

# BGR Report

A Report from the Bureau of Governmental Research

September 2003

## Issues on the October 4, 2003 Ballot

### Introduction

On October 4 Louisiana voters will be asked to approve 15 constitutional amendments. Four of the proposed amendments are of particular importance to the New Orleans region. Three relate to coastal restoration; the fourth provides for the possible state takeover of failing public schools, many of which are in Orleans Parish.

In this report BGR presents its analysis of these four significant amendments. It also addresses two ballot propositions in Jefferson and Orleans Parishes. The Jefferson Parish ballot proposition would increase property taxes to fund salary increases for classroom teachers and certain other employees. The Orleans Parish ballot proposition would allow slot machines at the Fair Grounds racetrack.

Additional information on these issues is available on BGR's website, [www.bgr.org](http://www.bgr.org).

### Constitutional Amendment No. 1: Wetlands Conservation and Restoration Fund

#### **What it would do:**

This proposed amendment would expand potential funding for the Wetlands Conservation and

Restoration Fund (WCRF). The WCRF is the central source for state spending on coastal restoration.

First, the amendment would add the WCRF to the list of constitutionally permitted uses of non-recurring revenue. The list currently includes: (a) retirement of state debt; (b) paying for unfunded accrued liability of public retirement systems; (c) capital outlay projects, and (d) deposits in the Budget Stabilization Fund (commonly called the "Rainy Day Fund") used to cover budget shortfalls.

Second, the amendment would dedicate to WCRF each year the first \$35 million of funds available in the Mineral Revenue Audit and Settlement Fund (Audit Fund). The Audit Fund consists of certain revenues from settlements and judgments relating to underpayments to the State of mineral revenue. Such revenues are deposited in the Audit Fund only after a series of allocations to other funds and entities.

The amendment would also add WCRF to the permitted uses of any additional money remaining in the Audit Fund. Currently allowed uses are limited to debt reduction and payment of unfunded accrued liability of public retirement systems.

Third, the amendment would raise an existing cap on WCRF funds. That cap currently limits to \$40 million the fund balance attributable to mineral revenues from severance payments, royalty

payments, bonus payments, or rentals. The amendment would increase the cap to \$500 million, or a greater amount approved by the legislature.

The amendment also contains a number of provisions that do not address coastal erosion. These include a provision adding new highway construction for which federal matching funds are available to the list of items eligible to receive nonrecurring revenues. The purpose of the addition is unclear, since such highway projects are already eligible for nonrecurring revenues as capital outlay projects. Although the provision is redundant as to funding, it may create an alternative authorization process.

### **What prompts the proposal:**

The amendment is aimed at securing funds for the restoration of Louisiana's coastal wetlands, which, among other things, protect the New Orleans metropolitan area. According to the U.S. Geological Survey, approximately 40 percent of the coastal wetlands of the lower 48 states is located in Louisiana. This fragile environment is disappearing at an alarming rate. Louisiana has lost over 1,900 square miles of coastal land since 1930. This is an area approximately the size of the state of Delaware. If the current rate of loss is not slowed, by the year 2040 an additional 800,000 acres of wetlands will disappear, and the Louisiana shoreline will advance inland as much as 33 miles in some areas.

The Louisiana coastal wetlands provide a vital natural buffer that helps to protect against hurricanes and other storms. The U.S. Census Bureau estimates that about half of Louisiana's 4.5 million people live in coastal parishes. Without wetlands to buffer storms, both people and property are at risk. Among the assets threatened by this erosion are the oil and gas production facilities and

pipelines that provide approximately 25% of the nation's oil and gas, the U.S. Strategic Petroleum Reserve Sites, and an intricate ecosystem that supports the largest commercial fishery in the lower 48 states.

Restoring the state's coast would be one of the largest environmental projects ever undertaken in the United States, commonly estimated to cost \$14 billion over the next several decades, with some recent estimates as high as \$34 billion. State and federal officials, however, estimate that the cost of inaction would be more than \$100 billion in infrastructure alone.

Given the prospects of so massive an undertaking, the State will have to make a significant commitment of resources and secure a tremendous commitment of federal funds. The amendment is intended to give the State greater flexibility in committing its own funds to that effort.

### **Analysis and potential impact:**

Proponents claim that the amendment would demonstrate Louisiana's willingness to commit resources to coastal restoration projects by increasing flexibility in funding, raising the existing limits on funds for that purpose, and dedicating new, specific, potential (but not guaranteed) sums to the cause. A demonstration of commitment is considered essential to obtaining federal funding.

Raising the cap on the WCRF would allow the accumulation of significant sums that may be required for the ambitious projects planned to restore Louisiana's wetlands. Making the fund eligible to receive nonrecurring revenues would also provide the state with greater flexibility in raising the large amounts of money needed to restore Louisiana's wetlands.

