicably has a land value of zero.

The bottom line is that government officials and the public lack reliable information on the value of exempt properties, other than homestead-exempt property. This seriously hampers their ability to calculate the cost of exemptions, to perform a cost-benefit analysis of exemptions and to quantify the impact of proposed reforms.

Because they are the only official numbers available, BGR is using the values on the tax roll to calculate the impact of exemptions in this report. It is also providing a second calculation, based on the assumption that the value of government- and nonprofit-exempt property

**Table 1: New Orleans' Real Property Assessed Value**

	Assessed Value (in millions)			Share of Total Assessed Value		
	1996	2011	2011 Adjusted*	1996	2011	2011 Adjusted*
<b>All Real Property</b>	\$2,544	\$3,926	\$5,602			
<b>Taxable Property</b>	\$902	\$2,221	\$2,221	35.5%	56.5%	39.6%
<b>Exempt Property</b>	\$1,642	\$1,706	\$3,381	64.5%	43.5%	60.4%
Government	\$714	\$874	\$1,758	28.1%	22.3%	31.4%
Nonprofit	\$477	\$384	\$1,175	18.8%	9.8%	21.0%
Homestead	\$448	\$384	\$384	17.6%	9.8%	6.9%
Industrial	\$3	\$64	\$64	0.1%	1.6%	1.1%

*Note: The table does not include personal property because assessors do not assess it for tax-exempt entities. Public service property, which includes a combination of real and personal property, is also excluded. Assessments for personal and public service property totaled \$554 million in 2011.*

*\*To calculate the 2011 adjusted assessed value, BGR increased the assessed value of government- and nonprofit-exempt property in 1996 by 146.2%, the percentage by which the assessed value of non-exempt property increased in that period.*

*Source: 2011 and 1996 Real Property Tax Rolls for the Parish of Orleans, prepared by the Orleans Parish Board of Assessors, and BGR calculations.*

on the roll in 1996 has increased by the same percentage, 146%, as taxable property.<sup>4</sup> Calculations based on that assumption are referred to as “adjusted.”

The adjusted numbers, like the ones on the tax roll, suffer from weaknesses. First, because keeping valuations of exempt property current and accurate was not a priority of the assessors even 15 years ago, the 1996 numbers on which they are based were not necessarily accurate to begin with. Second, the adjusted numbers do not account for the value of 2,000 nonprofit-exempt properties that have been added to the rolls since 1996. Nor do they necessarily reflect the current value of government-owned and tax-exempt industrial properties that have been added to the roll since that time. For these reasons, the calculations of the nonprofit exemption’s impact are far from precise and should be regarded as illustrative only. (See Table 1.)

### The Impact of the Nonprofit Exemption

According to the 2011 property tax roll, the nonprofit exemption shields \$384 million, or 10%, of the city’s assessed property value from taxation. If all that value

were taxed at current rates, tax-recipient bodies would receive an additional \$41 million in revenue.<sup>5</sup> Under a revenue-neutral scenario, the millage rate could be rolled back by 18 mills.<sup>6</sup>

If the assessed value of nonprofit property were adjusted as described above, it would amount to nearly \$1.2 billion – more than triple the value now recorded on the rolls for such property. Taxing such property at current rates would produce an additional \$125 million for tax-recipient bodies in Orleans Parish, \$42 million of which would accrue to the city. Alternatively, the millage rate could be cut by as much as 44 mills, or nearly one-third. (See Table 2.)

The numbers in Table 2 cover all nonprofit properties included on the tax roll. In presenting the numbers in this fashion, BGR is not implying that *all* nonprofit property should be taxed at full value. Rather, it is making the point that these exemptions have a cost, both for local government and for taxpayers. Given the significant cost, this area deserves careful scrutiny and dispassionate analysis of the costs and benefits.

## Table 2: The Impact of Eliminating the Nonprofit Exemption

*How property tax revenue or millage rates would be affected if nonprofit property were taxable*

	Current Level	Estimate Based on 2011 Assessments	Estimate Based on BGR's 2011 Adjusted Assessments
<b>Total Property Tax Revenue (in millions)</b>	\$384.5	\$425.3	\$509.1
<b>Millage Rate</b>	147.6	129.8	104.0

*Source: 2011 Real Property Tax Roll for the Parish of Orleans, prepared by the Orleans Parish Board of Assessors, and BGR calculations.*

The assessors' tax roll provided a breakdown of the types and relative value of nonprofit exemptions for 2011. (See Table 3.) As is discussed later in the report, the categories presented on the tax roll do not match the exemptions set forth in the state constitution, making it difficult to analyze the impact of specific exemptions.

## SHOULD THERE BE A NONPROFIT EXEMPTION?

Property tax exemptions relieve beneficiaries of the obligation to pay taxes. As such, they are indirect subsidies for those property owners. Although these indirect subsidies occur off the books and are seldom accounted for in budgets, they have real consequences for both government bodies and non-exempt taxpayers.

A threshold question is whether the nonprofit exemption should be eliminated in its entirety. In that case, taxes, like utility costs and other expenses, would become part of the cost of providing a service.

No state in the country takes this approach. There are, however, arguments for doing so.

First, a tax structure needs a broad tax base and multiple revenue sources in order to hold down the rates of taxation. In nonprofit centers like New Orleans, it is virtually impossible to achieve a broad property tax base without adding exempt property back to the rolls.

Second, an effective and fair tax establishes a clear link

between the benefits received and taxes paid while accounting for a nonprofit's ability to pay. Nonprofits, like residents and businesses in a community, benefit from local government infrastructure and services. Unlike residents and businesses, they do not pay for them. And they are exempt regardless of their ability to pay.

Third, even carefully defined nonprofit exemptions do not distinguish between well-run and inept organizations, forcing the public to subsidize entities regardless of effectiveness, efficiency and merit.

## Table 3: Nonprofit Exempt Property, 2011

	Parcels/ Tax Records	% of Nonprofit Assessed Value
All Others	2,404	43.5
Churches	1,598	21.3
Tulane	69	19.5
Other Religious	635	12.7
Private School	104	2.0
Fraternal	88	0.8
Labor Union	20	0.2
<b>Total</b>	<b>4,918</b>	<b>100.0</b>

*Source: 2011 Real Property Tax Roll for the Parish of Orleans, prepared by the Orleans Parish Board of Assessors.*

*Note: BGR included seven records coded specifically for Xavier University under the "Private School" category. It also moved 10 uncoded university-owned properties into that category. It included 39 other uncoded records in the "All Others" category.*

On the other hand, a blanket elimination of the nonprofit exemption could be counterproductive as a fiscal measure. Some nonprofit activities relieve the government of obligations that it would otherwise have to meet. A blanket elimination of the exemption could have the perverse effect of increasing government's costs without producing offsetting revenue. For example, eliminating the nonprofit exemption for parochial and private schools would increase their operating costs and presumably tuition, possibly causing some students who would otherwise attend those schools to opt for the public school system. Unless the additional tax revenue generated by eliminating the exemption exceeded the additional costs associated with educating those students, the school system would be in a worse financial position.

In addition, eliminating the nonprofit exemption could diminish amenities that contribute to quality of life, such as museums, cultural centers and performance halls.

While there are compelling arguments for eliminating the nonprofit exemption, there is insufficient information at this point to gauge the impact of such a far-ranging change.

## **STANDARDS FOR EXEMPTIONS**

There are various threshold standards for determining whether a nonprofit activity should be considered for an indirect subsidy. One approach focuses on whether the nonprofit is relieving the government of a burden. Under that standard, the exemption would be limited to nonprofit property used to perform services that the government would otherwise have to provide. Another, more expansive, approach would allow exemptions for nonprofit-owned properties used to provide the public with services and amenities that the government considers important to quality of life.

There is no generally accepted standard for determining the range of nonprofit activity that deserves an exemption under either rationale. Opinions differ as to what services government should provide. The same is true when it comes to identifying which public benefits the government should underwrite.

Nonprofit cemeteries and elementary and secondary schools would appear to qualify under the most stringent application of the government burden test. The dead must be buried and children must be educated. A more expansive interpretation of the phrase "relieving a government burden" would embrace homeless shelters, soup kitchens, indigent housing for the elderly and disabled, animal shelters, and public health facilities. Determining the limits of the exemption on this basis depends upon how one defines the responsibilities of government.

The range of public benefits that the government may want to underwrite is equally expansive. The benefits that nonprofits provide to the general community may be cultural, civic, educational, environmental, psychological or economic in nature. They may therefore include museums, performing arts centers, universities, nature preserves, youth sports facilities, counseling centers and workforce training centers.

BGR takes the position that the threshold test should be broad enough to allow exemptions for activities that provide important public benefits, regardless of whether government must provide them.

While no exemption should be allowed unless a property is used for activities that provide a public benefit, this is merely a threshold test. Government should not be obligated to grant an exemption for an activity simply because it provides a public benefit. There should be a compelling and clearly articulated reason for granting any exemption. As BGR discusses later in this report, exempt activities should be carefully defined and limited to ensure that they serve the public.

Religious exemptions present special constitutional considerations that are further discussed in the sidebar.

## **LOUISIANA'S TROUBLED SYSTEM OF NONPROFIT EXEMPTIONS**

Louisiana's property tax exemptions are enshrined in the state constitution. Broadly, they include the homestead exemption, industrial tax exemption, government exemption and nonprofit exemption. In the nonprofit category, the Louisiana Constitution exempts, among

## THE SPECIAL CASE OF RELIGIOUS EXEMPTIONS

The practice of exempting religious property from property taxation antedates the founding of the country. All 50 states provide for religious exemptions, but the scope of the exemptions varies considerably.

