



ON THE BALLOT

A Report from the Bureau
of Governmental Research

Issues on the Ballot for November 2, 2010

ON NOVEMBER 2, Louisiana voters will consider 10 constitutional amendments. The amendments concern a wide array of issues, including salary increases for elected officials, property tax exemptions, public retirement benefits and expropriation of blighted property.

In this report, BGR provides analysis of all 10 of these propositions and takes positions on nine of them.

AMENDMENT NO. 1: SALARY INCREASES FOR ELECTED OFFICIALS

What It Would Do

The proposed amendment would prevent the State Legislature from voting itself, members of the Louisiana Public Service Commission or statewide elected officials in the executive branch an immediate pay raise.¹ Salary increases for these officials would not go into effect until the commencement of a new term for those offices. Examples of statewide elected offices in the executive branch include the governor, lieutenant governor, secretary of state and attorney general.

Analysis

The amendment comes two years after a contentious debate about salary increases for elected officials. In 2008, the Legislature passed two measures to increase the pay of legislators and members of the Public Service Commission. One bill would have more than doubled the annual pay for state legislators, from \$16,800 to \$37,500, while the other would have boosted the salary of Public Service Commissioners from \$45,000 to \$75,000 per year.² Both bills would have taken effect immediately. Following public outcry, the Gov-

ernor vetoed the two measures.

Supporters of the amendment believe that it would make pay raises less controversial in the eyes of the voting public by mitigating the conflict of interest inherent in members of the Legislature voting themselves a pay raise. Because legislators would not benefit from a raise unless they were re-elected, they would be able to vote for raises, when warranted, without the appearance of a conflict of interest.

The amendment would also make it more difficult for lawmakers to use their public office to enrich political allies. For instance, if a popular governor campaigned for a state senator, the senator, once elected, could not vote the governor an immediate salary increase.

On the other hand, the amendment would provide political cover for those confident of re-election to benefit from a pay increase. If the amendment passes, citizens must remain vigilant to ensure that future proposals to increase pay are appropriate and based on legitimate need.

The constitutional amendment is not absolutely necessary. Legislators could address the underlying problems via statute by tying the effective date of future raises for a position to the commencement of the next term of office for that position. We note, however, that the U.S. Constitution contains a similar (though weaker) delay provision for pay raises for members of Congress.³

BGR Position

FOR. Delaying the effective date of pay raises until successive terms begin mitigates the conflict of interest associated with legislators voting themselves raises.

1 The Public Service Commission is a regulatory agency housed in the executive branch that oversees public utilities, including gas and electricity.

2 SB No. 672, Louisiana Legislature Regular Session, 2008; HB No. 939, Louisiana Legislature Regular Session, 2008.

3 The 27th Amendment provides that "No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened."

AMENDMENT NO. 2: ALLOCATION OF STATE SEVERANCE TAXES

What It Would Do

Currently, the Louisiana Constitution dedicates 20% of severance tax revenue on most natural resources, up to a maximum of \$850,000 (adjusted annually for inflation), to the parish in which the production or severance occurs.⁴ For the 2009 fiscal year, the maximum was \$874,310.⁵

The proposed amendment would raise the cap by \$2 million over a two-year period to \$1.85 million the first year and \$2.85 million the second year following the implementation date. Thereafter, the maximum remittance would be adjusted annually for inflation based on the Consumer Price Index (CPI).

The earliest date on which the amendment could go into effect is April 1, 2012. Its provisions would be triggered only when and if the revenue forecast for severance taxes in the coming year exceeds the actual 2009 fiscal year collections. Thereafter, it would remain in effect, regardless of future fluctuations. In the 2009 fiscal year, Louisiana collected \$897 million in severance taxes.⁶

The parishes would be required to spend at least 50% of any increase in severance tax revenue they received due to the amendment on transportation-related projects. For example, if a parish received \$600,000 in 2012 and \$1 million in 2013, the parish would have to spend \$200,000 on transportation projects.

The amendment would also create the Atchafalaya Basin Conservation Fund. It would dedicate 50% of the severance tax revenues and royalties generated from state lands in the Atchafalaya Basin to the fund. The dedication would be calculated based on the amount remaining after the parish allocations, constitutionally required deposits to the State's bond

fund and allocations to the Louisiana Coastal Protection and Restoration Fund.⁷ The dedication is capped at \$10 million per year and would be used exclusively for conservation, improvement and management of the Atchafalaya Basin.

Analysis

A nearly identical amendment appeared before voters in November 2008. Voters rejected the proposed change. At the time, BGR supported the amendment on the grounds that the parishes that bear the brunt of natural resource production deserve greater tax remittances to offset this damage. In 2009, state legislators voted to put the issue back on the ballot after adding the requirements that the earliest implementation date would be April 2012 and that the law would not go into effect until the 2009 revenue threshold is exceeded.

Severance tax revenues have been allocated to producing parishes since at least the 1920s.⁸ Voters increased the maximum annual parish allocation to \$500,000 in 1990, to \$750,000 in 1998 and to \$850,000 in 2006. The 2006 amendment also linked future allocations to the CPI starting in 2008. The intent was to allow for automatic increases to the statutory maximum without requiring voters to amend the constitution.

In the 2009 fiscal year, all 64 parishes received some severance tax revenue; 29 parishes received the maximum remittance.⁹ The allocation for Orleans and St. Tammany parishes, \$18,172 and \$16,352 respectively, were among the lowest. Plaquemines, Jefferson and St. Bernard parishes all received the maximum allocation.

Assuming the increase were implemented in 2012 with each parish generating approximately the same severance tax as in 2009, 25 parishes would receive the maximum allocation of \$1.85 million, while another four would be in line for a greater remittance than they receive currently. The rest of the state's parishes do not have sufficient production to exceed the current cap.