It is important to note that, while the constitutional amendment increases the potential for funding, it does not guarantee significant funding increases. For example, it is by no means certain that the dedicated \$35 million, much less additional revenues, would be available to WCRF from the Audit Fund. The Audit Fund is a highly unpredictable revenue stream. In the ten fiscal years from 1992-93 through 2001-02, receipts from settlements and judgments have ranged from \$0 (FY's 1996-97, 1997-98, 1998-99, and 2001-02) to \$132.4 million (FY 1993-94). The \$132.4 million in FY 1993-94 represents over half of the ten year total of \$256.9 million.

**BGR Position: FOR.** The Wetlands Conservation and Restoration Fund is the central state fund for spending money on coastal restoration. As Louisiana unavoidably gears up its efforts to save the coast, the increased flexibility for allocating money to the fund and a higher cap on fund assets are desirable. So too is the dedication of \$35 million from the Audit Fund, even though the revenue itself is not predictable. Although the amendment will not solve all the problems associated with coastal erosion, it will make the state more nimble for the challenge that we face.

## Constitutional Amendment No. 2: Louisiana Coastal Restoration Fund

### What it would do:

This amendment would create the Louisiana Coastal Restoration Fund. It would require the transfer from the Millennium Trust Fund to the Coastal Restoration Fund of up to 20% of the proceeds from any future securitization of revenues received from the state's tobacco settlement (the Master Settlement Agreement).

The actual amount transferred would be limited to the amount required to match federal funds available to Louisiana in the year in which federal funds are received. Money in the Louisiana Coastal Restoration Fund could be spent only on programs to reduce coastal erosion and restore areas directly affected by coastal erosion. These include the New Orleans metropolitan area.

### What prompts the proposal:

Like proposed Constitutional Amendment No. 1, this amendment is prompted by the need to stem the severe coastal erosion in Louisiana. The goal of this amendment is to provide a potential source for state matching funds, assuming success in obtaining major commitments of funding from the federal government to make the restoration possible.

### Analysis and potential impact:

Proponents say that this amendment is a demonstration of Louisiana's seriousness and commitment to saving the coast. It is part of the effort to secure massive federal funding by showing the state's willingness to commit resources to the project.

In 2001, the State securitized 60% of the revenue stream from the Master Settlement Agreement. Fifty million dollars of the proceeds (the State netted approximately \$1.07 billion from the securitization) went to the Louisiana Fund, from which the Legislature can make appropriations for education and health-care related purposes. The balance was distributed to the three dedicated funds that form the Millennium Trust Fund: the Health Excellence Fund, the Education Excellence Fund, and the TOPS Fund.

Currently, 60% of the funds from tobacco settlement is committed to paying off the bonds issued in the securitization. The remaining 40% is

distributed to the three funds in the Millennium Trust Fund and the Louisiana Fund.

Estimates of proceeds from the sale of the remaining 40% of the settlement funds range from \$500 million to \$1 billion, and depend heavily on market conditions and the perceived solvency of the tobacco companies obligated under the settlement. The resulting amounts available for coastal restoration range from \$100 million to \$200 million.

Representatives of health and education interests have pointed out that the amendment would potentially reduce the funds available to the beneficiaries of the Millennium Trust Fund. The Legislative Fiscal Office, using a State Bond Commission estimate of \$600 million in bond proceeds, estimated that the fund transfer to the Louisiana Coastal Restoration Fund could reduce by \$120 million the principle that would otherwise be deposited in the Millennium Trust. The Millennium Trust Fund would forego earnings of \$5.6 million annually, a third of which would otherwise have benefited each of the three special funds. The balance in the three funds ranged from approximately \$357 million (TOPS and Health Excellence Funds) to \$366 million (Education Excellence Fund) on June 30, 2003. The calculation in the Fiscal Note indicates that the Louisiana Fund would receive no future revenues if the remainder of Master Settlement Agreement is securitized.

**BGR Position: FOR.** Ignoring the need for coastal restoration is simply not a choice. As Louisiana continues to search for ways to fund the effort, this amendment could open the door to a significant source of matching funds. Contingent as it is on a decision to securitize the remaining revenues of the tobacco settlement and on federal programs that require a match from the State, the

amendment is certainly not a final answer. It does represent a reasonable balancing of important spending priorities and may play a useful part in the state's repertoire for funding an effort from which we cannot afford to hide.

## Constitutional Amendment No. 3: Compensation for Property Affected by Coastal Restoration

### What it would do:

This proposition would amend Article I, Section 4 of the Louisiana Constitution, which defines the fundamental property rights of citizens of the State. It would allow the State Legislature to limit compensation for takings of, or loss or damage to, property rights affected by coastal wetlands conservation, management, preservation, enhancement, creation, or restoration activities.

Voter approval of the amendment would activate companion legislation stipulating that compensation for such takings "shall be governed by and strictly limited to the amount and circumstances required by the Fifth Amendment of the Constitution of the United States of America." The legislation seeks to apply this limitation both prospectively and retroactively.

### What prompts the proposal:

State officials and lawmakers have voiced serious concerns about the state's potential liability for compensating property owners caught in the path of coastal restoration projects planned for the next few decades. The projects, which will require a mixture of state and federal funding, range from river diversions to restoration of barrier islands in coastal Louisiana.

