

***Constitutional Amendments on
the October 3, 1998 Ballot***

Number	Subject	BGR Position
1	Establishes community collage system	Support
2	Increases parish severance tax allocation	No Position
3	Grants Legislature oversight of Charity Hospitals	No Position
4	Establishes crime victims' rights in Constitution	No Position
5	Modifies "Rainy Day" Fund and uses of nonrecurring money	Support
6	Broadens basis to deny bail in criminal cases	No Position
7	Establishes State Infrastructure Bank	Support
8	Freezes property tax assessment for seniors	Oppose
9	Places prohibition against a convicted felon holding elective or appointed office for 15 years unless pardoned	No Position
10	Prohibits State Courts from levying state or local taxes	No Position
11	Declares Louisiana a sovereign state	No Position
12	Establishes more public notice for millage roll-up	Support
13	Establishes more public notice for millage roll-up money to deal with imminent floods	No Position

14	Changes jury requirements and allows combining certain crimes together in one trial	No Position
15	Allows local governments to forgive back taxes on blighted property if approved renovations take place	Support
16	Extends property tax assessment freeze for an additional five years for renovated residential property in a downtown district	Oppose
17	Allows property in New Orleans to be sold at tax sale for less than minimum bid	Support
18	Allows the Town of Vidalia to exempt most property owners from municipal property tax	Oppose

Introduction

On October 3rd, Louisiana voters will be asked to make decisions on eighteen proposed constitutional amendments. These eighteen proposals, combined with another two proposed amendments on the November 3rd ballot, represent a record number of amendments presented to the voters since the present state Constitution was adopted in 1974.

The subject matter of proposed amendments ranges from creating a constitutional base for a community and technical college system to creating tax breaks for the renovation of blighted property and making it harder for drug dealers to get out of jail on bail.

All of the amendments are on the ballot as a result of at least two-thirds of the members of each house of the Legislature approving an election call for the measure. The decision on whether to place a proposed amendment before the public is not subject to a governor's veto.

The following information is designed to present the voting public with background information on the eighteen amendments on the October 3rd ballot. BGR's primary mission is to provide a brief objective summary on each of the proposed amendments. In some cases, BGR also offers a recommended position on an amendment based on our analysis and previous research on the subject.

Generally, BGR takes a position on proposed amendments:

- that have a direct impact on the City of New Orleans or the New Orleans metropolitan region
- that directly relate to subject matter that BGR has previously studied or has a basis for taking a position (e.g. fiscal and budgetary issues, tax matters, local and state governmental organization and management, public access to governmental information)
- that while they do not directly impact the city or region, the proposal establishes a precedent elsewhere that could significantly affect the city, region or other local governments.

Conversely, BGR generally takes no position on proposed amendments:

- that relate to subject matter beyond BGR's traditional interests or areas of expertise
- when the arguments for and against the proposed amendment are evenly balanced and thus there is no clear consensus within BGR.

Based on these general criteria, BGR's position on the eighteen proposed amendments is reflected in the table on page one. It should not be implied that because BGR took no position on an amendment, there is a problem with the proposal. It could be, as stated above, that the measure does not fall within BGR's interest or area of expertise. It could also mean that while there was support for the general concept of the proposal, there were questions regarding whether the proposed language is appropriate constitutional material.

Therefore, BGR urges citizens to carefully evaluate each of the proposals not only on the relative merits of the proposal but also on whether the subject matter is better addressed on a statutory or a constitutional basis.

Establishes Community College System

Amendment 1: Creates the Louisiana Community and Technical College System and its Board of Supervisors and places it under the Board of Regents

Analysis: The amendment is designed to create a constitutional base for a community and technical college system.

Shifts of educational authority away from several existing management boards to the newly proposed board will create a community college system in Louisiana. Post-secondary vocational and technical education will move from the Board of Elementary and Secondary Education (BESE) to a Board of Supervisors of Community and Technical Colleges. The new board will also have responsibility for the two-year associate degree programs. Other higher education management boards like LSU and Southern's will keep their current responsibilities. BESE will retain supervision of high school vocational training.