The creation of the Atchafalaya Basin Conservation Fund

4 La. Const. Art. VII, Sec. 4. Louisiana levies a severance tax on the production of natural resources taken from land or water bottoms within the territorial boundaries of the state. The proposed amendment affects revenue sharing of severance taxes from all natural resources other than sulphur, lignite and timber.

5 Legislative Fiscal Office, Fiscal Note on HB 765.

6 BGR calculations based on Louisiana Department of Revenue, *Severance Tax Collections and Distributions*, Fiscal Year 2008-2009.

7 La. Const. Art. VII, Sec. 10.2.

8 Art. VII, Sec. 2 of Louisiana's 1921 constitution contained such a provision.

9 BGR calculations based on Louisiana Department of Revenue, *Severance Tax Collections and Distributions*, Fiscal Year 2008-2009, *op. cit.*

would help fund floodway and conservation projects in the Atchafalaya Basin, some of which are already under way. These projects have historically been funded through appropriations. The amendment would provide an additional direct source of funding up to \$10 million per year for these projects.

However, due to falling gas prices and other factors, the State's Revenue Estimating Conference estimates that severance taxes for the fiscal years of 2012, 2013 and 2014 will fall below the fiscal year 2009 threshold. This means that the amendment might not go into effect for some time.¹⁰

Proponents of the amendment argue that the parishes that produce the resources generating the severance tax bear a significant burden. The additional revenue would help local governments defray the related costs.

Proponents also argue the parishes that produce the most severance taxes should receive more of the revenue in return. Of the more than \$890 million in tax revenues the State collected in fiscal year 2009 for oil and gas, it remitted just 4% to the parishes. Because of the current cap, the largest severance tax producers receive significantly smaller remittances as a percentage of collections than low-producing parishes. In 2009, Plaquemines Parish generated \$175 million in severance tax revenue. The parish received just \$874,310, or less than 1%, in return.

On the other hand, the State has a multitude of other funding needs, such as health care and education. The amendment would further deplete an already thinly stretched general fund. The State faced a budget deficit this past year and with the local and national economies still struggling, there is no guarantee that the economy will have recovered by 2012. Assuming that the amendment went into effect in 2012 and that the amount of severance taxes generated by the various parishes was approximately the same as in 2009, the total dedication would cost the State's general fund at least \$35 million in the first year and \$60 million in all subsequent years.¹¹ The State's total general fund revenue for the 2010 fiscal year is estimated at \$9 billion.¹²

10 Revenue Estimating Conference, Official Revenue Estimate for FY10-FY14, April 2010.

11 Legislative Fiscal Office, Fiscal Note on HB 765.

12 Louisiana State Budget FY 2009-2010. See http://doa.louisiana.gov/opb/pub/FY10/FY09-10_StateBudget.pdf.

BGR Position

FOR. The parishes that are the largest producers of natural resources subject to severance taxes deserve additional tax allocations to sustain the infrastructure used and mitigate the environmental damage done during the production process.

AMENDMENT NO. 3: PROPERTY TAX EXEMPTION FOR DISABLED VETERANS

What It Would Do

Currently, owner-occupied properties benefit from a homestead exemption that shields the first \$7,500 of assessed value (\$75,000 of market value) from property taxes. The proposed amendment would give local governments the option to exempt an additional \$7,500 of assessed value for properties owned and occupied by a veteran with a U.S. Department of Veterans Affairs (VA) service-related disability rating of 100%, or his surviving spouse. Together, the exemptions for qualifying homeowners would total \$15,000 of assessed value (\$150,000 of market value).

For the exemption to take effect in a particular parish, it must be approved by a majority of voters in an election called by the parish governing authority. If voters approve the change, local taxing authorities would have to absorb any revenue losses resulting from the expanded exemption. They would be prohibited from increasing their millage rates to offset decreases in assessed value resulting from the exemption.

Analysis

Disabled veterans, like other homeowners, benefit from the homestead exemption. In addition, veterans with a service-connected VA disability rating of 50%, their surviving spouses and spouses of servicemen killed in action are eligible for an assessment freeze if their income falls below a certain threshold.¹³ The proposed amendment would expand on these existing benefits by exempting an additional \$7,500 of assessed value for veterans with disability ratings of 100% and their surviving spouses.

13 For 2010, the income threshold is approximately \$64,400. La. Admin. Code, Title 61, Sec. 101(G).

Proponents of the bill argue that the amendment is a way of recognizing the sacrifices made by members of the armed forces who have been totally disabled in military service. However, the proposed amendment would not benefit all veterans with disability ratings of 100%. Rather, it would apply to a limited subset: those who own their own homes. Those who rent would not benefit. In addition, the proposed amendment would not apply to spouses of service members killed in action. It applies only to spouses of service members who carry a 100% disability rating at the time of their death.

It is impossible to estimate the impact of the proposed amendment on local governments. Such an estimate would depend on the number of eligible homeowners, their residence, local millage rates and future property values. The number of eligible homeowners is likely to be small. Using U.S. Census Bureau and U.S. Department of Veterans Affairs statistics, BGR estimates that roughly 2,500 disabled veterans could potentially qualify for the exemption statewide.¹⁴ It is not clear how many spouses of deceased veterans may be eligible.

Expansions of the homestead exemption affect local government finances. The proposed amendment recognizes this. Rather than mandating a tax break, the amendment would allow local jurisdictions to extend one if their voters wish.

However, the amendment places an unnecessary restriction on the flexibility of local governments to deal with the fiscal ramifications of the expanded exemption. It does this by eliminating their ability to roll forward the millage rates to offset the loss to the tax base. BGR has consistently criticized State-imposed limitations that unnecessarily restrict the revenue-generating capacity of local governments.¹⁵

14 According to the Census Bureau's 2008 American Community Survey, approximately 305,000 veterans live in Louisiana. The Census Bureau also estimates that the homeownership rate in Louisiana is 67.9%. Finally, according to the Department of Veterans Affairs' *Annual Benefits Report, FY 2009*, 1.21% of veterans nationwide have a disability rating of 100%. Applying the percentage of veterans who have a 100% disability rating nationally to a Louisiana veteran population of 305,000 suggests that approximately 3,700 such veterans live in Louisiana. If the homeownership rate among veterans is similar to the statewide rate of 67.9%, roughly 2,500 could be eligible for the proposed exemption.