Worries heightened in recent years after courts in Plaquemines and St. Bernard parishes awarded judgments against the State totaling \$2 billion to a group of oyster leaseholders who claimed that a 1991 freshwater diversion project ruined their oyster beds. The retroactive nature of the legislation suggests that the State hopes to reduce those judgments, which are currently on appeal, as well as avoid future similar predicaments with coastal restoration projects.

### **Analysis and potential impact:**

The proposed constitutional amendment would create an exception to Article 1, Section 4 of the Louisiana Constitution, which states in part that "[p]roperty shall not be taken or damaged by the state or its political subdivisions except for public purposes and with just compensation paid to the owner or into the court for his benefit." The article also guarantees the right to a trial by jury to determine compensation and provides that the owner shall be compensated "to the full extent of his loss."

Louisiana courts have interpreted the "full extent of his loss" standard to mean the fair market value of the property plus other provable damages, such as lost rental revenues or business profits. In contrast, damage awards under the Fifth Amendment of the U.S. Constitution are limited to the fair market value of the property.

Currently the only exception to Article 1, Section 4 is for the "appropriation of property necessary for levee or levee drainage purposes." Such appropriations are addressed in Article VI, Section 42, which calls for damages to be "paid for as provided by law." Under current law, such appropriations are compensated to the same extent as expropriations governed by Article 1, Section 4.

Interestingly, the state standard of "the full extent of his loss" is not a long-standing historical right in Louisiana. The standard was introduced into the state Constitution in the 1974 revision. Previously, the State followed the Fifth Amendment concept of fair market value.<sup>1</sup>

Proponents of the amendment set forth several reasons for limiting compensation for coastal restoration projects to fair market value:

- The cost of compensation could significantly increase the already enormous cost of the coastal restoration effort. If future judgments resemble those for the Plaquemines and St. Bernard oyster leaseholders, the State could be held liable for billions of dollars more.
- The State must persuade the federal government to cover the vast majority of the restoration cost. If federal lawmakers believe that significant amounts of federal dollars will be used to pay the claims of property owners and leaseholders, over and above what would be paid by the federal government under the Fifth Amendment standard, they may be reluctant to loosen the purse strings. Implementing the more limited federal standard compensation should allay those fears.
- The State wants to base its decisions in executing coastal restoration projects on science and not the size of the litigation costs.

Opponents maintain that:

- The new standard cannot be applied retroactively to reduce the oyster lease judgments now on appeal.



- The proposed amendment raises an issue of equal protection under the law, placing oyster farmers and others affected by coastal restoration in a different class than citizens impacted by other public works projects. Those affected by restoration will be deprived of categories of damages, such as the loss of future earnings, that other citizens are entitled to receive.

**BGR Position: FOR.** Financing coastal restoration projects is critical to the future of southern Louisiana and the State as a whole. While the proposed retroactive application to existing claims is open to challenge, the federal standard of compensation is reasonable for this state emergency.

## Constitutional Amendment No. 4: BESE Takeover of Failing Schools

### What it would do:

The proposed amendment would allow state takeover of individual public schools deemed to be "failing" under Louisiana accountability guidelines. Specifically, it would authorize the state Board of Elementary and Secondary Education (BESE), at its discretion, to "supervise, manage, and operate or provide for the supervision, management, and operation of a public elementary or secondary school which has been determined to be failing." The amendment also gives BESE the power to receive and expend state and local education dollars "in amounts calculated based on the number of students in attendance in such a school ...."

The amendment would activate companion legislation (SB 710) that spells out the specifics of execution and creates a Recovery School District to be administered by the state Department of Education. The legislation specifies the criteria for

takeover; the process for transfer from the local board to the state, and back again; state reporting responsibilities and progress at a transferred school; student eligibility to attend; powers of the Recovery School District to garner local, state, and federal funding; rules and process for the granting of charters within the district; facility upkeep; and personnel.

The legislation provides for school takeover under any of four circumstances:

- The local district in which the school is contained has failed to file a plan for reconstitution of the school on time.
- A submitted plan is unacceptable to BESE.
- The local district fails to comply with the terms of an agreed-upon plan.
- The school is deemed to be failing for four consecutive years.

Any school subject to takeover would remain in the Recovery School District until it is "no longer academically unacceptable," at which point the State and local district would initiate negotiations for the return of the school to local control.

Although the legislation allows direct state management of a failing school, it also gives the State the ability to contract with another entity or issue a charter. It places particular emphasis on inviting participation by historically black universities. It prohibits contracting with for-profit education companies, thus avoiding a matter that has been the subject of bitter contention in other state takeovers. Education officials indicate that the contractual approach would be far more likely than direct administration.

The schools would be financed by redirecting federal, state, and local monies to the Recovery School District. Capture of federal funding is described only in general terms. At the state level,

funding would be based on the per-pupil amount for the local district under the Minimum Foundation Program. At the local level, funding would be derived from the average per-pupil amount received in the local district from sales, use, and ad valorem taxes, excluding funds "specifically dedicated by the legislature or by voter approval to capital outlay or debt service or which was actually expended by the school board for facilities acquisition and construction."