When it comes to taxation and exemptions, religious institutions present unique constitutional issues. Under the First Amendment to the U.S. Constitution, as applied to the states through the Fourteenth Amendment, states are prohibited from passing any law that prohibits the free exercise of religion (the “Free Exercise Clause”). Under that same amendment, they are also prohibited from making a law “respecting an establishment of religion” (the “Establishment Clause”).

Litigation under the Free Exercise Clause has centered for the most part on whether the clause requires that a person be excused from complying with laws that contradict that person’s religious beliefs or practices. In general, no exemption is required if a law burdening a religious practice is neutral and of general application. If a law burdening a religious practice is not neutral and of general application, it must be justified by a compelling governmental interest and narrowly tailored to advance that interest.<sup>7</sup>

The Establishment Clause has been interpreted by the U.S. Supreme Court as generally requiring neutrality on the part of government, both among particular religions and between religion and non-religion. To pass muster under the Establishment Clause, governmental action must have a secular purpose that neither endorses nor disapproves of religion, and have an effect that neither directly advances nor directly inhibits religion.<sup>8</sup>

The Supreme Court has decided a number of cases challenging both government’s power to tax religious institutions and its power to exempt them. It struck down as a violation of the Free Exercise Clause a flat license fee imposed on itinerant ministers because it imposed a prior restraint on evangelical activity.<sup>9</sup> It upheld the application of a broad sales and use tax on religious materi-

als under both the Free Exercise Clause and the Establishment Clause.<sup>10</sup>

The Court upheld a property tax exemption for religious institutions where religious institutions were one of a wide range of exempted nonprofit institutions.<sup>11</sup> It struck down a sales tax exemption that applied solely to religious periodicals.<sup>12</sup>

While the Supreme Court has decided that states can exempt the property of religious institutions along with others, it has never decided whether states are required to provide an exemption. It has not had the occasion to do so, since all 50 states exempt religious organizations.

A change in law to add places of worship to the tax roll would undoubtedly be litigated under both the Free Exercise and the Establishment Clauses. This means that the court would evaluate the tax to determine whether it is neutral and of general application and, if not, whether it is justified by a compelling state interest and narrowly tailored to advance that interest. It would also evaluate whether it has a secular purpose that neither endorses nor disapproves of religions and has an effect that neither directly advances nor directly inhibits religion. Existing case law suggests that there are arguments on both sides, and BGR does not presume to predict the ultimate outcome.

Louisiana has a broad, undefined exemption for religious property. The exemption could be significantly tightened without moving into this grey area discussed above. Other states provide examples (see Appendix). While some exempt property used by religious organizations for a range of diverse purposes, including social services, others define religious purposes narrowly, limiting the exemption to property used for public worship. This can be further defined to limit the exemption exclusively to places of worship, or to a house of worship and related facilities, such as parsonages, parish houses and parking lots.<sup>13</sup> Some states place additional limitations on the amount of land or number of buildings that can be exempted.<sup>14</sup>

other things:

- “Property owned by a nonprofit corporation or association organized and operated exclusively for religious, dedicated places of burial, charitable, health, welfare, fraternal, or educational purposes, no part of the net earnings of which inure to the benefit of any private shareholder or member thereof and which is declared to be exempt from federal or state income tax.” (This is referred to as the “catch-all provision.”)
- “Property of a bona fide labor organization representing its members or affiliates in collective bargaining efforts.”
- “Property of an organization such as a lodge or club organized for charitable and fraternal purposes and practicing the same.”
- “Property of a nonprofit corporation devoted to promoting trade, travel, and commerce.”
- “Property of a trade, business, industry or professional society or association, if that property is owned by a nonprofit corporation or association organized under the laws of this state for such purposes.”<sup>15</sup>

The only limitation on the exemption for these properties is that the property cannot be used for a commercial purpose unrelated to the exempt purposes of the nonprofit entity.<sup>16</sup>

Nonprofit ownership is not required for the following two exemptions: property leased for no more than one dollar per year to a nonprofit for housing for the homeless<sup>17</sup> and “property used for cultural, Mardi Gras carnival, or civic activities and not operated for profit to the owners.”<sup>18</sup>

Finally, on top of exemptions for property used for educational purposes, Tulane University alone benefits from a special exemption for \$5 million worth of property that would otherwise be taxable.<sup>19</sup>

The legal moorings of the nonprofit exemption in Louisiana suffer from serious problems:

- The exemption provisions in the constitution are too broad and too vague. Qualifying exempt purposes are not clearly defined in the constitution or state law.
- The exemption does not require that the property actually be used for the exempt purpose.

## Narrowing and Defining the Exemption

When BGR last did a 50-state survey of the nonprofit exemption, all states had some form of exemption for nonprofit-owned property used for cemetery, religious, educational and charitable purposes.<sup>20</sup> This was not the case for some of the other exemptions granted in Louisiana, such as those for property of labor organizations; nonprofits devoted to promoting trade, travel and commerce; and nonprofit trade, business, industry or professional associations. These are highly unusual. In fact, BGR was unable to find any exemptions in other states for labor organizations or entities promoting trade. It found only one state that exempted special interest groups, such as professional associations. Eliminating exemptions for the property of such entities would bring Louisiana more in line with other states.

Exemptions that benefit private clubs with restricted memberships, such as fraternities, social clubs and carnival krewes, also deserve scrutiny. Such groups primarily serve the interests of their members.

While eliminating exemptions for these types of entities would be a first step in narrowing the scope of the exemption, it would barely scratch the surface of the problem. Even if the fraternal exemption were eliminated, the catch-all provision would still cast a wide net, picking up property of nonprofits organized and operated exclusively for religious, dedicated places of burial, charitable, health, welfare or educational purposes. Add to that property used for cultural and civic purposes, even if it is not owned by a nonprofit.

Unfortunately, these terms are not defined further in the constitution or state statutes, opening the door to overly generous interpretation and application. As a result of the vagueness, nonprofit status operates as the basis of the exemption. This is unacceptable, because it exempts property regardless of whether it provides an

important public benefit.

In order for the nonprofit exemption to serve a legitimate purpose, it must be further defined and limited in either the constitution or state law. That process begins with identification of the specific types of activities that a government wants to underwrite with an indirect subsidy, and the crafting of a narrowly tailored exemption for property used in those activities.

Louisiana is not alone in having broad, undefined exemptions. Many states do. There are, however, some useful examples of ways to target and limit exemptions. Texas, for example, limits the religious exemption to property used primarily as a place of worship or property that is reasonably necessary for engaging in religious worship. It also exempts property reasonably necessary for use as a residence for a clergy member.<sup>21</sup> Other limits, based on the amount of land, the number of acres or property value, can be superimposed on this and other exemptions. New Jersey, for example, limits exemptions for church property to five acres.<sup>22</sup>

When it comes to the amorphous charitable exemption, it is especially important to craft language that captures the intent of the exemption. Some states, such as Nebraska, specify that the charitable services provided should inure to the general public or some identifiable segment of the public, rather than to members of a closed organization.<sup>23</sup> Other states, such as South Dakota, require that nonprofit entities benefiting from the exemption should serve the poor or distressed.<sup>24</sup> A number of states, including Texas and Wisconsin, enumerate with clarity and precision the types of activities that qualify for exemption.<sup>25</sup> By way of example, Wisconsin limits its exemption relating to low-income housing by requiring that at least 75% of the units be occupied by residents who fall below specified income or asset levels.<sup>26</sup>

For more information on how other states narrow and define exempt activities, see the Appendix.

### **Giving Teeth to the Use Requirement**

The Louisiana Constitution does not require that property owned by a nonprofit actually be used for the purpose on which its exemption is based. Rather, the constitution states only that the property cannot be used for an

unrelated commercial purpose.<sup>27</sup> Courts have interpreted the provision as exempting property used for an array of ancillary commercial uses and property that is idle.<sup>28</sup>

In effect, Louisiana law focuses on the nonprofit status of the owning entity, virtually ignoring the question of whether the property is actually being used for a purpose that the state would like to subsidize. This approach forecloses the possibility of a strategically sound exemption.

Louisiana has not always had such a lax use requirement. The 1921 Louisiana Constitution, which remained in effect until 1974, required that property be used for exempt purposes in order to be eligible for an exemption, and it prohibited exemptions for property leased for profit or income.<sup>29</sup> Court rulings prior to the adoption of the current constitution in 1974 emphasized that use for an exempt purpose, and not merely nonprofit ownership, was the key criterion for an exemption.<sup>30</sup>

There are several options for tightening up the current use requirement. These include:

- Limiting the exemption to property used directly and exclusively for the exempt purpose. Neither nonuse nor any level of commercial activity would be allowed under such language.
- Allowing a certain level of incidental use for commercial or other non-exempt purposes. Colorado, for example, sets a maximum number of hours (208 per year) that the property can be used for such purposes, and a maximum level of income (\$10,000 to \$25,000 per year) that the property can generate.<sup>31</sup>
- Giving partial exemptions that account for the level of commercial activity that occurs on-site. For example, Idaho<sup>32</sup> and Oregon<sup>33</sup> compute partial exemptions based on the proportion of property value used for exempt purposes. Property used for non-exempt purposes is subject to taxation.