15 Bureau of Governmental Research, *Unfair Assessments, Excessive Exemptions: How New Orleans' Tax System Hurts Government and Taxpayers*, May 2005, p. 8.

BGR Position

AGAINST. BGR believes that members of the military who are severely disabled while serving their country deserve government assistance. While it supports assistance, it opposes the proposed amendment for a number of reasons. First, it believes that assistance should come from the federal government. Second, the proposed amendment would benefit only a subset of such veterans: those who own their homes. The amendment would provide no benefit to similarly disabled veterans that rent, or to spouses of service members killed in action. If State legislators wish to provide tax benefits to disabled service members and their surviving spouses, they should do so in a manner that provides equivalent benefits to similarly situated persons. Third, the amendment places an unnecessary restriction on the ability of local governments to deal with the fiscal ramifications of granting the expanded exemption.

AMENDMENT NO. 4: LIMITING TAX INCREASES FOR NON-ELECTED TAXING AUTHORITIES

What It Would Do

The proposed amendment would cap millage roll-forwards by some taxing authorities with one or more non-elected members (Non-Elected Taxing Authorities). Roll-forwards by such authorities could not increase tax collections by more than 2.5% of collections in the immediately preceding calendar year. Fire districts, port districts and certain levee districts would be exempt from this limitation.

Analysis

In Louisiana, property is assessed at a percentage of the market value of taxable property. The percentage varies according to the property's classification of use.¹⁶ For instance, all land and residential property is assessed at 10% of fair market value. The tax bill is computed by multiplying the property's assessed value, adjusted for the homestead exemption when applicable, by the tax rate expressed in mills. A mill equals one dollar for every \$1,000 of assessed value.

16 La. Const. Art. VII, Sec. 18(B).

The Louisiana Constitution requires that all taxable property be reassessed at least once every four years.¹⁷ Millage rates must then be adjusted upward or downward to make the impact of the reassessment revenue-neutral.¹⁸ However, following a downward adjustment, a taxing authority can raise its millage rate to a level not exceeding the maximum authorized millage rate for the preceding year.¹⁹ This is called a roll-forward. For example, if an increase in assessed values forces a taxing authority to adjust its millage downward from 5 mills to 4 mills, the taxing authority can roll the rate forward to 5 mills by a two-thirds vote of its members.²⁰

The proposed amendment would cap roll-forwards by Non-Elected Taxing Authorities. Supporters of the amendment argue that roll-forwards are tax increases and all tax increases should have to be approved by voters. Short of this, it is important to have limitations and safeguards on roll-forwards, especially in the case of Non-Elected Taxing Authorities. While voters can exert pressure on elected officials considering roll-forwards and express displeasure by voting them out, they have little ability to influence, and no recourse against, non-elected members. Supporters also argue that the multitude of special districts prevents adequate citizen oversight of such bodies' revenue-raising activities.

Opponents of the amendment point out that there is no rationale for the exceptions granted in the amendment to fire districts, port districts and some levee districts. The amendment would result in disparate treatment of similarly situated entities, leaving some Non-Elected Taxing Authorities with the same roll-forward power as fully-elected ones.

The cap at issue suffers from another flaw: It bears no relationship to market movements or inflationary trends. Such caps can lead to a loss of purchasing power for the affected government entity.

17 La. Const. Art. VII, Sec. 18(F). Assessors may reassess property at any time as long as they conform to uniform standards set by law. Louisiana Attorney General Opinion No. 07-0128, April 2, 2008.

18 La. Const. Art. VII, Sec. 23. Entities that levy millages for the payment of general obligation bonds, such as the Board of Liquidation, City Debt, in New Orleans, are exempted from this mandatory adjustment. La. Const. Art. VII, Sec. 23(D).

19 La. Const. Art. VII, Sec. 23(C).

20 Taxing authorities must institute a roll-forward before the next mandatory reassessment year; otherwise the adjusted millage will become the new maximum millage rate. Millages required to pay general obligation bonds are not subject to this roll-forward limitation.

BGR Position

NO POSITION. BGR has consistently criticized State-imposed limitations that unnecessarily restrict the revenue-generating capacity of local governments. In the case of Non-Elected Taxing Authorities, a strong argument can be made for some limitations. That's because the moderating influence of voters on elected officials dealing with tax decisions does not operate in the case of Non-Elected Taxing Authorities. However, the proposed cap is arbitrary in several respects. First, the 2.5% limit bears no relationship to market movements or inflation. Second, the amendment arbitrarily excludes some Non-Elected Taxing Authorities.

AMENDMENT NO. 5: EXTENDING DISASTER-RELATED EXEMPTIONS AND FREEZES

What It Would Do

In 2006, voters amended the Louisiana Constitution to allow owners of homes damaged in a disaster to retain the homestead exemption for as many as five years without occupying their homes. The amendment also allowed homeowners who benefited from a special assessment level – a freeze on assessed value for certain elderly and disabled homeowners – to retain the pre-disaster assessment on the repaired or rebuilt homestead.²¹ For homeowners whose property was damaged by the disasters of 2005, the five-year period expires this year.

The proposed amendment would extend for an additional two years the period in which the property owner can retain his homestead exemption and special assessment without reoccupying his home. As with the 2006 amendment, to qualify for the extension the property owner must file an annual affidavit stating his intent to reoccupy the property. In addition, he must provide his assessor with proof of a pending damage claim with an insurance company, or with a governmental agency or program offering rebuilding funds, such as the Road Home program.