The legislation states that certified teachers employed at a school slated for takeover will receive "priority consideration for employment," although it does not specify what this means. Those who are hired by the Recovery School District would be considered "on leave" from the local district, and any time served in the school would accrue toward retirement and other benefits. Teachers may choose to remain with the local school district, subject to the contractual obligations and policies of that district with respect to retention and reassignment. Any benefits or privileges applicable under the local system would apply under the takeover. The legislation does not require that schools slated for takeover employ only certified teachers.

### **Analysis and potential impact:**

From a practical standpoint, the amendment would primarily affect schools in Orleans Parish, since 50 of the 65 Louisiana schools ranked as "failing" are in Orleans. However, under the proposed criteria, only 16 schools, 15 in Orleans and one in Baton Rouge, would be eligible for state takeover in the 2004-2005 school year. State officials contacted by BGR have indicated that few to none of those are likely to be selected at that time, given the current school reform atmosphere in Orleans and the discretion granted to BESE in the proposed amendment.

**Financial impact.** The financial impact of a school takeover on Orleans is difficult to calculate. The State estimates it will have to spend an extra \$350,000 to \$500,000 on costs for administration of the Recovery School District. Although it is possible to estimate the amount of revenue that would be lost to a school district from a school takeover (e.g., approximately \$7,300 per student transferred in Orleans), education officials state that they cannot estimate the financial impact, or even whether it would be positive or negative, on the local school system.

**National trend.** Districtwide takeovers of one kind or another are becoming more common. They are allowed in 24 states and have occurred in 18. Most have occurred since 1995. Baltimore, Boston, Chicago, Cleveland, Detroit, Oakland, and Philadelphia are among the cities that have seen district takeovers of some fashion. Takeovers have ranged from state management of an entire district (like Compton, Calif., Hartford, Conn., and Newark, N.J.) to transfer of local control to the mayor, authorized by the state (found in Chicago, Boston, and Baltimore).

A total of 15 states, including 11 that permit districtwide takeovers, allow state takeover of individual schools. Among those 11 states, two have exercised the individual school option -- Maryland took over three Baltimore schools, and Alabama took over six schools across the state.

Louisiana education officials say the State took the school-by-school approach, rather than the districtwide approach, because it was perceived to be more feasible in the Legislature and more politically palatable when it comes to implementation. They say the approach places the emphasis more directly on the schools and students themselves, and less on power politics.

Reasons to support the proposal. Education experts and officials make two arguments in favor of takeover:

First, in a state which contains arguably the worst schools in the U.S., the State owes it to both its children and its future to try new approaches for intervening in failing schools. At the very least, takeover may give the community hope, psychological capital for a despairing school.

Second, the threat of school takeover is essential to give school accountability programs teeth. School closure (i.e., revocation of school approval) is currently the only recourse when a school district ignores BESE's mandates or otherwise falters in revitalizing a school. Education officials consider closure an unappealing last resort.

State takeover could help in two other ways: First, by relieving the district of its worst schools, a takeover would allow the district to focus its energies on the rest of the system. Second, it would bring the issue of accountability home to BESE, the agency that has been the driving force behind accountability, by giving BESE the responsibility for revitalizing the stagnant and troubled schools it has exposed.

Reasons to oppose the proposition. On the negative side, school takeover, whether on a districtwide or other basis, is a recent trend without a proven track record. Education experts have little basis to measure its relative success in the classroom, although district takeovers have proven successful in the realm of fiscal management. The lack of a measurable track record is a cause for concern.

In addition, many people consider public education an area that belongs under local control. Some consider the transfer of schools to distant boards or officials an affront to the democratic process.

Others believe that the proposed constitutional amendment and companion legislation are too

weak to provide an effective solution. One fundamental concern is that the amendment merely grants the power to take over schools without mandating its use, leaving open the possibility of no remedial action and continued loss of educational opportunity for the state's youth.

**BGR Position: AGAINST.** BGR acknowledges that the New Orleans public school system is in need of drastic and immediate reform. The BGR board has serious concerns, however, about the appropriateness and effectiveness of the remedy set forth in the proposed constitutional amendment.

## Jefferson Parish Proposition: Property Tax Millage for Teacher Salary Increases

### **What it would do:**

The proposition would authorize the Jefferson Parish School Board to levy an additional nine mills of property tax for the purpose of increasing teachers' salaries. The proposed tax millage would run for 10 years. The tax would yield an estimated \$17 million in its first year for the Jefferson Parish Public School System (JPPSS).

Pursuant to an agreement with the Jefferson Federation of Teachers, the money would be used for the salaries and benefits of employees in 14 job classifications defined as teachers for purposes of the bargaining unit. The 14 classifications include counselors, librarians, nurses, and similar occupations, as well as classroom teachers. The bargaining unit contains about 3,900 employees, of which about 3,200 are classroom teachers.

