



ON THE BALLOT

A Report from the Bureau of Governmental Research

New Orleans, October 2008

INTRODUCTION

ON OCTOBER 4, voters in Orleans Parish will consider two propositions: one to provide capital funds for certain criminal justice facilities and the other to amend the Home Rule Charter of the City of New Orleans.

The first item, a \$63.2 million bond issue, would support construction efforts by the Criminal Sheriff, the District Attorney, the Coroner, the Clerk of Criminal Court and the Municipal, Traffic and Juvenile courts.

The second item, a charter amendment, would make permanent the Office of Inspector General, define its responsibilities and provide funding to ensure it will remain independent. It also would make permanent the recently created police monitor division within the Office of Inspector General.

In this report, BGR provides analysis and takes a position on each proposition.

ORLEANS LAW ENFORCEMENT DISTRICT: BOND ISSUE

What it would do

The proposition would authorize the Orleans Parish Law Enforcement District, a special entity governed by the Orleans Parish Criminal Sheriff, to issue \$63.2 million of general obligation bonds. The funds would be dedicated to facilities, equipment and furnishings for the following justice agencies:

Criminal Sheriff	\$40.9 million
Municipal and Traffic Courts	\$7.5 million
Coroner	\$5.0 million
Juvenile Court	\$3.7 million
District Attorney	\$3.3 million
Clerk of Criminal District Court	\$2.8 million

Background

The Orleans Parish Law Enforcement District is one of the special districts created by state legislation in 1989 to provide a financing vehicle for the parish sheriffs and, in New Orleans, for the Criminal Sheriff.¹ The Attorney General has interpreted the legislation as allowing the Criminal Sheriff to issue bonds for buildings and equipment used by the other participants in the criminal justice system.

The district's boundaries are coterminous with those of Orleans Parish. The Criminal Sheriff is the chief executive of the district. There is no governing board, and neither the City Council nor the Mayor has a voice in the funding or operations of the special district.

The Law Enforcement District is authorized to levy a tax of up to 10 mills with voter approval. Currently the district assesses 2.9 mills to support \$27 million of bonds issued in 2001. Approximately \$13 million of the proceeds from that issue remain unspent. The unspent proceeds are dedicated to improvements for the following city-owned justice facilities:

Criminal District Court	\$9.4 million
District Attorney	\$1.7 million
Juvenile Court	\$1.1 million
Clerk of Criminal Court	\$700,000
Municipal and Traffic Courts	\$250,000

Justice Facilities Master Plan. The proposed bond issue would, for the most part, pay for facilities that are part of the criminal justice complex at Tulane and Broad. The site contains both city- and Criminal Sheriff-owned facilities. The Criminal Sheriff owns 16 buildings on the site. Some house inmates. Others are used for rehabilitation programs or jail administration. The city owns another eight buildings. Four of these house the District Attorney, the Municipal and Traffic courts, the Criminal District Court and New Orleans Police Department headquarters. Another four are for inmate housing.

Pre-Katrina, many of the buildings suffered from inadequate maintenance and other problems. When the disaster struck, several feet of flood water ruined electrical facilities, mechanical equipment and building contents at the complex. It also damaged the structural integrity of some buildings.

In 2007, FEMA brought together city and criminal justice officials to develop plans to rebuild the Tulane and Broad facilities as a more efficient criminal justice complex. Later that year, it brought Civil Court and Juvenile Court officials into the facilities planning discussion.²

The meetings resulted in the Justice Facilities Master Plan – a multi-stage plan to rebuild or repair facilities for police, fire, Emergency Medical Service, the Criminal Sheriff, the Coroner, the District Attorney and the courts. The plan, released in September 2007, is still in draft form and has never been vetted at a public hearing or adopted by the City Planning Commission. The Criminal Sheriff and the city have stated that, where possible, they intend to rebuild according to the Justice Facilities Master Plan.

A complete build-out of the Justice Facilities Complex would cost approximately \$1.4 billion. While the planning group discussed multiple potential funding sources, there is no realistic plan for funding the entire complex.