The amendment would give the parish assessor the authority to grant as many as three additional one-year extensions

21 The freeze is available to elderly and some disabled homeowners with incomes under \$64,410 for 2010. See La. Const., Art VII, Sec. 18 (G) and La. Admin. Code, Title 61, Sec. 101(G).

in accordance with law. A companion statute tied to the passage of the proposed amendment states that these extensions would be reserved for property owners contending with uncontrollable contractor delays.²² In order to qualify for a one-year extension, the property owner would have to provide his assessor with documentary evidence showing a good-faith effort to secure a contractor to complete the project.²³

Analysis

The proposed amendment is intended to help property owners affected by hurricanes Katrina or Rita who, through no fault of their own, cannot occupy their homes. With the original five-year extension set to expire at the end of this year, the proposed amendment would offer continued relief to property owners who are still awaiting resolution of Road Home applications or insurance claims.

Without the proposed amendment, an owner unable to reoccupy his home by the end of 2010 would no longer be eligible for the homestead exemption. He would have to pay taxes on his property's full assessed value. In addition, a homeowner who benefited from a special assessment level prior to the disaster would lose his frozen, pre-storm assessment. Once he rebuilt and reoccupied his home, he could again apply for a freeze. However, the assessment would be based on the current market value, not the pre-disaster assessment.

BGR opposed the 2006 amendment.²⁴ The proposed amendment partially addresses some of the concerns that underpinned that position. Others remain.

One significant improvement is the requirement that a property owner demonstrate that he is still awaiting resolution of a Road Home or insurance claim. Unresolved claims have posed a serious obstacle to rebuilding for some owners of storm-damaged property. The amendment would distinguish these homeowners from those who benefitted from the 2006 blanket extension despite having little intention of returning.

22 Act 865, Louisiana Legislature Regular Session, 2010.

23 *Ibid.*

24 Bureau of Governmental Research, *On the Ballot: Issues on the Ballot for September 30, 2006.*

Assessors in heavily damaged parts of the metro area believe that this requirement would narrow the pool of eligible property owners considerably.

The eligibility requirements, though tightened, are not fool-proof. The affidavit requirement is easily abused and impossible to verify. In interviews with BGR, some assessors from the metro area report that, over the last five years, they have received intent-to-return affidavits from – and, thus, have granted homestead exemptions to – many property owners whom they doubt truly intend to repair and reoccupy their properties. In addition, the existence of a pending Road Home or insurance claim is no guarantee that the property owner will reoccupy the property. Indeed, the hurricane-impacted areas of southeast Louisiana include a startling number of properties that have received Road Home or insurance funds but still sit vacant.²⁵

The proposed amendment suffers from a number of downsides. Five years after Hurricane Katrina, blight remains a serious problem in many local neighborhoods. Continuing to shield owners of blighted properties from property taxes removes an incentive for reoccupying the home or returning the property to commerce. Neighbors who have repaired and returned to their homes would suffer the consequences.

In addition, the amendment would strip tax-recipient bodies of critical revenue. The homestead exemption on a single property in Orleans Parish could cost tax-recipient bodies as much as \$980 in 2010.²⁶ BGR has consistently opposed Louisiana's blanket homestead exemption.

The amendment would not benefit the homeowner who by years six and seven has resolved his Road Home or insurance issues, but is stalled by contractor delays. That's because the assessors' ability to give case-by-case extensions for contractor delays does not kick in until year eight.

25 Recipients of the Road Home's Option 1 grants are required to use their grant money to rebuild and reoccupy their home within three years of receipt of the funds. An April 2010 analysis by *The Times-Picayune* found that, in Orleans Parish, 23% of the 2,308 properties required to be reoccupied by the end of the month were still vacant. Hammer, David, "Many owners in devastated areas are now safe at home," *The Times-Picayune*, April 10, 2010.

26 BGR calculation, using the millage rate for citywide on the east bank of Orleans.

By contrast, those stalled through year seven by a pending Road Home or insurance claim would retain their homestead exemption and could expect to retain it during contractor delays later on.

BGR contacted several assessors in southeast Louisiana to gauge the number of property owners likely to be eligible for the extension. They could not provide precise estimates, but all said that the number is likely to be relatively small. The assessor for the Third Municipal District of Orleans Parish, by far the largest and most hurricane-damaged of the city's seven districts, reported that 2,600 property owners received the homestead exemption on damaged, unoccupied homes in 2010. He estimates that just 20% of these properties are awaiting resolution of a Road Home or insurance claim. Therefore, the remaining 80% would not continue to qualify for the benefit.

BGR Position

AGAINST. While assisting homeowners working to rebuild their homes is a worthy goal, the proposed amendment is not the solution. The exemption and assessment freeze have already been in effect for five years, and the extension would apply for too long a period of time. Shielding property from taxes removes an incentive for returning property to commerce.

AMENDMENT NO. 6: PUBLIC RETIREMENT SYSTEMS

What It Would Do

Currently, the Legislature must approve by a simple majority changes in the future benefits for employees in state and statewide public retirement systems. The proposed constitutional amendment would extend the requirement for legislative approval to all retirement systems subject to legislative authority. It would also require two-thirds of the members of each house of the Legislature to approve changes to benefits that have actuarial costs. A benefit generally has an actuarial cost if it increases the expense associated with fully funding a retirement system.

Analysis

In Louisiana, there are four “state” retirement systems and nine “statewide” retirement systems. The state systems cover teachers and other employees of the public educational system and officials and employees of the State and its agencies.²⁷ The statewide ones cover assessors, clerks of court, district attorneys, firefighters, municipal employees, municipal police employees, parish employees, registrars of voters and sheriffs.²⁸

In addition, there are local systems created either by statute or by local charter or local ordinance. The amendment does not provide guidance as to which of these systems are considered “subject to legislative authority” and therefore covered by the proposed amendment. According to the amendment’s sponsor, the term would cover local systems created by statute. These include an old system for some New Orleans police officers²⁹ and the systems covering New Orleans’ firefighters, the Harbor Police for the Port of New Orleans and employees of the Sewerage & Water Board.³⁰ It is not intended to pick up public retirement systems created by charters or local ordinances. These include the City of New Orleans Employees’ Retirement System and the Employees’ Retirement System of Jefferson Parish.