### **What prompts the proposal:**

As part of its one-year contract signed with the Jefferson Federation of Teachers, the School Board is obligated to put a stand-alone proposition to



voters asking them "to fund a substantial salary increase for teachers, including retirement costs and certain insurance costs." The submission of the proposition to voters fulfills that obligation.

### **Analysis and potential impact:**

Approximately \$15.8 million of the new tax revenues would be applied to raises for teachers and other members of the bargaining unit. The balance of the new millage income, \$1.2 million, would pay for insurance benefits and Medicare costs of retired teachers who return to work.

Impact on salaries. If the levy were to pass, a new salary schedule would go into effect for the 2004-05 school year. Salaries for every level of experience would be adjusted, although not all by the same amount. By way of example, a beginning certified teacher with a bachelors degree hired for the 2003-04 school year makes \$28,134. If the levy passes, an equivalent employee hired for the 2004-05 school year would start at \$31,500, a 12% difference. Under the current JPPSS schedule, a certified teacher, or other member of the bargaining unit, with a bachelors degree and 10 years experience makes \$34,798. Under the proposed schedule, the equivalent employee would make \$37,500 (up almost 8%). Under the proposed salary schedule, teachers and other eligible employees would be guaranteed a \$600 longevity raise each year and, if they earned an additional degree, they would receive a \$600 raise.

Teacher salaries in Jefferson Parish have not been stagnant. For example, the starting salary for an employee with a bachelors degree and no experience was \$23,244 in 1997-98 (vs. the 2003-04 starting salary of \$28,134). The individual hired in 1997 is now making \$31,892 (a 37% increase), as a result of six years of experience and union contract improvements. Under the proposed salary schedule, the individual would make \$35,700 in 2004-05 (a 53% increase over starting salary).

Part of the increase in salaries was due to the state Minimum Foundation Program (MFP). Legislation mandates that half of the increase in MFP Level 1 and Level 2 funding go to raises for teachers and administrators whose jobs require teacher certification. For the 2002-03 school year, the amount for Jefferson Parish was approximately \$3.4 million, \$880 per eligible employee. In the 2002-03 school year, each employee received \$880. That amount is incorporated on a permanent basis into the salary schedule for subsequent years. If the next MFP formula includes an increase in Levels 1 and 2, that new amount would in turn be incorporated into a new salary schedule.

School finances. Just over 51% of the school system's operating budget is locally generated. Of that amount, 17.3% comes from 13.91 mills of property taxes, and 80.2% comes from sales taxes. Jefferson Parish has the lowest millage dedicated to education of any area parish and is overly dependent on sales tax.

Almost 96% of the state money comes via the MFP, a complex formula that incorporates, among other variables, tax capacity and tax effort. If the nine-mill tax were to pass, the formula would include the new revenue and would improve the allocation. If the tax had been in effect this year, JPPSS would have received an additional \$730,000 of state funds.

Costly, legislatively mandated increases for health and retirement benefits have stressed the JPPSS budget in recent years. In FY 2003-04, benefits will comprise 23% of the budget, up from 17.5% in 2000. At the same time, revenues have been stagnant. The one, two punch has prompted the School Board to make cuts amounting to \$2,352,000, following combinations totaling \$14 million of budget cuts, transfers, and use of nonrecurring revenue in the two previous years. Class sizes have increased, foreign language classes in elementary school have been dropped, and special education

services decreased. The \$16 million in actual and planned savings, some in programs that directly affect educational quality, indicate that the School Board and administration are now making difficult spending choices.

Incidence of the tax levy. The proposed parishwide ad valorem tax would be paid only by those who own property not exempted from property tax. The owner-occupant of a \$100,000 house on land worth \$5,000 would pay an additional \$27 annually on the \$30,000 of taxable fair market value. If the same property were used as residential rental property, the annual tax increase would be \$94.50. If the property were commercial, the owner would pay an annual increase of \$141.75.

An increase in property taxes would help to smooth out the revenue stream for the school system. In addition, it would impose on property owners a share of the public education cost more in line with that paid in other metro parishes. A disadvantage is that the high proportion of tax-exempt property places an unfair share of the property tax burden on non-manufacturing businesses and renters.

Discussion. JPPSS advances the difficulty in hiring and retaining new certified teachers as a justification for the new millage. The most recent available Louisiana Department of Education count of certified teachers in elementary schools (2000-01) shows Jefferson Parish had a lower percentage (93.9%) than its suburban neighbors (97.8% in St. Charles and 98.2% in St. Tammany).

JPPSS does offer a lower starting salary than the neighboring parish public school systems. A certified teacher with a bachelors degree and no experience is eligible for \$28,134 in Jefferson Parish, \$29,494 in Orleans Parish, \$30,857 in St Tammany, and \$32,124 in St. Charles.