The Cost to Taxpayers. When voters approve a Law Enforcement District bond issue, they are also

approving a property tax dedicated to the district for debt service on the bonds issued. The Law Enforcement District property tax, currently set at 2.9 mills, costs the owner-occupant of a \$200,000 home \$36.25 annually, the owner of \$200,000 residential rental property \$58 and the owner of a \$200,000 commercial property \$87.

The proposed bond issue will cost taxpayers approximately \$5 million a year for 20 years. The Criminal Sheriff calculates that no millage increase will be necessary to make the projected debt payments. He has set the bond issue at the maximum amount (\$63 million) that can be raised without triggering an increase. However, if revenue is insufficient, the Criminal Sheriff has an obligation to increase the millage to cover debt service.

If the proposed bond issue is not approved, the tax rate for the Law Enforcement District will decline from 2.9 mills to approximately .8 mills, with further reductions in future years. No tax would be payable after 2016.

Use of Bond Proceeds

As indicated above, the bond proceeds would be dedicated to various participants in the criminal justice system. The participants have indicated that they intend to use the dedicated proceeds as follows.

The Criminal Sheriff. The Criminal Sheriff's plan for the proposed bond funds is very close to that proposed as the first stage of rebuilding in the Justice Facilities Master Plan. The Criminal Sheriff would use the \$40.9 million to help pay for five projects costing almost \$230 million. The balance of the funding would come from already-committed FEMA grants. The five projects include:

- An elevated kitchen and warehouse, connected to all housing units via a secure overhead walkway, estimated to cost \$53.5 million. FEMA would provide \$48.4 million and the bond proceeds would provide \$5.1 million.

- An elevated central power plant with emergency capabilities estimated to cost \$20 million, paid for entirely with bond proceeds.
- A communication and data system for the criminal justice system estimated to cost \$4 million, paid for entirely with bond proceeds.
- An intake and processing center estimated to cost \$21 million. FEMA will pay \$20 million, and bond proceeds would cover the \$1 million balance.
- An elevated jail with 1,500 beds at a total cost of \$130.8 million. FEMA has committed \$120 million, and bond proceeds would cover the \$10.8 million balance.

Municipal and Traffic Courts. \$7.5 million of bond proceeds would be used to construct hearing and consultation offices for domestic violence cases, make improvements to comply with the American with Disabilities Act (including an elevator), install public restrooms on the main floor, and connect the judges' chambers to the courtrooms. The balance of the \$8.5 million cost would be paid with unused proceeds from the 2001 bond issue and the Traffic and Municipal Court Building Fund.

Coroner. \$5 million in bond proceeds would be used to construct a state-of-the-art forensic center to replace the flooded morgue and forensic laboratory. The Coroner estimates that the total cost would be \$7 million to \$10 million, with \$2 million provided by FEMA. He hopes that the city will fund the balance for the building. The site, facility and funding are uncertain. The Coroner and city are discussing which of two city-owned locations to use and whether the police crime lab would be merged with the Coroner's toxicology lab. The city has not committed to fund a portion of the facility.

Juvenile Court. The Juvenile Court intends to use \$3.7 million of bond proceeds to help it relocate to a proposed Juvenile Justice Center. The new center would include offices for the assistant district attor-

neys and the public defenders who work on juvenile cases, and offices for the city and state agencies that provide services to youth and families. The center would also include a pre-trial juvenile holding facility, the Youth Study Center. That facility was badly damaged by the levee breaks, and FEMA will fund its replacement. The city is considering several sites for the facility, but for financial reasons the judges consider the pre-Katrina site, between Bayou St. John and St. Bernard Avenue, to be the most feasible.

The Juvenile Court estimates that the Juvenile Justice Center, excluding the FEMA-funded Youth Study Center, would cost \$56.7 million. The court facilities would account for approximately \$13 million of that amount. In addition to the \$3.7 million from the proposed bond issue, the judges plan to use \$1.1 million remaining from the 2001 bond issue to pay for the court facilities. They expect to fund the balance with a mix of federal and state grants, none of which is firm at this time.

District Attorney's Office. The District Attorney's office plans to use \$3.3 million to build a secure, elevated walkway connecting the District Attorney's office building to the Criminal District Court; to upgrade communication and data processing systems; and to resurface the existing parking lot. The project costs will total roughly \$4.9 million. Proceeds from the 2001 bond issue will cover the balance.