There is growing concern across the nation about the condition of state and local pension systems and the ability of governments to meet their future obligations to these funds. Louisiana is no exception. The unfunded liabilities of some public retirement systems in the state are quite large. For

27 These are: the Louisiana State Employees’ Retirement System, the Teachers’ Retirement System of Louisiana, the State Police Pension and Retirement System, and the Louisiana School Employees’ Retirement system.

28 These are: the Louisiana Assessors’ Retirement Fund, the Louisiana Clerks of Court Retirement and Relief Fund, the District Attorneys’ Retirement System, the Firefighters’ Retirement System of Louisiana, the Municipal Employees’ Retirement System of Louisiana, the Municipal Police Employees’ Retirement System, the Parochial Employees’ Retirement System, the Registrars of Voters Employees’ Retirement System, and the Sheriffs’ Pension and Relief Fund.

29 The Police Pension Fund for the Police Department of the City of New Orleans (the Fund) merged with the Municipal Police Employees’ Retirement System (MPERS) in 1983. All active policemen who were participating in the Fund, all retirees, widows and survivors were transferred to MPERS. The Fund continues to have some obligation to those transferred; it no longer takes new members.

30 La. R.S., Title 11.

example, the four state retirement systems have a total unfunded liability of \$16.84 billion.³¹

A number of factors have contributed to the situation, including underfunding, investment losses and the expansion of benefits without consideration of their long-term price tag. The constitution has been amended several times to attempt to control unfunded liabilities.³² With respect to benefit changes, a 2007 constitutional amendment imposed a restriction on state retirement systems: if a change has an actuarial cost, it must be tied to a funding source sufficient to pay off the cost in 10 years. The limit does not apply to statewide systems or local systems.

The constitution also requires the Legislature to approve benefit changes for state and statewide retirement systems if the change has an actuarial cost.³³ The proposed amendment would expand the requirement to all systems under legislative authority. In doing so, it would expand scrutiny at the legislative level and allow the Legislative Auditor's office to analyze the potential costs of proposed changes for more systems.

Interestingly, some local systems created by state statute already seek legislative approval for benefit changes. For example, in the 2010 Regular Session there were four bills proposing benefit changes to the Firefighters' Pension and Relief Fund in the City of New Orleans.³⁴

The proposed amendment also would require two-thirds of the members of each house of the legislature to approve any benefit change that has an actuarial cost. This would make it more difficult to enact new benefits or increase existing benefits for public retirement systems under legislative authority. More legislators would have to consider and be comfortable with the fiscal effects of such a decision. However,

31 Division of Administration, *State of Louisiana Comprehensive Annual Financial Report for the Year Ended June 30, 2009*, pp. 74-75.

32 Among other things, the Louisiana Constitution requires the state and statewide retirement systems to eliminate by 2029 their unfunded accrued liabilities that existed as of 1989. La. Const. Art. X, Sec. 29(E)(2)(c) and Sec. 29(E)(3). The constitution does not specifically address unfunded accrued liabilities resulting from post-1989 increases in benefits or other liability increases. However, the constitution does mandate that government employers contribute adequate funds to keep these systems actuarially sound. La. Const. Art. X, Sec. 29(E)(1).

33 La. Const. Art. X, Sec. 29(E)(5)(b).

34 These were HB 454, HB 455, HB 457 and HB 458. None passed.

the amendment would not make it impossible to pass new or increased benefits.

Opponents of the proposed amendment say that it is unfair to impose a higher approval threshold for benefit increases than for other issues that come before the legislature. They contend that the current system for passing benefit-related legislation has built-in checks and balances that ensure legislation is thoroughly analyzed and vetted by the legislature. They also say that it should not be harder to pass new or increased benefits than it is to reduce benefits.

Opponents contend that public employees accept lower wages than those available in the private sector in return for more generous benefits. They fear that the proposed amendment would impose a nearly impossible burden on retirement systems seeking to improve benefits.

Proponents point out that elected officials face huge temptations to increase public retirement benefits. Adding or increasing benefits offers them an immediate win with public employees while the cost is paid in the future. But once employees accrue benefits, they are immutable and must eventually be paid for by the public, either through taxes or fees. It is for this reason, proponents argue, that it should be hard to approve new or increased benefits for members of public retirement systems under legislative authority if those benefits have an actuarial cost.

BGR Position

FOR. Retirement costs have the potential to seriously hamstring the State and some localities in the coming years. New benefits and increases in benefits should be carefully considered. Requiring all public retirement systems under legislative authority to gain legislative approval for changes in benefits would allow the State Legislature to more thoroughly oversee the systems under its authority. Requiring a two-thirds vote to enact changes with actuarial costs raises the bar for any decision that could strap future taxpayers with higher obligations, and it encourages fiscal responsibility.

AMENDMENT NO. 7: BIDDING DOWN OF PENALTY RATES AT TAX SALES

What It Would Do

Currently, at tax sales for immovable property, the Louisiana Constitution requires tax collectors to sell the least amount of property that a bidder is willing to accept for the amount of taxes, interest and costs owed on the property. The amendment would add penalties due to the items included in the auction price. This change implicitly grants tax collectors the authority to assess and collect penalties on tax delinquent properties.

The amendment would also allow tax collectors to change the basis for bidding at tax sales. Currently, bidding is based on a declining percentage of undivided interest in the property (e.g., 90%, 85%), and the bidder willing to accept the smallest undivided interest in exchange for paying the amount due wins tax sale title. The proposed amendment would give tax collectors the option to base bidding on incremental reductions to the 5% redemption penalty that bidders are entitled to receive from delinquent taxpayers.