JPPSS claims that increased salaries are needed to retain and attract experienced teachers. JPPSS administrators offer only anecdotal evidence that higher pay will help retain or lure more experienced teachers to Jefferson. JPPSS has produced no evidence that experienced teachers are leaving for better pay elsewhere, either as teachers in other school systems or to pursue other, more lucrative careers. In fact, the retention problem appears to be confined to beginning teachers, with a 42% turnover rate in the first three years.

Data from the Louisiana Department of Education indicates that, as of October 2001, the average salaries for 3,000 Jefferson Parish teachers working in the five most common job classifications were higher than state averages and slightly higher than Orleans Parish, but lower than St. Tammany's and St. Charles' average salaries.

Opponents to the proposition criticize past spending decisions and are reluctant to give JPPSS more resources. They point out that when voters turned down last summer's half-cent sales tax proposal, the School Board managed to find \$10 million of savings. Opponents believe there are more cuts available to the School Board.

Opponents also criticize the School Board's lack of a formal set of priorities for operating and capital programs. Until the public knows where JPPSS wants to go and how it intends to get there, the School Board should not ask voters for more money.

Opponents believe that the raises in the proposal are too generous and not targeted to the problems identified by the School Board, particularly the difficulty in attracting entry-level teachers. They call attention to the fact that most of the money will go for longevity raises and not to starting salaries, the primary focus of the JPPSS argument. One group estimates that at a fraction of the cost, something closer to \$3.2 million, the salaries of certified

teachers in their early years could be raised. It should be noted, however, that without some upward adjustment to the salaries of experienced teachers, new teachers would suffer reductions in pay as they gained experience. For example, if new teachers were paid according to the proposed salary schedule for their first three years, but reverted to the current schedule in year four (and JPPSS did not apply any additional MFP Level 1 and 2 money or make any other adjustments during the three years), the teacher would take a pay cut of \$2,451.

Opponents further maintain that any revenue proposal should deal only with salary issues impacting student performance, and not give raises to everybody covered by the union contract.

Opponents anticipate that the 2004 property tax reassessment and an improved economy will increase both property and sales tax revenue for the school system. A 5% increase in property taxes would cover about half of the costs of a plan targeted at starting salaries. Opponents think JPPSS should wait to see what happens to sales and property tax income next year before rushing a new tax to voters.

While dedicating revenues might provide a political advantage in that teacher raises are a popular cause and many voters distrust elected officials, limiting the school board and administration's discretion to react to changing conditions is not fiscally prudent.

Opponents also point out that the language in the proposition, which refers to raises for teachers is misleading. The public will in fact be approving raises to hundreds of non-teachers covered by the union agreement. Proponents counter that the positions are for professionals who provide instructional or health services to children and that librarians and counselors are important to a successful educational system.

**BGR's Recommendation: AGAINST.** Voters should reject this dedicated nine-mill tax. The proposal seems confected to appeal to the most voters, not to address the most pressing needs. A careful review and prioritization of operating and capital needs might demonstrate that the across-the-board raises contemplated in the union agreement are less desirable than raises targeted to particular classes of teachers, reductions in class size, or other goals. A full discussion of priorities should take place before the School Board is given new money.

## Orleans Parish Proposition: Slot Machines at the Fair Grounds Race Course

### **What it would do:**

The proposition would allow the Fair Grounds Race Course (Fair Grounds) to add up to 300 slot machines through June 2004, increasing to 400 slots the next year and 500 slots thereafter. If revenue at Harrah's New Orleans Casino (Harrah's) should exceed \$350 million in any 12-month period, the Fair Grounds would be permitted to increase its total slot machines to 700.

### **What prompts the proposal:**

In 1997, the State Legislature allowed three of the four racetracks in the state to operate slot machines. The Fair Grounds was left out because of Harrah's exclusive contractual right to conduct land-based casino gaming in New Orleans.

In early 2001, Harrah's, which had declared bankruptcy in January, lobbied state lawmakers to reduce its minimum tax payments under its casino operating contract. During the lobbying effort, the Fair Grounds signed a memorandum of understanding with Harrah's to support the tax reduction if Harrah's would permit the racetrack to add slot

machines as an exception to the exclusivity provision of its contract. That year, however, while Harrah's received its tax break and emerged from bankruptcy, the Fair Grounds' slot machine gaming bill died in a Senate committee.

This spring, the Fair Grounds' fortunes turned as the Legislature passed Act 352, which authorizes the racetrack to add slot machines if Orleans Parish voters approve. If the ballot proposition passes, the Joint Legislative Committee on the Budget and the Louisiana Gaming Control Board must approve the amendment to Harrah's exclusivity provision in its lease agreement. The board then must give final approval of the Fair Grounds' eligibility to have slot machines.

**Analysis and potential impact:**

If voters approve the ballot proposition, the Fair Grounds would follow the terms and conditions of Act 352 and existing statutes authorizing slot machine gaming at racetracks. Under the law, the first 18% of the Fair Grounds' "net slot machine proceeds" — slot machine revenue, less payouts to winners — would be divided among purse supplements at Fair Grounds races, with portions dedicated to races with Louisiana-bred horses and to the Louisiana Horsemen's Benevolent and Protective Association, and special breeder awards distributed by the executive committees of the Louisiana Thoroughbred Breeders' Association and the Louisiana Quarter Horse Breeders' Association.