Clerk of Criminal Court. The Clerk plans to use \$2.8 million to develop a new evidence storage facility and inventory tracking system; a new records storage facility and tracking system; and communication equipment to link the Clerk of Criminal District Court to the 13 sections of Criminal Court.

Evidence storage for criminal trials is currently in the basement of the Criminal District courthouse. It would move to a city-owned building next door. The Criminal Justice Facilities Plan places the Coroner's facility and the Police Department's crime lab in the same building. However, the city's current plans for the building

do not include the Coroner's facility.

The storage building is expected to cost about \$15 million. In addition to the proceeds from the proposed bond issue, the Clerk of Court has \$700,000 from the 2001 bond issue. FEMA is expected to contribute an undetermined amount. It is unclear from where the balance will come.

Analysis

Timing. In proposing the bond issue at this time, the Criminal Sheriff is seeking to take advantage of a window of opportunity. As hurricane-damaged facilities are being rebuilt with FEMA funding, he wants to make improvements. Those improvements are for the most part integral to the rebuilding and can be made effectively only in tandem with the facility reconstruction.

If the bond issue were not approved by voters, the Criminal Sheriff would still have access to the funds that FEMA has committed to rebuilding the facilities. These funds total \$188.4 million.

Need. The jail facilities in Orleans Parish are outmoded and severely deteriorated. To address the problem, the Criminal Sheriff has developed a master plan. The proposed bond issue would help him with implementation.

Many of the improvements proposed by the Criminal Sheriff appear to be useful. Incorporating classrooms and other learning spaces would allow the Criminal Sheriff to provide more rehabilitation services. Adding a power generation facility would help to eliminate the need for mass evacuation. Improving inter-agency communication is highly desirable.

All of these serve a purpose. The real question, however, is whether the improvements to be funded by the bond issue are among the most pressing ones facing the community. Due to decades of neglect and the levee failures, much of New Orleans' infrastructure – whether in the form of schools, streets, or sewer and water pipes – is in poor condition.

Bringing the city's infrastructure up to an acceptable

standard will require billions of dollars. The collective price tag is far beyond the community's means. The city's residents will have to make very tough choices – choices that can be made intelligently only if needs are evaluated and prioritized on a comprehensive basis. That analysis must take into account local funding needs of all government entities operating in New Orleans.

It is not the Criminal Sheriff's fault, but to date there has been no attempt to establish comprehensive, city-wide priorities for limited resources. A piecemeal approach, with different entities going to voters on their own timelines, undermines the potential for wise resource allocation. BGR urges all local government bodies to come together to develop funding priorities and calls on the Mayor to provide the necessary leadership.

Governance Issues. In 1989 and again in 2000, the Orleans Parish Law Enforcement District successfully asked voters to approve bond issues. BGR took positions against both Law Enforcement District bond propositions. Its opposition was based in part on the method of administration.

As noted earlier, the Criminal Sheriff serves as ex-officio chief executive of the Law Enforcement District. The law establishing the district gives him total operational and financial authority over the district. There is no accountability to a board, the City Council, the Mayor or the Legislature. Basic checks and balances are not present in the district's operation.

The Criminal Sheriff, in consultation with the other elected officials, determines which agencies will receive funds through the bond issues. The legislation requires neither a plan for spending district revenue nor public hearings on proposed expenditures. As a result, transparency suffers.

Uncertainties. The Criminal Sheriff's plan appears to be well conceived. There are, however, many unknowns regarding some of the other proposed projects, particularly the Juvenile Court building, the Forensic Center and the Clerk of Criminal Court's evi-

dence storage. The Juvenile Court building and Forensic Center lack sites and the Criminal Court's evidence and record storage facility may or may not share the building with another agency. In some cases, there are gaps in the projects' financing plans and the development plans seem to be little more than concepts. The Juvenile Court's cost estimates diverge widely. Without accurate estimates, reasonably advanced plans and firm funding sources, voters cannot feel secure that all of the projects supported by the bond resolution are feasible.