Tightening the use requirement is a critical step in targeting the nonprofit exemption to activities that the government deems deserving of a public subsidy. The current requirement subsidizes the nonuse of property, an activi-

ty from which the public receives no benefit. It also has a perverse negative effect in that it removes a significant financial incentive for returning undeveloped, abandoned or other unused property to commerce. This encourages blight. The current use requirement also unnecessarily subsidizes commercial uses on exempt properties.

BGR believes that the use requirement should be limited to property, or a portion thereof, that is owned by nonprofit organizations, and – subject to an exception for minimal non-exempt uses – used directly and exclusively for an exempt purpose. The exempt property should be reasonably necessary for carrying out the exempt purposes. Defining what is “reasonably necessary” would depend on the type of exempt activity.

All other property owned by the nonprofit should be subject to taxation. Taxable property would include, without limitation, property used or leased for profit or income, investment property and property not in use.

Under this approach, where a portion of a property dedicated to an exempt purpose is used for a non-exempt purpose, the exemption would apply on a pro-rated basis. For example, if a university leased a part of its campus for a restaurant or operated a bookstore on campus, the portion of the property dedicated to those uses would be taxed.

For more information on other states’ use requirements, see the Appendix.

## Implementing Reforms

Beyond the question of how to define exemptions, there is the question of where to define them. Currently, the constitution provides for broad categories of exemptions, which are not defined further in statute. The job is left to the assessors and the courts. BGR is recommending a different approach: setting forth broad policies and parameters in the constitution and requiring the Legislature to develop the specific parameters for exemptions. BGR also recommends giving local governments the right to decide which exemptions will apply in its boundaries.

Under this approach, the constitution would explicitly require that an exemption be granted only when there is an identifiable quid pro quo for the indirect subsidy. It would also stipulate the basis for establishing a quid pro

quo (*i.e.*, the provision of a service that the government would have to provide or a more general contribution to the public good.)

The constitution would limit the exemption to property of nonprofit entities organized exclusively for, and engaged solely in, activities that meet that standard. It would identify in broad terms – such as religious, educational, charitable, cultural and cemetery – the types of activities for which the Legislature could provide an exemption. It would require the state Legislature to define the exempt purposes in detail. Specifically, the Legislature would spell out the benefits it would like the nonprofit sector to provide in exchange for the benefit of a tax exemption. Only activities defined by statute would provide a basis for an exemption.

The constitution would limit the exemption to property used exclusively and directly for one or more of the exempt purposes defined by the Legislature. The constitution would also make clear that unused property or property used for other purposes – such as property held for investment, put to ancillary purposes, or used for related or unrelated commercial purposes – does not qualify for exemption. It would allow partial exemptions for properties where ancillary uses occur on a site that is otherwise clearly dedicated to an exempt purpose. For instance, if a hospital leases out space on-site for a coffee shop, that portion of the property would be subject to taxation.

But the legal changes should not stop there. As discussed earlier, local governments bear the fiscal burden of exemptions; ideally, they should have final say over granting certain categories of exemption. Therefore, in addition to limiting exemptions to statutorily defined activities, the constitution would give local governments the ability to opt out of some, if not all, of the state’s authorized exemptions. BGR found two states, New York and Virginia, that allow local jurisdictions to opt out of specific exemptions. See the Appendix for more information on them.

## IMPROVING ADMINISTRATION

Property tax exemptions in Orleans Parish have long suffered from weak administration at the local and state levels. Locally, assessors in Orleans Parish have never

established a rigorous system of monitoring and inspecting exempt property, nor have they uniformly required regular reapplication for exemptions. In the past, Orleans Parish assessors have defended their passive approach to monitoring, citing a lack of legal resources, vague constitutional language, and a poor appellate record before the Tax Commission and the courts.

Additionally, the seven assessors have not systematically revalued exempt properties.<sup>34</sup> Because exempt property generates no revenue, appraising it has been a low priority. As a result, however, government officials and the public lack the information to assess the cost of Louisiana's state-imposed exemptions.

Not only are assessments of nonprofit property unreliable, the assessors' system for tracking the types of exemptions does not correspond with the full range of exempt purposes listed in the constitution. For example, nearly half of all nonprofit exemptions granted in New Orleans – for entities ranging from nonprofit hospitals to Mardi Gras dens – are labeled under a catch-all category called “All Other.” This illogical coding system prevents a basic analysis of how many properties are exempt under each of the exempt purposes authorized by the constitution. BGR recommended that the assessors amend their internal classification system in its 1999 report. A review of the 2011 tax roll – the final roll prepared under the seven-assessor system – shows that they did not do so.

The Louisiana Tax Commission, the state body that oversees local property tax systems, has done little to encourage improved local administration of exemptions. The commission does not have a standardized, statewide coding system that corresponds with the categories of exemption listed in the constitution. It does not monitor the accuracy of nonprofit assessments or publish information regarding nonprofit exemptions in its annual reports.

Improving administration of exemptions at the state and local levels requires only that the assessor's office and the Louisiana Tax Commission make exemption administration a priority. Both entities have the authority to: regularly inspect property to confirm that it is used for qualifying exempt purposes; require periodic reapplication for exemption; verify nonprofit status and

good standing;<sup>35</sup> maintain accurate valuation of exempt property; and accurately track the number, type and value of tax-exempt properties. To date, they have failed to do so. However, the advent of a single-assessor office at the start of 2011 opens the possibility for a fresh approach at the local level.

## REVENUE-RAISING OPTIONS

Even if Louisiana narrows and defines the nonprofit purposes eligible for exemption and imposes a strict use requirement, New Orleans will still find a substantial portion of its tax base exempt from taxation. This section considers four policy options to mitigate the fiscal impact of the nonprofit exemption. The first two options – taxing nonprofits at a reduced rate and the creation of a state reimbursement program – would require state action. The third and fourth options – soliciting voluntary payments in lieu of taxes and imposing service charges – would be addressed at the local level. However, as this section will discuss, not all of these options are equally feasible or effective.

Having nonprofit property owners contribute to the cost of local government is not just a financial matter. It is also a matter of fairness. Nonprofit property owners, like residents and businesses, benefit from public infrastructure and services.

### Taxing Nonprofit Organizations at a Reduced Rate

One way to require nonprofit property owners to contribute to the cost of local government is to tax them at a reduced level. This would be accomplished by assessing property used for exempt purposes at a lower percentage of value (e.g., 3% or 5%) than the percentages used for other types of property. Land and residential improvements are assessed at 10% of their value, commercial improvements at 15%, and public service property at 25%.<sup>36</sup>

Assessing nonprofit property at 3% of value would generate \$12.2 million, assuming current assessed value, or \$37.4 million, based on BGR's adjusted value. Assessing nonprofit property at 5% of value would generate \$20.4 million, assuming current assessed value, or \$62.3

million using BGR's 2011 adjusted value. The revenue generated from taxing nonprofits would be distributed among tax-recipient bodies parishwide.

BGR did not find any state that employs this approach. In recent years, legislators in Massachusetts and Rhode Island have introduced bills proposing taxation of certain nonprofits at 25% of the normal tax rate.<sup>37</sup> However, neither bill became law.

Taxing nonprofit-owned property at a reduced level would result in nonprofit property owners paying something toward the city services from which they benefit, while giving them a discount in exchange for the public benefits they provide. Coupled with sound reassessments of nonprofit-owned properties, it would significantly expand the tax base and improve the fairness of the system.

We note that even a discounted rate might not be appropriate for all types of nonprofit properties. For instance, cemeteries often occupy large tracts of land in high-value areas but may not have an ongoing source of income to pay a tax liability. Yet they directly relieve a government burden.

Implementing a special tax rate for nonprofits would require a constitutional amendment, meaning a two-thirds vote of the Legislature and approval by the electorate on a statewide basis.

### State Reimbursement Program

Another option for mitigating the local fiscal impacts of the nonprofit exemption is a state reimbursement program. Such a program would use state revenue to compensate local tax-recipient bodies for all, or a fixed percentage, of the revenue lost to the nonprofit exemption. Two states, Connecticut and Rhode Island, have such reimbursement programs. Louisiana has a program that reimburses local governments for part of the cost of the homestead exemption, but it does not address the nonprofit exemption.

*Connecticut.* The State of Connecticut reimburses local governments for revenue lost due to exemptions for nonprofit hospitals and universities, as well as for state-owned property. For nonprofit hospitals and universities, Connecticut law calls for the reimbursements

to equal 77% of lost property tax revenue, subject to appropriation.<sup>38</sup> The state has not fully funded the program in recent years, resulting in reimbursements closer to 40%. For state-owned property, Connecticut law calls for reimbursements ranging from 45% to 100%, depending on the type of property.<sup>39</sup> These appropriations have also fallen short of the legislatively required level of payment.