The remaining proceeds would be taxed by the State and possibly the City of New Orleans as follows:

- 18.5% to the State, portions of which would be dedicated to various purposes, including 5% for the newly created Orleans Parish

Excellence Fund, which will be used to support the Allied Health and Nursing Program at Delgado Community College. After all the dedicated allocations have been made, the State would allocate \$50,000 to the Southern University Urban Tourism and Marketing Program and \$50,000 to the Orleans Parish District Attorney's Office. Any remaining portion of the state's tax would be deposited in the state general fund.

- Up to 4% to the City, which would decide the exact percentage to levy.

The Fair Grounds would keep the remaining proceeds. The table below details the statutory rate and effective distribution for every \$100 of net slot machine proceeds.

Use	Statutory rate	Effective Distribution
<b>Net slot machine proceeds:</b>		<b>\$100.00</b>
Purse supplements	15%	\$15.00
Thoroughbred breeders	2%	\$2.00
Quarter Horse breeders	1%	\$1.00
<b>Remaining proceeds:</b>		<b>\$82.00</b>
State	18.5%	\$15.17
City	4%	\$3.28
<b>Fair Grounds</b>		<b>\$63.55</b>

The Fair Grounds would also be required to form a "good faith plan" to enhance minority employment and provide opportunities for minority business participation.

The racetrack would be required to remove its video poker machines. It has approximately 80 machines. The requirement to remove video poker machines affects only the racetrack location, and



not the off-track betting parlors operated by the Fair Grounds or its affiliates.

Fair Grounds bankruptcy filing. On August 15, 2003, Fair Grounds Corporation, the owner of the racetrack, filed for Chapter 11 bankruptcy. Company management stated that the bankruptcy protection was necessary because of a Louisiana Supreme Court decision that the Fair Grounds and other racetracks had incorrectly calculated the purse supplements for horsemen from video poker operations. The Fair Grounds has stated that the decision, which covers 10 years of operations, could cost over \$100 million.

Fiscal impacts. For state government, the slot machine proceeds would produce a new source of revenue. The state Legislative Fiscal Office estimates that from fiscal years 2004 to 2006, annual net slot machine proceeds at the Fair Grounds will rise from \$9 million to \$30 million. The 18.5% state tax would generate \$1.4 million to \$4.6 million during this period.

The Legislative Fiscal Office projects that annual revenue for the Orleans Parish Excellence Fund would rise from \$70,000 to \$230,000. Based on fiscal office assumptions, BGR calculated that a potential 4% City tax could generate annual revenue of approximately \$700,000 in 2004, increasing to approximately \$1,000,000 in 2006.

The Legislative Fiscal Office cautioned that the Fair Grounds could draw some revenue away from other local gaming locations, but it did not quantify this amount. A June report by gaming industry analyst Deutsche Bank Securities Inc. indicates that the maximum 700 slots would increase the supply of "gaming positions," or machines and table games for gamblers, by approximately 9%. Deutsche Bank Securities anticipated only a modest impact on revenue at other gaming businesses in the New Orleans area.

State requirements for the Fair Grounds to remove its video poker machines at the racetrack would cost the State its current income from video poker franchise fees, although the Legislative Fiscal Office could not obtain revenue figures from the State Police to determine the amount. It would also eliminate this stream of supplemental revenue for purses at the racetrack. However, slot machines have been more lucrative than video poker for racetracks. The loss of video poker revenues would have virtually no impact on city revenues. (State law allows local governing authorities to levy an occupational license tax on video poker machines of up to \$50 per machine. The City levies \$25.)

Reasons to support the proposition. The Fair Grounds, the nation's third-oldest racetrack, is seeking voter approval of the slot machines at a time when it is facing several financial problems. Gambling competition and declines in attendance and handle (the amount bet on horse races) have eroded the financial position of the Fair Grounds. Its management notes that the combination of declining revenues and escalating expenses have produced annual losses in recent years for the racetrack. Without a new revenue stream, such as slot machines, the racetrack faces a problematic financial future. The Fair Grounds estimates that the addition of slot machines will generate \$2 million to \$3 million a year to supplement purses. (The Legislative Fiscal Office's numbers suggest annual purse supplements of \$4.5 million by 2006-08.) With stronger purses, the Fair Grounds hopes that it can offer more quality races, boost attendance and handle, and alleviate its financial problems.

The rapid expansion of other legalized forms of gambling since the early 1990s has taken its toll on all horseracing tracks. Prior to 1990, only horseracing and charitable gambling were legal in Louisiana. The subsequent emergence of the state



lottery, video poker, riverboat gambling, casinos on Indian reservations, Harrah's, as well as the Mississippi Gulf Coast casinos, have given gamblers more options. Annual revenue from all forms of gambling in Louisiana has ballooned from \$192.1 million in 1990 to \$2.2 billion in 1998.<sup>2</sup> Horseracing revenue, however, declined 60% over the same period from \$131.9 million to \$78.7 million.