BGR Position

AGAINST. Although the Criminal Sheriff's plan appears to be well conceived, several projects for other agencies are not developed to the point where voters have enough information to consider them.

It is evident that the criminal justice facilities require major reconstruction. It is not clear, however, that the specific improvements proposed for the bond issue are the most pressing needs facing the city. In that regard, we note that the infrastructure needs of the community far exceed the local capacity for funding them.

To make informed decisions, voters need a comprehensive picture of the community's needs and resources. It is critical that the city, Criminal Sheriff and other tax recipient bodies develop such a picture and a set of funding priorities. Otherwise, we risk misallocation of scarce resources.

CHARTER AMENDMENT: OFFICE OF INSPECTOR GENERAL

What it would do

The proposed amendment to the Home Rule Charter of the City of New Orleans (the Charter) would make the Office of Inspector General (the OIG) a permanent part of city government. In addition, it would:

- Specify the duties of the office.

- Allow the OIG to hire special counsel separate from the City Attorney's lawyers.
- Establish a special division of the OIG devoted to monitoring the New Orleans Police Department and focused on how the police manage complaints.
- Provide the OIG and the Ethics Review Board with a permanent revenue source equal to 0.75% of the city's General Fund.

Analysis and impact

Background. In 1995, voters approved charter amendments allowing the City Council to create an Office of Inspector General and requiring the Council to establish an Ethics Review Board. BGR supported the changes. The next year, the Council established the Ethics Review Board, and the Mayor appointed its members. But the city did not provide support to the board, and it never got off the ground. For a decade, the Council took no action to create the Office of Inspector General.

Responding to a post-Katrina reform wave, the Mayor in 2006 re-established the Ethics Review Board. That same year, the Council passed an ordinance establishing the Office of Inspector General (OIG). The ordinance provided for the qualifications, appointment and removal of the Inspector General; spelled out his powers and duties; and made the OIG "operationally independent" from the Mayor and Council. Among other things, it allowed the OIG to hire its own counsel. Subsequently, the Ethics Review Board, the appointing authority for the OIG, hired the city's first Inspector General.

This year, the City Council responded to long-standing citizen concerns about police conduct with an ordinance adding an independent police monitor division to the OIG.

If voters approve the amendment, the OIG, with a mandated police monitoring division, will become a permanent part of city government. The office will have a

significant revenue stream to fund its operations.

If voters reject the amendment, nothing will immediately change with regard to functions or funding of the office. However, the Council could change the functions of the OIG or eliminate the office and police monitor altogether. It could also decrease or eliminate funding for the OIG and the Ethics Review Board.

Establishing the OIG. The proposed charter amendment helps to cement the reforms of the past two years. Making the office mandatory, specifying the major duties and providing a funding source significantly diminishes the risk of a future Council eviscerating the office. It enables the Inspector General to conduct his work with reduced risk of retribution.

The proposed amendment would also clear up some legal ambiguities about the scope of the OIG's powers. The Charter currently prohibits a city employee from performing an audit of any office or public body that receives city funds. The specific grant of audit powers to the OIG would provide a clear exception to that prohibition.³

The amendment also addresses a dispute over the Inspector General's right to hire or contract for legal services. The City Attorney maintains that the Charter does not allow the Inspector General to hire his own general counsel. Relying on the City Attorney's office would place the OIG in the untenable position of using an attorney who represents both the investigating body and the entity under investigation. The proposed Charter amendment makes it clear that the Inspector General has the right to hire his own counsel.

While the proposed amendment would greatly increase the independence of the office, it does not eliminate all material risks. For example, the proposed revision is silent as to who is the appointing authority – the agency that hires and fires the Inspector General. While the ordinance establishing the OIG designates the Ethics Review Board as the appointing authority, the Council could in the future appropriate the power to itself. This would have the unfortunate effect of giv-

ing a body subject to the Inspector General's oversight the power to hire and fire him.

The proposed amendment does not clearly establish the operational independence of the OIG. As a result, it is unclear whether the OIG would be subject to a mayoral hiring freeze or could be deprived of needed equipment by city purchasing delays. It is also unclear if the Council could put part of the OIG budget in "reserve," making it unavailable to the OIG without subsequent Council action. In short, there might still be ways that unfriendly city officials could undermine the work of the OIG.