In addition, the amendment would revise the constitutional provision governing tax sales of moveable property. Currently, the constitution allows the tax collector to seize and sell sufficient movable property to pay the taxes owed. The amendment would allow the tax collector to seize and sell sufficient property to cover interest, penalties and costs in addition to the taxes due.

Background

Taxes on immovable property are payable on an annual basis. If the property owner does not pay the taxes by year end, the tax collector, after advertising and giving the property owner notice and an opportunity to pay, can include the property in an upcoming tax sale. The purchaser does not receive immediate ownership of the property, but rather “tax sale title.” Tax sale title entitles the winning bidder to reimbursement from the debtor for taxes, interest and costs the bidder paid to the taxing authority, as well as 1% interest per month on the amounts paid and a 5% penalty.³⁵ It also gives the successful bidder a chance to become the owner of the

percentage interest for which he bid at the tax sale.

The tax sale process is complicated, and the constitutional provision on the issue is murky. Currently, the constitution authorizes the tax collector to sell a portion of the delinquent taxpayer’s property that the owner “points out.” However, if the debtor fails to point out property, the collector can sell “the least quantity of property which any bidder will buy for the amount of the taxes, interest and costs.”³⁶

This least-quantity provision is difficult to apply to properties that are not physically divisible, such as a home on a standard lot. The legislature has interpreted the provision to require the sale of the smallest undivided interest in a property that a bidder will accept in return for paying the taxes and costs due. Thus, as tax sales are currently conducted, bidders bid down from 100% interest in a property. The bidder who offers to take the smallest undivided interest in the property wins the tax sale title.

The tax sale title is subject to a right of redemption by the delinquent taxpayer. The redemption period is normally three years; in New Orleans, it is reduced to 18 months for blighted property.³⁷ If during that time the debtor pays all amounts due to the tax sale purchaser, he resumes full ownership of the property. If the debtor does not make payment within the allotted time, the purchaser can terminate the delinquent taxpayer’s interest through a suit to quiet title.³⁸ However, to bring such a suit, he must have 100% ownership interest in the property. This makes it impossible for a bidder who acquired a lesser percentage interest by bidding down at the tax sale to obtain clear title.

Analysis

The proposed amendment would allow tax collectors to include penalties as well as overdue taxes, interest and costs in the auction prices at a tax sale of immovable property.

It would also change the property tax sale process for immovable property by allowing tax collectors to center bidding on the redemption penalty paid by the owner to the bidder, rather than on the percentage of undivided interest in the property. Bidders would bid down the 5% penalty in incre-

³⁶ La. Const. Art. VII, Sec. 25(A).

³⁷ La. Const. Art. VII, Sec. 25(B)(2).

³⁸ La. R.S. 47:2266.

³⁵ La. R.S. 47:2153.

ments of 0.1%. While the tax sale purchaser would receive a smaller short-term return on his investment, he would be entitled to a 100% stake in the property if the debtor did not exercise the right of redemption.

The purpose of the amendment is to eliminate the practical and legal complications that ensue when the tax sale purchaser acquires a partial interest in the property. Title complications make it extraordinarily difficult to redevelop and put the property back into commerce.

Another problem resulting from partial ownership relates to ongoing tax liabilities. If the property is not redeemed, the purchaser of a partial interest at a tax sale has to continue paying the full taxes on the property. Otherwise, he risks losing his partial interest at a future tax sale.

Under the current system, most tax sale purchasers are seeking redemption payments, rather than property ownership. Proponents believe that the new option will help to attract more bidders interested in acquiring ownership of properties. Since many tax-delinquent properties are blighted, proponents think that the measure will help to reduce blight. Others dispute this, because they believe that foreclosure on blight liens provides a more effective and efficient way of dealing with blighted property. Proponents believe the proposed system will be easier and more efficient for taxing authorities to run and will make the entire process less difficult for bidders.

Some opponents assert that giving bidders a 100% stake in the property after the redemption period will make it too easy to strip property from a tax-delinquent property owner. They assert this despite the fact that the property owner has a substantial period of time in which to reclaim the property.

Other opponents take an opposite view. They object that the amendment would benefit property owners who are delinquent on their taxes. Bidding down the 5% redemption penalty would allow them to settle delinquency at a reduced rate. They point out that Louisiana already has a low interest rate. However, the provision allowing tax collectors to assess pre-sale penalties on tax-delinquent properties could lead to increased costs.

As noted previously, the amendment would also allow tax

collectors to seize and sell enough movable property to cover not just the taxes, but also the interest, penalties and costs. Movables, as the name might suggest, are any type of property that is not real estate. For instance, automobiles, airplanes, furniture and business inventories are all movables.³⁹ Movable property taxes are assessed only against businesses, not individuals. These sales are final, and the debtor has no redemption period following the sale.

The purpose of the change is to enable tax collectors to receive all the compensation due to them at moveable property tax sales. Interestingly, tax collectors to whom BGR spoke indicated that they include interest, penalties and costs in the price of movables already. Therefore, they do not foresee the change having a major impact on the tax sale process in the arena of movables.

BGR Position

FOR. The amendment would promote redevelopment of property by making it easier for bidders to assume outright ownership of properties with unpaid taxes.

AMENDMENT NO. 8: RESALE OF PROPERTIES EXPROPRIATED TO ADDRESS BLIGHT

What It Would Do

The proposed amendment would remove restrictions on the transfer of property that has been expropriated to remove blight.

Background

In 2006, voters amended the constitution to place new limitations on the power of the State and its political subdivisions to take private property in exchange for just compensation. The amendment came as part of a national wave of legislative reactions to a controversial U.S. Supreme Court decision, *Kelo v. New London*.⁴⁰ In that case, the Court allowed the City of New London, Conn., to take non-blighted

³⁹ Louisiana's Constitution does not define movables. Louisiana Civil Code, though, defines movables as "[a]ll things, corporeal or incorporeal, that the law does not consider as immovables." La. Civil Code Art. 475.