Total statewide handle declined steadily since 1990. The decline is most acute in "live handle," or the amount wagered on site at state racetracks. Live handle has fallen from more than \$350 million in 1990 to \$57.7 million through fiscal year 2003. Over the past five fiscal years, according to the Louisiana State Racing Commission, total live handle at the Fair Grounds declined from \$27.4 million to \$23.9 million, a decline of 13%. As handle has declined, it has become more difficult to pay purses. During the 2002-03 season, the Fair Grounds averaged \$262,267 per day. This average is down 2.7% from the prior season. The racetrack cut purses by 10% in February.

Racing commission figures show that attendance at the Fair Grounds racetrack and its off-track betting parlors has fallen 30% over the past five years, from 544,078 to 378,417.

Total racing days in Louisiana dropped from 685 in 1990 to 408 in 1998.<sup>3</sup> The Louisiana Racing Commission requires each track to race a minimum of 80 days. The Fair Grounds raced 84 in the 2002-03 season. It will drop to 80 racing days for the 2003-04 season.

Slot machine revenue has boosted purses at Delta Downs racetrack in Vinton, which added slots in February 2002. Delta Downs has increased purses from an average \$35,000 per day before slots to nearly \$200,000 per day. First-quarter revenue jumped 50% from \$24.9 million in 2002 to \$36.9

million this year. An operating loss of \$2 million turned into an operating profit of \$6.7 million.

Reasons to oppose the proposition. Opponents are concerned that the Fair Grounds' slot machines will attract a local crowd and contribute to the negative social impacts of gambling. A 2002 Southern University study found 3.4% of gamblers surveyed in New Orleans to be pathological gamblers, more than twice the 1.6% statewide average.<sup>4</sup>

The Legislature's decision to cure the ill effects of gambling expansion on racetracks with a further expansion of gambling points up its ad-hoc approach to gambling issues in Louisiana. There is little evidence that an over-arching vision exists for guiding the growth of gambling in the state and limiting its economic and social consequences.

The portion of the revenues that the City is eligible to receive is very small. Although the maximum allowed tax rate is 4%, the maximum effective rate is actually 3.3%. In effect, the Fair Grounds tax will be paying local taxes at a lower rate than the city's poorest citizens pay as sales tax when purchasing essential items such as clothing.

Another concern about the Fair Grounds slots centers on the potential neighborhood impact. The Fair Grounds anticipates operating the slot machines 24 hours a day year-round. It does not expect to draw more than 1,500 slot machine players per day once it installs 500 machines. The Fair Grounds believes it has available parking to accommodate these gamblers. The Fair Grounds is also considering limiting access to the racetrack to the main entrance on Gentilly Boulevard once it installs slot machines. However, the Fair Grounds' unusual position in the middle of a residential neighborhood calls for careful consideration of the proposed continuous operation, traffic patterns, and other issues that concern neighbors.

**BGR Position: AGAINST.** New Orleans does not need an additional outlet for gambling. Also, the proposed 24-hour operation could have negative impacts on the surrounding neighborhood.

## Endnotes

- 1) Howard, Tracy Lee, "Compensating an owner to the full extent of his loss: A reevaluation of compensable damages in Louisiana expropriation cases," Louisiana Law Review, March 1991.
- 2) Ryan, Timothy P., et al., "Gambling in Louisiana: A Benefit/Cost Analysis," prepared for the Louisiana Gaming Control Board, April 1999.
- 3) Oakland, William, "The Economic Impact of the Horse Racing Industry in the State of Louisiana 1997," Oakland Econometrics, April 1998.
- 4) Vogel, Ronald J., and Phillip Ardoin of Nelson Mandela School of Public Policy at Southern University (Baton Rouge), "Gambling in Louisiana: 2002 Louisiana Study of Problem Gambling," Louisiana Department of Health & Hospitals, Office for Addictive Disorders, 2002.



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Description of Proposition	BGR Position
Proposition No. 1, state constitutional amendment expanding potential funding for the Wetlands Conservation and Restoration Fund.	<b>FOR</b>
Proposition No. 2, state constitutional amendment creating the Louisiana Coastal Restoration Fund and requiring the transfer of up to 20% of the proceeds from any securitization of revenues received from the state's tobacco settlement.	<b>FOR</b>
Proposition No. 3, state constitutional amendment limiting compensation for takings of, or loss or damage to, property rights affected by coastal wetlands conservation, management, preservation, enhancement, creation, or restoration activities.	<b>FOR</b>
Proposition No. 4, state constitutional amendment allowing state takeover of individual public schools deemed to be failing under Louisiana accountability guidelines.	<b>AGAINST</b>
Jefferson Parish, proposition to authorize the Jefferson Parish School Board to levy an additional nine mills of property tax for the purpose of increasing teachers' salaries.	<b>AGAINST</b>
Orleans Parish, proposition to allow the Fair Grounds Race Course to add slot machines.	<b>AGAINST</b>