Even with the reduced reimbursements, however, the state in 2010 disbursed significant funds. New Haven received \$41 million in reimbursements.<sup>40</sup> Hartford received \$34.7 million.<sup>41</sup>

*Rhode Island.* Rhode Island law calls for the state to reimburse local governments for 27% of revenue lost due to exemptions for nonprofit institutions of higher education, nonprofit hospitals, state hospitals, veterans' residential facilities and correctional facilities.<sup>42</sup> The reimbursement is subject to an annual appropriation by the state's General Assembly. If the appropriation is less than the targeted amount, reimbursements are reduced on a pro rata basis. In fiscal 2011, the General Assembly appropriated \$27.6 million, resulting in reimbursements equal to 21.1% of foregone revenue.<sup>43</sup>

*Appropriateness and Feasibility in Orleans.* There are two arguments in favor of state reimbursement programs. First, since exemptions are authorized at the state level, it is the state – and not local governments – that should bear the cost. Second, the benefits emanating from public and nonprofit-owned properties often extend beyond the borders of a city or parish. For example, while private universities in New Orleans benefit the city in myriad ways, they also contribute to neighboring parishes and the state as a whole. Yet, New Orleans alone bears the financial burden of the universities' property tax exemptions.

Unless reimbursements were mandated at a particular level – rather than subject to annual appropriation – fully funding the program would likely take a backseat to other state priorities. The experience of Connecticut and Rhode Island, which leave the appropriations to their legislatures, highlights the risk. So does local governments' experience with Louisiana's reimbursement program for revenue lost due to the state-mandated homestead exemption. Each year, the Legislature ap-

appropriates the amount that the constitution sets as the minimum appropriation. Although the Legislature is authorized to appropriate more for this purpose, it usually does not. Currently the program reimburses local governments for only 13% of revenue lost due to the exemption.<sup>44</sup>

While a state reimbursement program may make sense from a policy perspective, it holds limited promise as a solution to New Orleans’ problem of excessive exemptions. To start, it would require a significant financial commitment from the state in a time of budget deficits. Furthermore, unless reimbursements were mandated at a particular level, fully funding the program would likely take a backseat to other state priorities. Establishing a mandatory program would require a constitutional amendment.

### Voluntary PILOTs

A number of communities use payments in lieu of taxes (PILOTs) to recoup a portion of the revenue lost due to exemptions for nonprofit-owned property. PILOTs are voluntary payments made by tax-exempt nonprofit organizations as a substitute for property taxes. A mandatory payment in lieu of property taxes is a contradiction in terms because it would be, in effect, a property tax.

According to the Lincoln Institute of Land Policy, at least 117 municipalities in 18 states used PILOTs during the last decade.<sup>45</sup> Eighty of the municipalities are located in Massachusetts.<sup>46</sup>

PILOT programs suffer from serious weaknesses. First, because the programs are voluntary, not all nonprofit institutions make payments, and those that do contribute at varying levels. The payments are based on individually-negotiated agreements, and in many cases do not bear any relationship to the value of tax-exempt property.

Second, the programs underperform as revenue generators. BGR reviewed PILOT programs in seven cities. In none of them does PILOT revenue make up more than 1.5% of the local budget. In most cases, it is far less. (See Table 4.)

*Rethinking PILOTs in Boston.* Although Boston’s PILOT program has more participants (35) and generates far more revenue (\$14.7 million) than any other PILOT program,<sup>47</sup> it has not been as successful as hoped. In January 2009, the mayor appointed a task force to review the program and to address its weaknesses, including limited participation, ad hoc agreements and underperformance as a revenue generator.<sup>48</sup> Recently, the task force issued its report. It recommended that the city use a standard-

**Table 4: The Impact of PILOTs in Various Cities**

	Year	Nonprofit PILOT Yield (in millions)	Total Operating Budget (in millions)	PILOT as Percentage of Budget
Baltimore	2011	\$5.3	\$1,382.8	0.38%
Boston	2010	\$14.7	\$2,393.0	0.61%
Cambridge	2011	\$5.0	\$459.7	1.09%
New Haven	2010	\$9.0	\$615.7	1.46%
Pittsburgh	2011	\$2.8	\$455.1	0.62%
Providence	2010	\$1.9	\$617.9	0.31%
Worcester	2011	\$0.7	\$455.1	0.15%

*Source: BGR compiled this table through a review of city budgets, available PILOT agreements, information from City of Boston and City of New Haven, and media accounts of PILOT agreements.*

ized formula for determining PILOT payments.<sup>49</sup> For a description of the task force's recommended formula, see the sidebar.

The task force estimates that, if all of the city's medical and higher education institutions participate at the recommended level, PILOT revenue from these institutions would rise from \$14 million to \$38 million.<sup>50</sup> While substantial, this sum would amount to less than 2% of the city's budget and would represent just 11% of what these institutions would pay if their property were taxable.<sup>51</sup> It remains to be seen whether Boston's nonprofit institutions will ultimately participate at the recommended level.<sup>52</sup>

## BOSTON'S PROPOSED PILOT FORMULA

In December 2010, Boston's PILOT task force recommended that local nonprofit organizations make PILOT payments based on the following formula:<sup>53</sup>

- The first \$15 million of tax-exempt property value would be exempt, effectively excusing smaller nonprofits from the program.
- The PILOT payment would equal 25% of the taxes that would be due on property value in excess of \$15 million. The 25% figure is based on the share of Boston's budget devoted to essential services, such as police, fire protection and snow removal. (In 2011, police, fire and emergency medical services alone made up 39.8% of the New Orleans' general fund budget.)
- Participants in the program would be able to reduce their payments by as much as 50% with "community benefit" deductions for quantifiable services the institution provides to residents. (This is somewhat odd, given that the rationale for the exemption is presumably already based upon the services the institutions provide.)

The increased payments would be phased in over a five-year period.

*PILOTs in Other Cities.* In 2003, Providence, R.I., entered into an agreement with four local universities for PILOTs totaling \$48 million over 20 years. The city recently reviewed its PILOT program. It found that the PILOT payments, combined with state reimbursements and other revenue from tax-exempt institutions, cover nearly the entire cost of providing government services from which nonprofit organizations directly benefit.<sup>54</sup> It called for entering into PILOT agreements with other tax-exempt property owners but did not recommend the creation of a standard PILOT formula.

In 2010, the City of Baltimore reached an agreement with local hospitals and universities that will generate \$20 million of PILOTs over six years.<sup>55</sup> The agreement calls for payments of \$5 million in each of the first two years, with reduced payments thereafter.

The City of Pittsburgh expects to receive \$2.8 million from PILOTs in 2011, with \$200,000 increases each year through 2015.<sup>56</sup> The PILOTs are transferred to the city through the Pittsburgh Public Service Fund. The fund reveals the name of each participating nonprofit, but not the amount of its contribution.

Worcester, Mass., has negotiated PILOT agreements with three local colleges and universities. In total, the Worcester agreements will yield \$17 million over the next 25 years to support the local library, a local park and public safety.<sup>57</sup> Also in Massachusetts, Cambridge has a PILOT program that dates back to 1973. In 2011, 27 tax-exempt institutions made payments totaling \$5 million.<sup>58</sup>

New Haven, Conn., collects PILOTs from Yale University and Yale New Haven Hospital based on the number of employees and beds at the university's campus and hospital. These payments totaled \$9 million in 2010.<sup>59</sup> These PILOT payments supplement revenue that New Haven already receives through Connecticut's generous revenue-sharing program.

*Appropriateness and Feasibility in Orleans.* In New Orleans, PILOT payments could be directed only to the city for a share of certain essential services it provides, or it could be dispersed among all local tax-recipient bodies, such as the School Board, Sewerage & Water Board (S&WB) and Orleans Levee District for a percentage of forgone property taxes.

The best hope for a fair PILOT program would be a standardized, transparent formula. A set formula would create a rational benchmark against which all nonprofits could be measured to determine whether they are covering their fair share. For any PILOT calculation based on the assessed value of nonprofit-owned property to be fair and rational, the assessor would have to update long-neglected assessments.

As the experience of other cities demonstrates, however, PILOTs are generally an unfair and insubstantial revenue approach to offsetting the losses due to nonprofit exemptions. A small number of nonprofits would likely participate in such a program, leaving a great many nonprofit property owners off the hook for their share of public sector support. The participation of even that handful is not guaranteed, since PILOTs are voluntary. Furthermore, it is unlikely that the program would generate substantial funds. The city would be better served directing its energies toward other alternatives.

### Imposing Service Charges

Service charges are another option available to ensure that nonprofit property owners contribute something to support the city services from which they benefit.

A service charge could be imposed for general municipal purposes and cover a range of services supported by the city's general fund – such as police and fire protection, public works and code enforcement. Alternatively, a charge could be targeted to a single, specific service and calculated based on use or burden. The City of New Orleans already imposes a service charge for trash pickup; the S&WB imposes charges for sewer and water service. Drainage and streets are other logical candidates for targeted service charges.

Drainage fees are quite common. In more than 500 local jurisdictions around the country, such as Richmond, Va., Louisville, Ky., and Tulsa, Okla., drainage is treated as a public utility, with service charges based on the burden a property places on the drainage system. Since in most states the fee is considered a service charge and not a tax, tax-exempt property owners, such as nonprofits and government entities, are subject to the charge.<sup>60</sup>

Charges for street maintenance, typically referred to as

“transportation utility fees,” or TUFs, are far less common than those for drainage. BGR found only a couple dozen cities that impose TUFs.<sup>61</sup>

As the name suggests, TUFs treat street maintenance like a utility, charging property owners based on their estimated use of the local street system.<sup>62</sup> The most common method for calculating TUF charges is through “trip generation” estimates for different uses of property.<sup>63</sup>

*Structuring Service Charges.* A municipal service charge could take several forms: a flat per-parcel charge; a variable charge based on the square footage of the parcel or improvements; or a variable charge based on the burden a property imposes on a particular city service.