The new board will manage the eight community colleges, 42 technical schools, and the associate degree programs offered at 13 four-year universities. Work force training and education will be combined under this new board allowing for closer coordination of job training programs. There is a potential for less duplication of programs, which savings can result in better prepared graduates of the remaining programs. Resources can be better focused to ensure a better fit between trainee and job.

The amendment also provides some changes in the source of funds for vocational-technical schools and community colleges. The amendment makes vocational-technical schools ineligible for Louisiana Quality Education Trust Fund money, and community colleges are now eligible under the Title VII, sec.10.1D (1) provisions for funding economic development.

BGR recommendation: BGR supports passage of Amendment 1. Instead of the usual state community college system, Louisiana has pieces, of a system. The pieces are under three management boards, with different accreditation agencies, and unique budget procedures. The fragmentation creates confusion, overlapping programs, duplication of facilities, and general waste. The present confusion and duplication in vocational-technical education, community colleges, and work force development could be corrected by better coordination and planning under one board. Placing the new board under the Board of Regents should promote planning of post-secondary education in Louisiana.

Increases parish severance tax allocation

Amendment 2: Increases the maximum amount of state severance tax rebated to a parish government from \$500,000 to \$750,000 for natural resources other than sulphur, lignite and timber.

Analysis: Under the current state constitutional, a parish gets one-fifth of the severance tax collected by the state in that parish on certain natural resources such as oil and gas. In 1997, twenty-seven parishes received the maximum severance tax share. Most of these parishes will be eligible for the new cap if the amendment passes. Since local jurisdictions are prohibited from levying their own severance tax, the return of a larger percentage of revenue is designed to provide recompense for the use of roads and other local infrastructure during extraction. The percent and the cap bear no relation to any actual expense incurred by the parish government. The maximum rebate amount (\$500,000) has been in place since 1974 when the new state constitution was adopted.

BGR recommendation: No position. Parish governments pushed for this proposed change to increase the local share of the severance tax. The proposed amendment would have no impact on the City of New Orleans. The 1997 and 1998 operating budgets included no revenue from severance taxes.

Grants Legislature oversight of Charity Hospitals

Amendment 3: Authorizes the legislature to provide by law for the supervision, operation, and management of the public hospital system by a board of higher education. The public hospital in Shreveport, which has been under LSU management since 1976, would not be affected by this amendment.

Analysis: With passage of R.S. 17:1519.1 in 1997 the legislature authorized the transfer of the nine public hospitals from the Louisiana Health Care Authority to the LSU Board of Supervisors. Companion legislation to R.S. 17:1519.1 provides for detailed measures of performance, approval of rule changes, and other management tasks for the Legislature. The amendment is intended to make clear that the Legislature has budget and operational authority of the hospitals and to potentially move the public hospital system from LSU to the Board of Regents or another board of higher education. The Constitution gives the LSU Board of Supervisors authority to “supervise and manage” programs administered through their system. That same language is given to the Legislature’s authority by this amendment.

The amendment provides that the Legislature “may” provide by law for these specific management aspects. The amendment language does not use “shall”, so the Legislature may decide to take a “hands off” attitude, at least until it is known if the transfer to the LSU board has produced improved performance.

As the Legislature currently has the “power of the purse” to hold over any state institution, the amendment may be unnecessary.

BGR recommendation: BGR takes no position on this amendment. The proposed amendment formalizes in the state constitution the statutorily approved system for supervising and managing the Charity Hospital System, while maintaining legislative oversight of the system.

Establishes crime victims’ rights in Constitution

Amendment 4: Provides constitutional protection to the rights of crime victims, including being present and heard during pre-conviction and post-conviction hearings, a right to confer with the prosecution, a right to refuse to be interviewed by the accused or his/her representative, a right to notification of release or escape of the accused, and a right to seek restitution.

Analysis: Most of the rights granted by this amendment have already been placed in law (R.S. 46:1844). The right to refuse to be interviewed by the accused or his representative is not presently in law. The right to refuse to be interviewed by the attorney for the accused may interfere with the accused’s right to a fair trial.

There may be additional delay in the time between arrest and sentencing because of the additional steps required in meeting the victim’s rights during the criminal justice process.

Critics of the proposed amendment suggest that it would be much easier in the future to correct or modify statutes regarding victims rights procedures than to change the Constitution.