⁴⁰ *Kelo v. the City of New London*, 545 U.S. 469 (2005).

private property and transfer it to private entities for redevelopment pursuant to a carefully considered economic redevelopment plan.

Property rights advocates feared that the ruling would open the way to abuse, allowing wealthy and well-connected private interests to benefit from government's power to take property – at the expense of average property-owning citizens. In response, legislatures across the nation passed measures designed to prevent *Kelo*-like takings.

Louisiana answered the rallying cry with particularly aggressive changes to its expropriation laws. The 2006 amendments imposed several limitations on government's expropriation powers by:

- Expressly and narrowly defining the “public purposes” for which government can expropriate property.
- Prohibiting the State or its political subdivisions from expropriating property for predominant use by a private person or for transfer of ownership to a private party.⁴¹
- Adding transfer restrictions. Specifically, an expropriating entity can sell or lease expropriated property only by public bid, and only after offering it back to the original owner.⁴²

BGR took a position against the 2006 amendments because they were clumsily drafted and would unnecessarily complicate important post-Katrina blight remediation and redevelopment efforts.⁴³ Among its concerns were the resale restrictions requiring the government to first offer the expropriated property back to the original owner and then dispose of it through a public bid process.

In 2008, voters rejected a proposed constitutional amendment that would have exempted blighted properties from the resale restrictions. Amendment No. 8 has the same objec-

tive as the 2008 proposition: to unshackle the disposition of expropriated blighted property. It amends the constitution's resale restrictions by excepting from them property expropriated to remove “a threat to public health or safety caused by the existing use or disuse of the property.”

Analysis

Expropriation is an important tool for redevelopment, especially in the flood-ravaged parishes of south Louisiana. The Katrina disaster damaged tens of thousands of residential and commercial properties in the region. According to one recent study, New Orleans alone contains about 55,000 blighted properties and vacant lots.⁴⁴ Both Jefferson Parish and St. Bernard Parish have more than 14,000.⁴⁵

It is critical to return these properties to commerce, or to land-bank them for future development. Unfortunately, the current resale restrictions – which require the expropriating entity to first offer the property back to the original owner and then to sell the property through public bid – act as a serious impediment when it comes to large-scale redevelopment efforts. The requirements thwart strategic collaboration with private developers.

The resale restrictions also make it impractical to expropriate individual blighted properties and sell them to individuals for redevelopment. They do not, however, prevent government from taking such properties, fixing them up to remove the blight and then offering them to the original owner at renovated value before opening up the sale to public bid.

BGR Position

FOR. The resale restrictions are an unnecessary impediment to addressing the serious blight issues in the New Orleans area. Removing them would facilitate both large and small scale redevelopment and renovation projects.

41 La. Const. Art. I, Sec. 4(B)(1).

42 La. Const. Art. I, Sec. 4(H)(1)-(4). If the government chooses not to offer the right of first refusal to the original owner or sell by public bid, it must hold the property for 30 years, after which time it can sell the property as provided for by law.

43 Bureau of Governmental Research, *On the Ballot: Issues on the Ballot for September 30, 2006*, available at www.bgr.org.

44 Plyer, Allison, *Benchmarks for Blight*, prepared for the Greater New Orleans Community Data Center, May 7, 2010.

45 The Brookings Institution and the Greater New Orleans Community Data Center, *The New Orleans Index at Five*, August 2010.

AMENDMENT NO. 9: WORKERS' COMPENSATION APPEALS

What It Would Do

The proposed amendment would give appellants in workers' compensation cases the right to a rehearing by a five-judge panel if the appeals court modifies or reverses the decision of the administrative hearing officer and one judge dissents. This amendment would bring the judicial appeals process for workers' compensation cases in line with the process for other civil matters.

Analysis

The Louisiana Constitution gives appellate jurisdiction over all civil matters, including workers' compensation cases, to the courts of appeal.⁴⁶ It provides that cases on appeal must be heard by panels of at least three judges, a majority of whom render a decision.⁴⁷ When civil cases originate in district court, the constitution requires a rehearing by a five-judge panel when the judgment of a district court is modified or reversed and one judge dissents.

Workers' compensation cases, however, do not originate in district court. Rather, such cases are heard by administrative hearing officers in the Office of Workers' Compensation (OWC).⁴⁸ While decisions made by the hearing officers can be appealed to the appropriate court of appeals, the Louisiana Supreme Court has ruled that such cases do not qualify for automatic rehearing before a five-judge panel.⁴⁹ The proposed amendment would resolve the disparate treatment of appeals in workers' compensation and other civil cases.

The amendment would not benefit one side over another in a workers' compensation dispute. Depending on the case, either the plaintiff or the defense could benefit from having the appeals decision reargued before a larger panel of judges.

The OWC thinks that the amendment would only affect a small number of cases each year. The agency estimates that, of the 6,000 to 8,000 cases it handles on average each year,

only about 100 to 150 are appealed, and only a fraction of these appeals are decided by a 2-1 decision on the appeals level. The office considers the amendment to be minor.

BGR Position

FOR. The amendment would add an extra layer of review in the appeals process for workers' compensation claim cases, placing them on par with other civil cases.

AMENDMENT NO. 10: RESTRICTIONS ON WAIVING THE RIGHT TO A JURY TRIAL

What It Would Do

A defendant in Louisiana, unless charged with a crime punishable by death, can decide to waive his right to a jury trial in order to have a bench trial instead. Currently, Louisiana law permits a defendant to waive this right any time before the start of trial.⁵⁰ State law also allows the defendant to change his mind and revoke this waiver.⁵¹ The proposed amendment would restrict a defendant from waiving his right to a jury trial later than 45 days before the trial's start date. It would also make such waivers irrevocable.