A flat per-parcel charge would be fundamentally unfair in New Orleans, since parcels in the city vary widely in size. For example, large chunks of Tulane's and Loyola's campuses are located on a single parcel. One Shell Square and Touro Infirmary's main building, each of which takes up an entire city block, are also on a single parcel. Under a flat per-parcel proposal, the owners of these large parcels would pay the same amount as the owner of a single-family residence on a 30-foot lot.

Basing a service charge on the size of a parcel or the square footage of improvements also presents fairness issues. For instance, small parcel can contain multiple units and high-value improvements. A large one can be located in a part of the city with depressed property values and impose little burden on public infrastructure.

Charges that take into account the burden a property imposes on a system tend to be the fairest. Drainage and transportation are areas that lend themselves to this type of fee structure. For drainage, the calculation can be based on the size of the property and its contribution to stormwater runoff. For streets, the charge can be based on the volume and type of traffic generated by different uses of property.

In this context, it is important to bear in mind that all types of taxes and fees pose fairness issues. This is one of the reasons that a diversity of revenue sources is desirable: Multiple sources collectively help to offset the fair-

## A TOUGH HISTORY FOR SERVICE CHARGES AND PARCEL FEES

New Orleans last imposed a general municipal service charge on real property more than 30 years ago. The charge was levied by the City Council at \$100 per parcel. It applied to all property, except for property owned by religious or educational nonprofits and actually used for those purposes.<sup>71</sup> That same year, the City Council also imposed a “road use charge” on all automobiles registered in Orleans Parish.<sup>72</sup>

The municipal service charge, along with a city charge imposed on automobiles, was repealed in 1980 and replaced by a half-cent sales tax.

Citizen opposition to the charge resulted in a charter amendment to require voter approval for certain taxes and service charges. Since the passage of that amendment in 1981, two municipal service charge proposals and one proposal for a drainage fee have come before voters.

In 1986, Mayor Barthelemy sought a per-parcel general service charge of \$195.<sup>73</sup> The revenue generated from the charge would have supported the city’s general fund. The proposal would not have applied to property owned by nonprofit organizations, the poor or the disabled. It would, however, have applied to homeowners completely exempt from property taxes due to the homestead exemption. At the time, 85% of homeowners were completely exempt. The proposal failed at the polls, with 61% of voters opposing it.

In 1998, Mayor Marc Morial proposed an annual charge to boost the salaries of city and school workers and to fill gaps in the city’s budget. The proposed charge would have been calculated based on the size and use of the parcel. The city estimated that the charge would raise nearly \$50 million per year. The proposal initially included land owned by nonprofit organizations, but by the time it reached the ballot, nonprofit property was exempt. The proposal would have applied to all homesteads,<sup>74</sup> including the 66% of homesteads that were completely exempt.<sup>75</sup> Voters rejected the proposal by an overwhelming margin, with 84% opposed.

Twice over the last 25 years, in 1985 and 1998, the S&WB proposed a citywide drainage fee. Each would have been calculated by multiplying the square footage of a parcel by a rate that reflected the amount of storm-water runoff created by different classes of property.<sup>76</sup> Exemptions would have been limited to property owned by the city and S&WB. The 1998 proposal would have generated \$25.6 million per year for drainage.

The first proposal went to the voters, who rejected the measure, with 54% opposing it. In 1998, the S&WB tried again, this time arguing that voter approval was not necessary. The S&WB contended that, under the charter, only City Council approval was necessary. The Council never considered it.

ness deficiencies particular to the component sources.

*Legal authority.* The Louisiana Constitution expressly exempts nonprofit organizations from ad valorem taxes.<sup>64</sup> It does not, however, exempt them from other taxes or from service charges and fees. At the local level, the Home Rule Charter of the City of New Orleans allows the City Council to impose taxes and fees not expressly prohibited by the constitution.<sup>65</sup>

The charter requires voter approval for a specific tax or service charge affecting real property or motor vehicles.<sup>66</sup> The charter defines “a specific tax or service charge” as one that “is imposed as a fixed sum on each

article of a class without regard to its value.”<sup>67</sup> However, it excludes from the definition and voter approval a wide range of charges. It excludes “any charge (including but not limited to a sanitation charge), fee, license, permit or rate imposed or levied pursuant to the regulatory authority of the City of New Orleans in the operation of the City, its departments, boards, agencies and commissions (whether attached or unattached) including, but not limited to, the Sewerage and Water Board.”<sup>68</sup>

The charter language is confusing and has been the subject of dispute (see sidebar). It has never been interpreted by the courts.

A state statute authorizing municipal drainage authorities to impose service charges requires that those charges be approved by voters.<sup>69</sup> However, because the requirement is not set forth in the constitution, New Orleans' home rule authority to levy certain fees and service charges without voter consent might take precedence over that statutory requirement.<sup>70</sup> However, the issue has not been considered by the courts.

*Appropriateness of Service Charges.* Both drainage and streets provide a tangible benefit to property owners, and both face serious funding shortfalls. In New Orleans, streets and drainage are both prime targets for special fees.

The S&WB needs an additional \$536.7 million for drainage projects over the next five years.<sup>77</sup> In addition, the S&WB estimates that it will need an additional \$16 million a year to operate and maintain the outfall canal pumps that the U.S. Army Corps of Engineers is constructing and to pay its share of operating and maintenance expenses for the Gulf Intracoastal Waterway West Closure Complex. The S&WB is currently preparing a financial plan and rate study for the drainage system to develop adequate funding over a 10-year planning horizon.

The city also faces serious needs in the area of street rehabilitation and maintenance. According to New Orleans' Department of Public Works, the cost of rehabilitating the city's failing streets is approximately \$1 billion.<sup>78</sup> In addition, roughly \$40 million is needed annually for proper maintenance.<sup>79</sup> In 2011, the city allocated just \$4 million for such maintenance.<sup>80</sup>

The city's very survival depends on the condition of its drainage system. A healthy network of streets is central to quality of life and economic development in New Orleans. All residents, businesses and institutions benefit from and impose burdens on the systems. Their continued neglect will hurt all property owners, regardless of their exempt status.

A service fee would be the fairest approach to funding part of this shortfall. It would force all property owners – including nonprofit and other exempt property owners – to share in the cost of upgrading, maintaining and operating the city's basic infrastructure.

In the case of drainage, the city could again pursue a fee based on the burdens different types of property place on the system. The fee could be crafted to reach not only nonprofit properties, but also homestead-exempt and government-owned properties. In the past, federal agencies have refused to pay these charges, claiming they are constitutionally-prohibited taxes rather than user fees.<sup>81</sup> But a new federal law enacted in January 2011 requires the federal government to pay the charges, as long as they are based on a fair approximation of the proportionate contribution of the property to storm-water runoff.<sup>82</sup>

For street maintenance, the city could pursue a TUF based on the traffic demands imposed by different uses of property.<sup>83</sup> Like a drainage fee, the fee could apply to property owners not currently paying property taxes, such as nonprofit- and government-owned property and homesteads valued at less than \$75,000.

## CONCLUSION

Little has changed since BGR conducted its comprehensive review of nonprofit property tax exemptions in 1999. Louisiana still bestows exemptions on nonprofit entities with weak claims for public subsidy, exemption criteria are not defined, and the constitution does not possess a strong use requirement. Cities like New Orleans, which serve as centers of nonprofit activity, suffer acutely as a result. Nonexempt taxpayers pick up the tab for an expanding base of nonprofit-owned properties.

Widespread exemptions are a major structural problem in New Orleans' tax base. They narrow the local revenue base. And they are unfair.

It is time to take steps to mitigate the impact of the exemption on government revenue and the taxpayers who foot the bill for the exemption. Options for doing this include:

- Eliminating the exemption completely.
- Tightening eligibility requirements.
- Improving administration of the exemption.
- Establishing a voluntary payment in lieu of

taxes program.

- Creating a state reimbursement fund.
- Taxing nonprofits at a reduced rate.
- Imposing service charges.

There are some compelling arguments for eliminating the nonprofit exemption and making property taxes a cost of doing business. But it is a subject that requires more data and closer financial analysis.

If the exemption is not eliminated, it becomes critical to target the exemption more precisely to nonprofit activities that the government deems worthy of an indirect subsidy. As a threshold matter, each activity should either relieve the government of a burden or provide the public with services and amenities that the government considers important to quality of life. These activities should be carefully defined and limited to ensure that they serve the desired purpose. There should be a compelling and clearly articulated reason for each exemption.

While the constitution can and should provide broad guidance, the details of the nonprofit exemption should be spelled out through legislation. Local governments, which bear the brunt of property tax exemptions, should have the power to decide which exemptions to allow within their jurisdictions.

Redefining the nonprofit exemption should be accompanied by changes in the administration of exemptions. These changes, such as requiring periodic reapplications for the exemption and inspections to determine whether a property is being used for an exempt purpose, are necessary to ensure that the exemption is benefiting the intended properties.

Tightening the eligibility requirements and improving administration are critical, regardless of what other steps government officials and the voters take. However, these actions alone are insufficient to address the fiscal problems facing local government and the unfair burdens on taxpayers. Addressing local government's fiscal woes will ultimately require a significant contribution from properties that are off the tax roll.

One common method for seeking nonprofit contributions, PILOTs, is unlikely to yield fair or significant results. If the experience of other cities is a guide, only a

handful of institutions are likely to participate in such a program, and the amount generated is unlikely to have a significant fiscal impact. The city would be well-advised to turn its energies to other options.