BGR recommendation: No position

Modifies “Rainy Day” Fund and expands uses of nonrecurring money

Amendment 5: Broadens the ways non-recurring revenue can be used, renames the “rainy day “ fund, and provides a source of revenue for the fund.

Funds designated as nonrecurring could be used by future legislatures for capital outlay projects and public retirement systems in addition to the retiring of state bonded debt. Twenty-five percent of money designated as nonrecurring each year is to be deposited in to the Budget Stabilization Fund (formerly called the Revenue Stabilization/Mineral Trust Fund). The amount deposited in the Budget Stabilization Fund could not exceed 4% of state revenues in the prior fiscal year. Based on the state’s current budget, this would equal approximately \$500 million.

Analysis: The present “rainy day” fund was established several years ago, but no money has been appropriated to the fund. The current constitution provides that all nonrecurring income be used to retire state debt. Nonrecurring revenue is a term for one-time income to the state such as a surplus from the previous year or the settlement in a lawsuit.

The proposed amendment contains both good and bad elements. On the plus side, the requirement that one fourth of non-recurring income be placed in a “rainy day” fund is long overdue. However, four percent of state revenues in the prior year’s budget is too low a cap on the fund, given the volatility of the state’s income sources. It is though, a step in the right direction. On the minus side, the amendment allows for nonrecurring revenue to be used for capital projects which themselves will require recurring income to run and maintain. In addition, if legislators do not show restraint in funding capital projects, the state could find itself overburdened with a heavy debt load at is has in the past.

BGR recommendation: BGR supports the amendment. The provision requiring 25% of non recurring income each year to be deposited in the “rainy day” fund is desirable. BGR hopes that, with passage of this amendment, legislators will take the responsible course and set aside more money for the inevitable downturn in revenue.

BGR also urges the Legislature to resist the temptation to use nonrecurring funds for capital outlay projects and to continue to reduce the state’s long term debt.

Broadens basis to deny bail in criminal cases

Amendment 6: Allows denial of bail for a person charged with a violent crime or a felony offense involving a controlled dangerous substance and when there is substantial risk the accused may flee or presents a danger to others.

Analysis: Presently, a judge must deny bail in capital cases and may deny bail in the post-conviction phase of an offense punishable by a five-year sentence.

Although a judge may not deny bail before conviction or sentencing in any non-capital case or while a conviction for offenses that carry a less than five-year penalty is being appealed, the judge may set the amount of the bail extremely high to have the same effect as denial.

The proposed amendment will allow a judge to deny bail at any time except for the pre-trial or pre-sentencing phase or appeal phase for an offense meriting a penalty of less than five years.

BGR recommendation: No position. The proposed change in bail procedure would track the federal method of holding pre-trial hearings to determine the potential use and amount of bail. Critics suggest the amendment is unnecessary because judges already have the authority to set a very high bail.

Establishes State Infrastructure Bank

Amendment 7: Authorizes the use of public funds to fund a state infrastructure bank that could loan money for capital improvement projects.

Analysis: The amendment is intended to clarify and strengthen the legal basis for the Louisiana Infrastructure Bank established in 1997 (R.S. 48:81).

The federal government has encouraged the establishment of this type of “bank” as an innovative financing tool for transportation projects. Money could be loaned at below-market rates and then repaid through dedicated revenue. If the loan is to local government for a road or bridge, the dedicated revenue might be a property tax. If the loan were to a private developer for building a road, toll receipts could repay the bank. Loans would have to be approved by the Department of Transportation and Development and the State Bond Commission. Money for the bank would come from the federal government and the state Transportation Trust Fund (gasoline tax).

BGR recommendation: BGR supports the amendment making the authorization of the Louisiana Infrastructure Bank constitutional. It is unclear how often this mechanism would be used, particularly given our state’s history of opposition to toll roads. However, having this option available may encourage innovative thinking.

BGR does have reservations that the amendment authorizes any type of capital project when the original purpose was to be for transportation infrastructure. The required approval of loans by The Department of Transportation Development and the State Board

Commission will provide some protection to safeguard the transportation priority of the Louisiana Infrastructure Bank.