Analysis

A defendant's right to a trial by a jury of his peers is one of the bedrocks of the American judicial system. However, defendants can waive that right and instead opt for a judge trial. Defendants generally opt for a judge trial when they feel that, due to the unique circumstances of a case, they will not be able to receive a fair trial from a jury. Examples would be a case in which the accused is on trial for child abuse, one in which a defendant believes a judge would be more receptive than a jury to complex legal arguments, or one in which the defendant has multiple prior convictions that might bias the jury against him.

The proposed amendment is a compromise version of a bill introduced in the State Legislature earlier this year. The original measure would have required a prosecutor and judge to agree before a defendant could waive his right to a jury trial. According to the Louisiana Attorney General's Office, 30 other states impose such a requirement.

46 La. Const. Art. V, Sec. 10.

47 La. Const. Art. V, Sec. 8.

48 La. R.S. 23:1291 (C)(1); La. R.S. 23:1310.1 (D).

49 *Snowton v. Sewerage and Water Board*, 6 So. 3d 164 (La. 2009).

50 Louisiana Code of Criminal Procedure, Art. 780, Sec. B.

51 Louisiana Code of Criminal Procedure, Art. 780, Sec. C.

Proponents of the amendment, which include the Attorney General's Office, argue that the change is needed because defendants too often wait until the trial's commencement date to waive their right to a jury trial. This leads to delays and unnecessary costs for the State, as jurors are paid to appear in court, only to then be sent home. In addition, in cases where witnesses must be brought in for jury trials from other parts of the state or country and housed at State expense, the delay attributable to resetting the case to another court date when the jury trial is waived at the last minute can be considerable. Opponents reject the idea that judge trials add costs to the legal system. They argue that jurors are paid a per-diem rate and are required to be at court for a specific range of dates regardless of case assignment.

Prosecutors across the State assert that current law puts the prosecution at a disadvantage. Prosecutors prepare for judge and jury trials very differently. To be fully prepared under the current system, prosecutors must double their efforts and ready both types of cases. Prosecutors generally have the resources to prepare only for a jury trial. Consequently, when a defendant opts for a judge trial on the start date, prosecutors are forced to reformulate their strategy at the last minute. Opponents argue that preparation for judge and jury trials is essentially the same.

Criminal defense organizations in Louisiana oppose the amendment because they believe it would cede one of the defense's strategic advantages. They say the defense is already handicapped because Louisiana does not require unanimous jury verdicts. It is one of just two states in the U.S. that require only 10 out of 12 jurors to agree on a verdict in criminal trials.⁵² They point out that current law allows a judge to prevent a defendant from withdrawing a waiver of a trial by jury if it would interfere with the administration of justice, cause unnecessary delay, inconvenience witnesses or prejudice the State.⁵³

Finally, it is worth noting that the language of the amendment approved by the legislature, as it will appear on the ballot, omits mention of the irrevocable nature of the waiver.

BGR Position

FOR. The amendment will help to improve court efficiency.

⁵² Oregon is the other state without unanimous jury trial verdicts. Rothwax, Harold J., *Guilty: The Collapse of Criminal Justice* (1997).

⁵³ Louisiana Code of Criminal Procedure, Art. 780, Sec. C.

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BGR POSITIONS

Amendment No. 1: FOR. Delaying the effective date of pay raises until successive terms begin mitigates the conflict of interest associated with legislators voting themselves raises.

Amendment No. 2: FOR. The parishes that are the largest producers of natural resources subject to severance taxes deserve additional tax allocations to sustain the infrastructure used and mitigate the environmental damage done during the production process.

Amendment No. 3: AGAINST. BGR believes that members of the military who are severely disabled while serving their country deserve government assistance. While it supports assistance, it opposes the proposed amendment for a number of reasons. First, it believes that assistance should come from the federal government. Second, the proposed amendment would benefit only a subset of such veterans: those who own their homes. The amendment would provide no benefit to similarly disabled veterans that rent, or to spouses of service members killed in action. If State legislators wish to provide tax benefits to disabled service members and their surviving spouses, they should do so in a manner that provides equivalent benefits to similarly situated persons. Third, the amendment places an unnecessary restriction on the ability of local governments to deal with the fiscal ramifications of granting the expanded exemption.

Amendment No. 4: NO POSITION. BGR has consistently criticized State-imposed limitations that unnecessarily restrict the revenue-generating capacity of local governments. In the case of Non-Elected Taxing Authorities, a strong argument can be made for some limitations. That's because the moderating influence of voters on elected officials dealing with tax decisions does not operate in the case of Non-Elected Taxing Authorities. However, the proposed cap is arbitrary in several respects. First, the 2.5% limit bears no relationship to market movements or inflation. Second, the amendment arbitrarily excludes some Non-Elected Taxing Authorities.

Amendment No. 5: AGAINST. While assisting homeowners working to rebuild their homes is a worthy goal, the proposed amendment is not the solution. The exemption and assessment freeze have already been in effect for five years, and the extension would apply for too long a period of time. Shielding property from taxes removes an incentive for returning property to commerce.

Amendment No. 6: FOR. Retirement costs have the potential to seriously hamstring the State and some localities in the coming years. New benefits and increases in benefits should be carefully considered. Requiring all public retirement systems under legislative authority to gain legislative approval for changes in benefits would allow the State Legislature to more thoroughly oversee the systems under its authority. Requiring a two-thirds vote to enact changes with actuarial costs raises the bar for any decision that could strap future taxpayers with higher obligations, and it encourages fiscal responsibility.

Amendment No. 7: FOR. The amendment would promote redevelopment of property by making it easier for bidders to assume outright ownership of properties with unpaid taxes.

Amendment No. 8: FOR. The resale restrictions are an unnecessary impediment to addressing the serious blight issues in the New Orleans area. Removing them would facilitate both large and small scale redevelopment and renovation projects.

Amendment No. 9: FOR. The amendment would add an extra layer of review in the appeals process for workers' compensation claim cases, placing them on par with other civil cases.

Amendment No. 10: FOR. The amendment will help to improve court efficiency.



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