A couple of New England states reimburse local governments for revenue lost due to nonprofit exemptions. While a state reimbursement program may make sense from a policy perspective, it holds limited promise as a solution to New Orleans' immediate problem. To start, it would require a significant financial commitment from the state in a time of budget deficits. In addition, an effective reimbursement program would require a constitutional amendment.

Another option, taxing nonprofit-owned property where practical at a reduced level, is appealing. It would result in nonprofits paying something toward the city services from which they benefit, while giving them a discount in exchange for the services they provide. Coupled with sound reassessments of nonprofit-owned properties, this approach would significantly expand the tax base and improve fairness. And, unlike service charges, it would do so without increasing the burden on those who are already paying. Unfortunately, taxing nonprofits at a reduced rate would face the extremely challenging hurdle of a constitutional amendment, making it an unlikely short-term solution.

The final approach examined in this report – service fees – offers the most practical approach to solving the revenue and fairness problems. A drainage fee or street maintenance charge, applied according to a rational formula, would require action only at the local level. If properly crafted, it could raise significant revenue to meet local needs. By requiring all property owners to contribute, a well-crafted service charge would distribute costs more fairly than is currently the case.

In light of all this, BGR makes recommendations in three areas:

- Legal changes at the state level to tighten eligibility for exemptions.
- More aggressive administration of exemptions.
- Revenue-raising measures.

## RECOMMENDATIONS

### Establishing a New Framework for Exemptions

BGR recommends revising the legal framework for granting exemptions, so that the constitution spells out the broad parameters for exemptions and the State Legislature specifically defines them. The constitution should:

- Require a clear and identifiable quid pro quo for exemptions. Nonprofits benefiting from exemptions should relieve the government of a burden or provide important public benefits.
- Limit the realm of possible exemptions to property of nonprofits formed exclusively for religious, educational, charitable, cultural or burial purposes, and engaged solely in those activities.
- Require the Legislature to establish the parameters of exemptions in a targeted manner that further defines, but in no case expands, the universe of possible exemptions set forth in the constitution.
- Prohibit the Legislature from defining exemptions that have the effect of exempting specific entities, rather than groups of entities.
- Eliminate exemptions for organizations devoted primarily to the interests of a private membership.
- Impose a strict use requirement limiting the exemption to property owned by an eligible nonprofit that is directly and, subject to the exception in the next sentence, exclusively used for an exempt purpose. When a small portion of a property otherwise dedicated to an exempt purpose is used for a related and supporting non-exempt purpose, the exemption should be pro-rated.
- Allow the governing authority of the local government to opt out of some or all exemptions.

### Improving Administration of Exemptions

The Orleans Parish assessor should:

- Place the burden of demonstrating eligibility on the applicant.
- Require nonprofit property owners to reapply for their exemption on a regular basis and terminate the exemption for those who do not comply with this requirement.
- Conduct regular inspections of exempt property to confirm compliance with applicable eligibility criteria.
- Re-assess exempt property as frequently as non-exempt property to allow analysis of the cost of exemptions.
- Internally classify nonprofit exemptions in a manner that corresponds to all eligible purposes set forth in the constitution and state statutes.

### Revenue-Raising Options

- Where appropriate and fair, local government entities should impose carefully crafted service charges or fees to fund services, such as drainage and street maintenance. Those charges should apply to all property owners in the city, including nonprofit property and government property, with exemptions only for property owned by the entity imposing the charge. In devising charges, the government entity should attempt to distribute them on a fair basis, taking into account factors such as size and use.
- The Legislature and voters should amend the constitution to impose a reduced tax on nonprofit property, to the extent feasible. This can be done by assessing the property at a lower percentage than that for land or residential property.

## APPENDIX: MODELS FROM OTHER STATES

Louisiana could limit eligibility for exemptions by focusing on five general areas:

- Narrowing the list of eligible purposes.
- Clearly defining eligible purposes.
- Allowing local option for exemptions.
- Imposing strong use requirements.
- Setting maximums on the amount of exempt land or buildings.

The following discussion offers examples of how other states have addressed these areas.

### Narrowing the List of Eligible Purposes

Other states limit qualifying purposes significantly by confining the pertinent constitutional language to the most basic categories of exemption. For instance:

- Utah exempts: “Property owned by a nonprofit entity used exclusively for religious, charitable or educational purposes ... and places of burial not held or used for private or corporate benefit ...”<sup>84</sup>
- New Mexico exempts: “All church property not used for commercial purposes, all property used for educational or charitable purposes, [and] all cemeteries not used or held for private or corporate profit ...”<sup>85</sup>
- Kentucky exempts: “Places of burial not held for private or corporate profit ... [and] property owned and occupied by ... institutions of religion, institutions of purely public charity, and institutions of education not used or employed for gain by any person or corporation ...”<sup>86</sup>

### Defining Eligible Purposes

A number of other states show how the pool of eligible purposes set forth in the constitution can be more clearly delineated by statute. Their statutes describe the types of activities or structures that qualify under a spe-

cific purpose. In some cases, they require that nonprofit properties meet certain public benefit targets to qualify for an exemption.

The Nebraska Constitution authorizes the state legislature to exempt property owned and used for agricultural and horticultural societies and for religious, educational, charitable or cemetery purposes. State law grants the exemptions and further defines some of them. For example, Nebraska law defines an educational institution as one that operates exclusively for the purpose of offering regular courses with systematic instruction or a museum or historical society operated exclusively for the benefit and education of the public.<sup>87</sup> Nebraska law defines a charitable organization as one that operates “exclusively for the purpose of the mental, social, or physical benefit of the public or an indefinite number of persons.”<sup>88</sup>

South Dakota’s constitution requires the state legislature to exempt property used exclusively for agricultural and horticultural societies and for school, religious, cemetery and charitable purposes.<sup>89</sup> South Dakota’s statutes set forth detailed criteria for exemption eligibility. Its statutes define in detail what constitutes a charitable purpose, restricting the definition to nonprofit organizations “devoted to relief of the poor, distressed or underprivileged that ... lessen a governmental burden ...”<sup>90</sup> The statutes also outline eligibility criteria for nonprofits devoted to religious, educational and health purposes.<sup>91</sup>

*Religious Exemption.* The degree of specificity for religious exemptions varies by state. South Dakota, for instance, exempts the following: a building or structure used exclusively for religious purposes, a parking lot used for the exclusive purpose of parking vehicles owned by members, an educational plant owned and operated by the religious society or a building or structure used to house any cleric of a religious society.<sup>92</sup>

New Hampshire exempts houses of public worship, parish houses, occupied church parsonages, convents, monasteries, and other property used and occupied for religious purposes.<sup>93</sup>

Texas limits religious exemptions to property owned by the religious organization that is used primarily as

a place of regular religious worship or is reasonably necessary for engaging in religious worship.<sup>94</sup> It also exempts property reasonably necessary for use as a residence for a clergy member.<sup>95</sup>

*Charitable Exemption.* Because they relieve government of the burden of providing certain public services, property tax exemptions for charitable purposes are widespread. In fact, all 50 states exempt property used for charitable purposes. But definitions vary widely.

Most states that do define “charitable” for purposes of property taxation employ broad, inclusive definitions. North Carolina defines a charitable purpose as one that has “humane and philanthropic objectives ... that benefits humanity or a significant rather than a limited segment of the community without expectation of pecuniary profit or reward.”<sup>96</sup>

Texas, on the other hand, provides more concrete guidance, specifying 23 activities for which it is willing to grant an exemption.<sup>97</sup> The list includes providing support to the elderly and handicapped without regard to ability to pay; promoting the athletic development of children; providing housing to specified classes of people; and operating cultural institutions such as zoos, libraries and museums.<sup>98</sup>

Some states set public benefit targets that properties must meet in order to qualify for the charitable exemption. Wisconsin uses its statutes to establish criteria on exemptions for nonprofit providers of low-income housing.<sup>99</sup> It requires that 75% of residents fall below certain income levels in order for the property to qualify for an exemption.

*Healthcare Exemption.* The health or hospital purpose is based historically on the performance of charitable acts. There are two broad approaches to the health-related exemption. Some states base the exemption solely on the organization’s nonprofit status. Others tie eligibility to actual charitable acts, requiring hospitals to provide some level of services to indigent patients.

Within the latter category, there’s a wide range of approaches. Georgia considers a hospital to be charitable if it uses revenue from paying customers to defray the cost of the nonpaying.<sup>100</sup> Texas spells out the level of

charity and government-sponsored care a nonprofit hospital must provide in order to qualify as a charitable organization.<sup>101</sup> It provides an exemption for health care facilities in counties designated as “health professionals shortage area(s).”

Indiana details the eligibility criteria for medical office buildings owned by nonprofit hospitals. The statutes specify that such an office building is not exempt unless it provides (or provides funding for) charity care or provides certain public research and education benefits. The statute makes clear that the participation in the Medicaid or Medicare program alone does not entitle office property to an exemption.<sup>102</sup>

### Local Option

Another option for narrowing the pool of qualifying purposes is to give local governments the authority to disallow certain types of exemptions. New York allows local governments to opt out of exemptions for organizations devoted to benevolent, literary, bar association, medical society, library, historical and scientific purposes, among others.<sup>103</sup> The local option does not apply to exemptions for churches, schools and charities.<sup>104</sup>

Virginia requires exemptions for certain nonprofit properties, including nonprofit cemeteries, houses of worship and residences of ministers, schools, hospitals, parks, playgrounds and museums.<sup>105</sup> It allows local governments to grant exemptions for property used for certain other purposes, including charitable, patriotic, historical, benevolent or cultural, subject to restrictions established by general law.<sup>106</sup>

### Imposing Strong Use Requirements

The Louisiana Constitution’s focus on ownership, rather than use, in granting nonprofit property exemptions has opened the door for exemptions for ancillary uses and even the non-use of nonprofit-owned property. This language has an obvious impact on the tax base. Most other states avoid these types of problems by requiring that the property be used in accordance with the exempt purpose.<sup>107</sup> For example, many states require that property be used exclusively for the exempt purpose.