Freezes property tax assessments for seniors

Amendment 8: Allows the freezing of assessment levels for owner-occupied homes when the owner reaches age sixty-five. The special assessment level continues for a surviving spouse aged fifty-five or older or with minor children if any. There is an additional requirement that the owner receiving the special assessment level not have an income exceeding \$50,000 per year. A homeowner would lose the tax break if the property value is increased by twenty-five percent or more through additional construction or renovation.

Analysis: Louisiana already gives the country's largest homeowner subsidy with the existing tax exemption on the first \$75,000 of the market value of homesteads. Some states have a "circuit breaker" that "trips" when the home owner reaches age sixty-five. A portion of the property tax is rebated.

If this additional tax preference passes, the money lost to local governments and schools will increase. The huge "baby boomer" generation will hit sixty-five in less than fifteen years and become eligible for this additional tax preference.

There will also be administrative difficulties for assessors if the amendment passes. Homeowners must apply every year, and to be eligible they will have to show the previous year's adjusted gross income on their federal income tax form as proof of income level. A 1994 report by the National Conference of State Legislatures, entitled *State Tax Policy and Senior Citizens*, found that "Tax freezes have never gained popularity for several reasons. First, they are difficult and expensive to administer, Second, since the 1970's more and more states have chosen circuit breakers and homestead exemption programs as their main property tax relief vehicles."

BGR recommendation: Consistent with BGR's long-held position in favor of lowering the homestead exemption, BGR opposes this amendment as further eroding the property tax base available to local governments. The state already has the most generous homestead exemption in the country. In addition, the elderly citizens who rent rather than own their own homes, would be even further disadvantaged by this amendment.

Places prohibition against a convicted felon holding elective or appointed office

Amendment 9: Permits a convicted felon who has served his/her sentence to be eligible for elected or appointed office if pardoned or if fifteen years have passed since completion of the sentence.

Analysis: Under present law a convicted felon may not hold elective office unless pardoned. He may hold an appointed office without having been pardoned. A first-time

offender is automatically pardoned when the sentence is complete. Therefore, he is eligible to hold either an elected or appointed office.

If this amendment passes, felons who have not been pardoned would be eligible to hold public office after fifteen years. On the other hand, a convicted felon would not be able to fill appointed public offices unless he had received a pardon.

BGR recommendation: No position

Prohibits State Courts from levying state or local taxes

Amendment 10: Provides that no state court can exercise the power to tax by ordering a new tax, increase an existing tax, or by ordering the elimination of an exemption. The court cannot order the Legislature or any other governmental unit to change a tax.

Analysis: There is nothing in the current state Constitution that would allow any state or municipal court to impose a tax. The authority to tax is reserved for the legislative branch. So far, there has been no instance in Louisiana where a state court has tried to exercise taxing powers.

Existing language in the Constitution seems to already prevent a court from taking the Legislature's power to tax. This amendment would have no impact on the jurisdiction or authority of the federal courts.

BGR recommendation: No position. There is some question as to whether this amendment is necessary given the fact that the present State Constitution grants the power of taxation to the Legislature with some limited exceptions for certain local government taxes.

Declares Louisiana a sovereign state

Amendment 11: Adds a section to Article I, Louisiana's Bill of Rights, stating that the people of this state have the exclusive right of governing themselves and have every power "which is not, or may not hereafter be, by them expressly delegated to the federal government."

Analysis: The U. S. Constitution provides, in the 10th amendment, that the states have the powers not expressly held by the federal government. While this line of separation shifts, the changes have been because of federal courts' interpretations. The states have the powers not kept by the federal government. This amendment states that the powers held by the federal government are held because the states have given them to the federal government.

This language, which embodies a different legal basis for the state's rights, may cause confusion or unnecessary lawsuits when the state governing body passes laws in conflict with the U.S. Constitution.

At best, the amendment is unnecessary as the U.S. Constitution prevails in a conflict. At worst, it may require the state Attorney General to defend actions clearly in opposition to the U.S. Constitution but permitted under the Louisiana Constitution.

BGR recommendation: No position

Establishes more public notice for millage roll-up

Amendment 12: Increases the public notice requirements of a taxing authority's vote on a roll-up of the property tax millage rate.