- Alabama exempts “property devoted

exclusively to religious, educational or charitable purposes.”<sup>108</sup>

- North Carolina limits exemptions for nonprofit property “wholly and exclusively used” for qualifying exempt purposes.<sup>109</sup>
- Utah’s constitution exempts “property owned by a nonprofit entity used exclusively for religious, charitable or educational purposes.”<sup>110</sup>

Other states allow non-exempt uses on exempt property up to a certain level of incidental use. Colorado, for example, sets a maximum number of hours (208 per year) that the property can be used for an incidental purpose, and a maximum level of income (\$10,000 to \$25,000 per year) that the property can generate.<sup>111</sup>

Another approach is to give partial exemptions that account for the level of commercial activity that occurs on-site. Idaho<sup>112</sup> and Oregon<sup>113</sup> compute partial exemptions. Idaho allows up to 3% of the property’s value to be used for non-exempt purposes. If more than 3% of the property’s value is used for non-exempt purpose, Idaho requires proportional exemption.

### **Setting Spatial Limits on Eligibility**

A number of states establish criteria to limit the amount of land eligible for an exempt purpose. This is particularly true for religious exemptions. New Jersey, for example, limits the number of residences for clergymen to no more than two buildings, and has a limit of five acres for church property.<sup>114</sup> Iowa sets a statewide limit of 320 acres of exempt property for religious and charitable societies.<sup>115</sup> Similarly, Texas limits the lot size of a parsonage to one acre.<sup>116</sup>

Few states impose any limitations on eligible educational property. However, Indiana and Iowa impose acreage limits on certain property owned by educational institutions.<sup>117</sup>

## END NOTES

1 Bureau of Governmental Research, *Property Taxes in New Orleans: Who Pays? Who Doesn't? And Why?*, October 1996. Because assessors have not regularly updated the values of exempt property, and because of blatant errors in the exempt tax roll, the accuracy of these numbers is questionable. However, at a minimum, they illustrate the problem of excessive exemptions in New Orleans.

2 Bureau of Governmental Research, *Property Tax Exemption and Assessment Administration in New Orleans*, December 1999.

3 The calculation is limited to real property. It does not include personal property or public service property.

4 Since 1996, the number of properties claiming a homestead exemption in Orleans Parish has dropped from roughly 80,000 to 54,000. The assessed value of property shielded from the exemption has dropped \$64 million, from \$448 million to \$384 million. Louisiana Tax Commission, *Twenty-Seventh Biennial Report*, 1994-1995 (1995-1996 for the Parish of Orleans), and 2011 Real Property Tax Roll for the Parish of Orleans, prepared by the Orleans Parish Board of Assessors.

5 In calculating potential increases, BGR used a millage rate of 114.2, which is the citywide millage rate for the East Bank, exclusive of millages levied to support annual debt service requirements on general obligation indebtedness. The latter are not included since the millages are fixed at the level necessary to meet annual debt service requirements. These include the Board of Liquidation's and the Sheriff's millage, and part of the School Board's millage. The millage rate on the West Bank is 1.09 mills higher. BGR assumed a collection rate of 93%.

6 For purposes of this calculation, BGR included the assessed value of personal and public service property as recorded on the tax roll.

7 *Church of Lukumi v. Hialeah*, 508 US 520 (1993); *Employment Div. v. Smith*, 494 US 872 (1990).

8 *Agostini v. Felton*, 521 US 203 (1997). In *Agostini*, the Court revised the three-prong test in *Lemon v. Kurtzman*, 403 U.S. 602 (1971), by folding the third prong (that there be no excessive entanglement between the government and religion) into the effect test.

9 *Follett v. Town of McCormick*, 321 U.S. 573 (1944).

10 *Texas Monthly v. Bullock*, 489 U.S. 1 (1989). The Court found that the tax represented a small fraction of sales and applied neutrally to all vendors. It rejected claims that the administration of the tax led to an excessive entanglement between church and state. Rather, it held that generally applicable administrative and recordkeeping regulations may be imposed on religious organizations without running afoul of the Establishment Clause.

11 *Walz v. Tax Commission*, 397 U.S. 664 (1970).

12 *Texas Monthly v. Bullock*, op. cit.

13 New Hampshire defines property used for exempt purposes as houses of public worship, parish houses, occupied church parsonages, convents, monasteries, and other property used and occupied for religious purposes. N.H. Rev. Stat. Ann., Sec. 72:23(III). Texas limits religious exemptions to property owned by the religious organization that is used primarily as a place of regular religious worship or is reasonably necessary for engaging in religious worship. Tex. Tax Code, Sec. 11.20(1). It also exempts property reasonably necessary for use as a residence for a clergy member not to exceed one acre of land per residence. Tex. Tax Code, Sec. 11.20(3).

14 New Jersey, for example, limits the number of residences for clergymen to no more than two buildings, and has a limit of five acres for church property. N.J. Rev. Stat., Sec. 54:4-3.6. Iowa sets a statewide limit of 320 acres of exempt property for religious and charitable societies. Iowa Code, Sec. 427.1. Texas limits the lot size of a parsonage to one acre. Tex. Tax Code, Sec. 11.20.

15 La. Const., Art. VII, Sec. 21(B)(1) through (B)(3).

16 La. Const., Art. VII, Sec. 21(B)(3).

17 La. Const., Art. VII, Sec. 21(B)(1)(b).

18 La. Const., Art. VII, Sec. 21(C)(12).

19 La. Const., Art. VIII, Sec. 14, and Louisiana Legislature, Acts 1884, No. 43, Sec. 5.

20 BGR, *Property Tax Exemption and Assessment Administration*, op cit.

21 Tex. Tax Code, Sec. 11.20(1) and (3).

22 N.J. Rev. Stat., Sec. 54:4-3.6.

23 Neb. Rev. Stat., Sec. 77-202(1)(d).

24 S.D. Codified Laws, Sec. 10-4-9.1.

25 Tex. Tax Code, Sec. 11(d) and Wis. Stat. Sec. 70.11.

26 Wis. Stat., Sec. 70.11(4a).

27 La. Const. Art. VII, Sec. 21(B)(3).

28 *Hotel Dieu v. Williams*, 410 So.2d 1111 (La. 1982); *Willis Knighton Medical Center v. Edmiston*, 979 So. 2d 656 (La. App. 2 Cir. 2008); *Board of Administrators of the Tulane Education Fund v. Louisiana Tax Commission*, 701 So. 2d 702 (La. App. 4th Cir. 1997), writ denied, 709 So. 2d 705 (La. 1998); and *Hotel Dieu v. Williams*, 403 So.2d 1255 (La. App. 4th Cir. 1981).

- 29 Louisiana Constitution of 1921, Art. 10, Sec. 4(2). The section read: “Places of religious worship, rectories, and parsonages belonging to religious denominations and used as places of residence for ministers; places of burial; places devoted to charitable undertakings, including that of such organizations as lodges and clubs organized for charitable and fraternal purposes and practicing the same; schools and colleges; athletic or physical culture clubs associations or organizations having and maintaining active membership of not less than one thousand members, being non-profit sharing organizations, holding, in equipped gymnasiums, physical development classes open to all members daily, except Sundays and holidays, under supervision of regular physical directors, with juvenile and junior classes, promoting, in all ages above eight years, physical and health development; but the exemptions shall extend only to property, and grounds thereunto appurtenant, used for the above mentioned purposes, and not leased for profit or income.”
- 30 *Ruston Hospital, Inc. v. Riser*, 191 So. 2d 665 (La. App. 2nd Cir. 1966); *Beta Xi Chapter of Beta Theta Pi v. City of New Orleans*, 137 So. 204, 18 La. App. 130 (La. App. 1931).
- 31 Colo. Rev. Stat., Sec. 39-3-106.5.
- 32 Idaho Code Ann. Sec. 63-602C. The statute allows up to 3% of the property’s value to be used for non-exempt purposes. If more than 3% of the property’s value it used for non-exempt purpose, Idaho requires proportional exemption.
- 33 Or. Rev. Stat., Sec. 307.130(2)(a).
- 34 State law requires that assessors reassess all taxable property at least every four years, but it does not require the same for exempt property. La. Const., Art. VII, Sec.18, and La. Rev. Stat., Sec. 47:1957.
- 35 According to the Internal Revenue Service, more than 900 nonprofit organizations based in New Orleans are at risk of losing their nonprofit status for failure to file proper documentation. See [www.irs.gov/pub/irs-tege/la.pdf](http://www.irs.gov/pub/irs-tege/la.pdf).
- 36 La. Const. Art. VII, Sec. 18(B).
- 37 See Commonwealth of Massachusetts, 186<sup>th</sup> Legislative Session, House Bill 619; and Rhode Island, January 2009 Legislative Session, Senate Bill 946.
- 38 Conn. Gen. Stat., Sec. 12-20a(a) and (b).
- 39 Conn. Gen. Stat., Sec. 12-19a.
- 40 Office of Policy and Management, State of Connecticut, “Searchable Grant Listing,” [www.dir.ct.gov/opm/towngrants/default.asp](http://www.dir.ct.gov/opm/towngrants/default.asp), accessed March 3, 2011.
- 41 Ibid.
- 42 R.I. Gen. Laws, Sec. 45-13-5.1.
- 43 Rhode Island Senate Fiscal Office, “FY 2011 State Aid to Cities and Towns,” September 29, 2010, p.4.
- 44 Bureau of Governmental Research, *Forgotten Promises: The Lost Connection Between the Homestead Exemption and the Revenue Sharing Fund*, June 2010. When the constitution was adopted in 1974, the minimum appropriation it required, \$90 million, was adequate to offset the revenue losses incurred by local government as a result of the homestead exemption. But over time, the parity between the appropriation and the lost revenue has eroded significantly. In 2009, the \$90 million appropriation for the Revenue Sharing Fund offset only a fraction of the \$716 million in statewide tax losses on homestead-exempt property.
- 45 Kenyon, Daphne and Adam Langley, *Payments in Lieu of Taxes: Balancing Municipal and Nonprofit Interests*, prepared for The Lincoln Institute of Land Policy, 2010, p. 2.
- 46 Ibid., p. 7.
- 47 City of Boston, Assessing Department, “Fiscal Year 2010 PILOT Contributions,” [www.cityofboston.gov/assessing/PILOT\\_Contributions.asp](http://www.cityofboston.gov/assessing/PILOT_Contributions.asp).
- 48 City of Boston, *Mayor’s PILOT Task Force: Final Report and Recommendations*, December 2010, p. 7.
- 49 Ibid., p. 11.
- 50 Ibid., p. 123.
- 51 Ibid., pp. 65-66.
- 52 Ryan, Andrew, “City to ask more from nonprofits,” *The Boston Globe*, December 22, 2010.
- 53 City of Boston, *Mayor’s PILOT Task Force*, op cit.
- 54 Commission to Study Tax-Exempt Institutions, *A Call to Build the Capital City Partnership for Economic Growth*, prepared for the Providence City Council, November 2010.
- 55 Walker, Andrea, and Julie Scharper, “Committee backs \$15 million in new taxes,” *The Baltimore Sun*, June 11, 2010.
- 56 City of Pittsburgh, 2011 Operating Budget, Summary of Operations, 2010-2015.
- 57 Kotsopoulos, Nick, “Clark will pay city \$6.7 million; University giving \$262,000 annually for library, Main South,” *Worcester Telegram & Gazette*, September 21, 2010.
- 58 City of Cambridge, *Annual Budget, 2010-2011*, p. III-9.

- 59 City of New Haven, Office of Management and Budget.
- 60 National Association of Flood and Stormwater Management Agencies, *Guidance for Municipal Stormwater Funding*, January 2006, pp. II-12 and III-1 through III-17.
- 61 Junge, Jason and David Levinson, Economic and Equity Effects of Transportation Utility Fees, working paper, July 20, 2009, p. 4, available at <http://nexus.umn.edu/Papers/TransportationUtilityFees.pdf>; and Carlson, Deven et al., Transportation Utility Fees: Possibilities for the City of Milwaukee, prepared for Division of Budget and Management, Department of Administration, City of Milwaukee, Spring 2007, p. 75.
- 62 State courts have struck down past efforts to impose TUFs in cities in Idaho, Florida and Washington as unconstitutionally imposed taxes. Colorado’s Supreme Court, on the other hand, upheld a Fort Collins transportation fee, finding that the fee was reasonably designed to meet the overall cost of the city’s street maintenance program. Carr, Jennifer, “Kansas Church Challenges Local Transportation Fee,” *State Tax Today*, February 14, 2011.
- 63 The trip generation estimates are derived from the Institute of Transportation Engineers’ *Trip Generation Manual*. Ibid.
- 64 La. Const., Art. VII, Sec. 21(B).
- 65 Home Rule Charter of the City of New Orleans, Section 3-101(2).
- 66 Ibid.
- 67 Ibid.
- 68 Ibid.
- 69 La. Rev. Stat., Sec. 38:90.17(A)(3).
- 70 La. Const. Art. VI, Sec. 4 states that “Every home rule charter or plan of government existing or adopted when this constitution is adopted shall remain in effect and may be amended, modified, or repealed as provided therein. Except as inconsistent with this constitution, each local governmental subdivision which has adopted such a home rule charter or plan of government shall retain the powers, functions, and duties in effect when this constitution is adopted ...”
- 71 New Orleans City Council, Ordinance 7110 M.C.S., passed April 5, 1979, amending Ordinance 7009 M.C.S. passed December 28, 1978.
- 72 New Orleans City Council, Ordinance 7011 M.C.S., passed December 28, 1978.
- 73 Bureau of Governmental Research, *Staff Report: Real Property Service Charge*, 1986.
- 74 Bureau of Governmental Research, *BGR’s Review and Analysis of the Real Property Service Charge Proposed by the City of New Orleans*, November 9, 1998.
- 75 Louisiana Tax Commission, *Twenty-Eighth Biennial Report, 1996-1997*, p. 144. The report covers the years 1997 and 1998 for Orleans Parish.
- 76 Under the 1998 proposal, parks and vacant land would have faced the lowest rates, while hospitals, parking lots, and other commercial and industrial uses faced some of the highest. See Bureau of Governmental Research, *The Sewerage and Water Board’s Fee Proposal*, February 1999, p. 4.
- 77 Sewerage & Water Board of New Orleans, *2011 Capital Budget*, pp. 1 and 15.
- 78 Bureau of Governmental Research, *The Price of Civilization: Addressing Infrastructure Needs in New Orleans*, August 2010, p. 3.
- 79 Ibid.
- 80 City of New Orleans, *2011 Proposed Operating Budget*, p. 232.
- 81 Defense Environment Alert, “Congress Passes Bill Requiring Federal Facilities to Pay Stormwater Fees,” January 4, 2011.
- 82 33 U.S.C. 1323 (c).
- 83 For an example of a transportation utility fee rate structure, see Loveland, Colorado, [www.ci.loveland.co.us/PublicWorks/Streets/StreetMaintRates.htm](http://www.ci.loveland.co.us/PublicWorks/Streets/StreetMaintRates.htm), and Hillsboro, Oregon, [www.ci.hillsboro.or.us/TUF/documents/Approved%20Fee%20Structure%20Summary.pdf](http://www.ci.hillsboro.or.us/TUF/documents/Approved%20Fee%20Structure%20Summary.pdf).
- 84 Utah Const. Art. XIII, Sec. 3(1)(f), (g).
- 85 N.M. Const. Art. VIII, Sec. 3.
- 86 Ky. Const. Sec. 170.
- 87 Neb. Rev. Stat., Sec. 77-202(1)(d).
- 88 Neb. Rev. Stat., Sec. 77-202(1)(d).
- 89 See Neb. Const. Art. VIII, Sec. 2(2) and S.D. Const. Art. XI, Sec. 6.
- 90 S.D. Codified Laws, Sec. 10-4-9.1.
- 91 S.D. Codified Laws, Sec. 10-4.
- 92 S.D. Codified Laws, Sec. 10-4-9.
- 93 N.H. Rev. Stat. Ann., Sec. 72:23(III).

- 94 Tex. Tax Code, Sec. 11.20(1).
- 95 Tex. Tax Code, Sec. 11.20(3).
- 96 N.C. Gen. Stat., Sec. 105278.3(d)(2).
- 97 Tex. Tax Code, Sec. 11(d)
- 98 Tex. Tax Code, Sec. 11(d)(3) and (5).
- 99 Wis. Stat., Sec. 70.11(4a).
- 100 Ga. Code Ann., Sec. 48-5-40 and 41.
- 101 Tex. Tax Code, Sec. 11.1801.
- 102 Ind. Code, Sec. 6-1.1-10-16.
- 103 N.Y. Real Prop. Tax., Sec. 420-b.
- 104 N.Y. Const. Art. XVI, Sec. 1, and N.Y. Real Prop. Tax, Sec. 420-a.
- 105 Va. Const. Art. X, Sec. 6(a) and Va. Stats., Sec. 58.1-3606
- 106 Va. Const. Art. X, Sec. 6(a)(6)
- 107 See Brody, Evelyn, “All Charities are Property Tax Exempt, but Some Charities are More Exempt than Others,” *New England Law Review*, Vol. 44, Spring (2010).
- 108 Ala. Const., Amendment No. 373(k).
- 109 N.C. Gen. Stat., Sec 105-278.3 through 105-278.7.
- 110 Utah Const. Art. XIII, Sec. 3(1)(f).
- 111 Colo. Rev. Stat., Sec. 39-3-106.5.
- 112 Idaho Code Ann., Sec. 63-602C.
- 113 Or. Rev. Stat., Sec. 307.130(2)(a).
- 114 N.J. Rev. Stat., Sec. 54:4-3.6.
- 115 Iowa Code, Sec. 427.1.
- 116 Tex. Tax Code, Sec. 11.20.
- 117 Ind. Code, Sec. 6-1.1-10-16 and Iowa Code, Sec. 427.1.9.





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