Analysis: After property has been reassessed in the constitutionally mandated four-year cycle, the millage is automatically adjusted (a roll-back when the assessed value of property has increased) to guarantee tax recipient bodies the same dollar value in revenue. To increase revenue, the taxing authority may elect to keep the previous millage rate; this is called a millage roll-up. A roll-up allows the taxing authority's revenue to increase by the same percentage as the value of the assessed properties rose during the four-year reassessment period.

The Constitution provides that the roll-up may be done by a two-thirds vote of the local governing body but only after a public hearing called in accordance with the Public Meetings Law. The law requires twenty-four hours written notice before a meeting. An exception is that with a two-thirds majority, the public body may consider a roll-up at that same meeting. This is effectively no notice.

This proposed amendment would require notices on two separate days at least thirty days before the vote of the taxing authority on a proposed millage roll-up. Notices must be in the official journal and in another newspaper with larger circulation, if one is available in the area.

BGR recommendation: BGR supports this amendment. Increased public notice will provide more opportunity for citizens to review any proposed millage roll-up.

Allows Interim Emergency Board to borrow money to deal with imminent floods

Amendment 13: Allows the state's Interim Emergency Board to borrow or appropriate money for an impending flood emergency. The anticipated situation would qualify contingent upon being declared a flood emergency by the Army Corp of Engineers or the U.S. Coast Guard. The monetary limit would be \$250,000 for any one event. Total funding for flood emergencies would be twenty-five percent of the Interim Emergency Board's total funding.

Analysis: Predicted flooding would be the only type of pre-emergency, or contingency, appropriation allowed. If the State was to have to restore infrastructure damaged by a

break in a levee, it would seem fiscally prudent to spend a lesser amount of money “up front” to shore up the levee until the danger of flood has passed.

If passed there may not be much use of the new authority, because the Interim Emergency Board would need to have the Corp of Engineers or the Coast Guard declare the situation an emergency before the Interim Emergency Board could perform the necessary polling of the Legislature. Then, assuming a sufficient number agree, the board could appropriate or borrow the money to meet the emergency.

BGR recommendation: No position

Changes jury requirements and allows combining certain crimes together in one trial

Amendment 14: Adds a section to the state Constitution to allow prosecutors, under certain circumstances, to try someone on more than one felony charge at a time. When certain felony charges are “joined”, the jury must be composed of twelve people and ten of the twelve must agree to reach a verdict.

Also provides that a case in which the punishment may be confinement at hard labor or confinement without hard labor for more than six months shall be tried before a jury of six persons, all of whom must concur to render a verdict.

Analysis: Currently, crimes with different jury requirements can not be combined. The amendment would allow that joinder of felonies with the condition that the twelve-person jury must be used.

The change from requiring five of six jurors to requiring all six to agree on a verdict has to be changed to conform to a U.S. Supreme Court decision. State statutes have been rewritten to conform, but the state Constitution has not been amended.

The joinder of trials of crimes for which there are different penalties may result in violations of the accused right to a fair trial. Evidence introduced for one crime, but not relevant to the second crime, may lead the jury to a guilty verdict for the second crime when otherwise they would have decided not guilty.

Proponents argue that allowing related crimes to combined in one trial would increase the efficiency of the court system and save taxpayers money.

BGR recommendation: No position

Allows local governments to forgive back taxes on blighted property

Amendment 15: Provides for the waiver of tax liens when the purchaser makes renovations approved by the parish or municipal government or when the owner sells for less than the appraised value for the purpose of facilitating the approved renovation plan.

The buyer cannot be a member of the owner's immediate family or an entity in which the owner has a substantial economic interest.

Analysis: This amendment is designed to increase the number of renovations of deteriorated properties which now have to go through a lengthy process to be declared blighted and then sold by the parish or municipal government. Under current provisions, a purchaser will not offer to purchase a property for which the tax liens are higher than the appraised value.

The amendment authorizes the waiver of past due taxes, interest and penalties that can apply to either the purchaser or seller under different conditions: for the purchaser, upon acceptance by the parish or municipality of a renovation plan, and for the seller, if the price is below appraisal in order to facilitate a renovation.

The language in favor of waiver of the past due taxes for the purchaser upon approval of a renovation plan does not require that the improvement plan be executed before the liens are waived. There is such a requirement when the property seller applies for the waivers. In that case, the deduction of past due taxes for the owner of blighted property only becomes effective after the approved renovation plan is accomplished.

The parish or municipality may have to hire additional plan examiners to review the proposed renovations.

BGR recommendation: BGR recommends approval of this amendment. It has the potential to increase the number of properties reclaimed and renovated by eliminating one of the major obstacles to the purchase of a blighted building. Local governments will lose some tax monies by not collecting the back taxes on the blighted property. However, some of these properties will start generating tax revenue again as they are put into residential or commercial use after renovation. Currently, many of these properties require taxpayer money for monthly inspections, record keeping and the filing of liens, without providing any tax revenue.

Extends property tax assessment freeze for an additional five years for residential property in a downtown district

Amendment 16: Allows a property tax break for owners of downtown property that is renovated for residential purposes to be renewed a second time, extending the tax break to a maximum of fifteen years. Currently, the property tax break is initially approved for five years and can be renewed for five additional years. The initial approval and subsequent extensions would still be subject to approval by the State Board of Commerce and Industry, the governor, and local government.

Analysis: To encourage redevelopment of existing buildings that may be expensive to bring up to present building codes, there is a constitutional provision that allows the owner to avoid paying property tax on the increase in the market value of the building for five years with the chance to renew for additional five years. Presently the owners of

properties in existing historic, downtown, or economic development districts are eligible for the property tax assessment freeze. Approval is granted upon the expansion, restoration or development of existing structures.

The proposed amendment would extend the assessment freeze for another five years, but only for residential properties located in downtown districts.

Properties converted to use as time-shares and hotels have been eligible for the exemption. If this amendment passes there will be a need for a uniform definition of “residential” to be used for the purposes of applying for the initial tax freeze and subsequent renewals.

BGR recommendation: BGR opposes the amendment. The extension would apply to current as well as proposed projects. For existing projects, there is no compelling reason to provide an additional five-year tax break. For new projects, we question the need to broaden property tax abatements and further erode the tax base of local governments.

Allows property in the City of New Orleans to be sold at tax sale for less than minimum bid

Amendment 17: When a property has been adjudicated to the City of New Orleans for non-payment of taxes, it is then offered for sale by auction. The minimum acceptable bid is the value of the outstanding taxes. If the property fails to sell at that tax sale, the City may sell it at a later sale with no minimum bid required. Proceeds are to be applied to past due taxes, but remaining unpaid taxes may be waived. The proposed amendment applies only to municipalities with a population over 450,000 (New Orleans).

Analysis: This amendment applies to any property subject to a tax sale, but it is unlikely to be used on other than blighted property. Property with a market value above the tax liability (the minimum bid) will probably sell at the first tax sale.

There is no requirement or condition of sale that the property be renovated. A sale under the conditions allowed by this amendment will give properties, which now have little chance of renovation, a better chance of being put back into productive use. This is another method of moving abandoned property back into commerce.

The proposed constitutional language does not mandate an "arm's length" transaction, but R.S.33:2880 requires that if the purchaser is the previous owner, all taxes and other encumbrances shall remain applicable.

BGR recommendation: BGR supports this amendment as another tool to help the City of New Orleans return some of the thousands of abandoned and blighted properties back to active commerce or residential use.

Allows the Town of Vidalia to exempt most property owners from municipal property tax

Amendment 18: Authorizes the Town of Vidalia to exempt all property assessed at up to \$20,000 from municipal property taxes.

Analysis: The State Constitution now allows all municipalities, (with the exception of the City of New Orleans which is defined as a parish) to levy property taxes for municipal proposes without application of the homestead exemption. The proposed amendment would allow the Town of Vidalia in Concordia Parish to establish a local exemption from municipal property taxes for property with an assessed value not exceeding \$20,000 (market value of \$200,000).

BGR recommendation: BGR opposes this amendment even though it has no direct impact on the City of New Orleans or the metropolitan region. BGR's concern is that the proposed amendment establishes a precedent for further broadening of the homestead exemption. If this passes, legislators representing other municipalities may also seek to have special exemptions such as this placed in the Constitution. ♦

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