Establishing the Police Monitor. As noted above, the City Council passed an ordinance requiring the OIG to establish a division dedicated exclusively to monitoring the Police Department. The ordinance mandates three positions for that purpose. So far, no staff members have been hired. The Inspector General estimates that the three police monitor positions will cost a total of \$300,000 in annual salaries and benefits.

As part of its oversight, the Independent Police Monitor Division will look for patterns in complaints and their resolutions, use of force and in-custody deaths, and make recommendations to improve performance. The division will not conduct initial investigations; that function will remain with the police department. While it can accept complaints from the public, it must send them to the police department for investigation. Civilian complainants who are dissatisfied with the result of a complaint can ask the division to review the police department investigation.⁴ The police monitor is to have complete access to, but not actively participate in, police and civil service disciplinary proceedings, and it may make recommendations on what the outcome should be. The ordinance also directs the police monitor division to administer a mediation program using trained neutral mediators from outside the police department.

The charter amendment would make that Independent Police Monitor Division a permanent part of the OIG. It would direct it to focus on civilian and police complaints, internal police investigations, discipline, use of

force, and deaths of civilians in police custody.

Most large cities have some type of civilian oversight of police. In general, the objective of such oversight is to improve police performance and increase trust between civilians and police officers.

The authors of the proposed amendment offer several reasons for the charter amendment placing a police monitor division within the OIG in the Charter. It would be more difficult for a future OIG, Mayor or Council to shrink or eliminate the independent police review function. It would enable the division to employ important powers that state and local laws grant to the OIG, such as the authority to issue subpoenas in the event that someone refuses to cooperate with an investigation. As a mandated part of the OIG, the police monitor division would be assured some annual funding.

Funding. Establishing the OIG in the Charter is not enough to guarantee that the office will have sufficient funds to function. The cautionary example is the first Ethics Review Board, which withered because of a lack of financial and administrative support.⁵

The proposed amendment aims to prevent that from happening to the OIG. It would guarantee that the OIG and Ethics Review Board receive minimum annual funding equal to 0.75% of the General Fund. It further provides that the Mayor may not veto the annual appropriation in spite of his authority under existing Charter provisions to remove or amend specific appropriations.

Based on the city's 2008 budget, the minimum funding formula would produce \$3.4 million. This amount is roughly equal to the 2008 budgets for the OIG and Ethics Review Board.⁶ Those budgets contemplate a staff of about 25 people for the OIG and two people for the Ethics Review Board.

Setting the dedication in the Charter at a level adequate to support the office would enhance the independence of the office by eliminating the need for annual budget negotiations between city staff and

elected officials. This is in line with the recommendation of the Association of Inspectors General that such offices receive a fixed percentage of general fund revenue. The intent is to clearly establish the Inspector General's resources and the authority to manage them independently.

BGR has traditionally opposed dedications because they limit a local government's ability to respond to changing conditions. In this case, however, a dedicated revenue stream of some amount is necessary to establish and maintain the OIG's independence.

Providing adequate funding to protect the OIG's independence is clearly important. Determining the appropriate amount of guaranteed funding is more difficult.

It is impossible at this point to say what the budget should be. For one thing, the office has no track record. In addition, there are no industry standards. Offices in other cities perform varying work and receive varying amounts. Miami's OIG receives \$5.2 million. Baltimore's receives \$663,598. Chicago, with its \$5.9 billion operating budget, allocates \$5.5 million or 0.09% to its OIG.⁷ The New Orleans OIG would receive almost 0.4% of the city's total operating budget.⁸

In 2006, BGR proposed dedicating a smaller percentage of General Fund revenue, 0.1%, to the OIG. BGR estimated that percentage would yield \$475,000 a year.⁹ The City Council could, at its discretion, add more to meet the OIG's needs.

There are risks to permanently setting aside 0.75% of the General Fund. It may lead to an outsized budget, given other needs. With a city budget currently propped up by federal and state borrowed funds, a population still recovering from the disaster of three years ago, and insufficient rebuilding funds, dedicating a portion from the General Fund could affect the provision of other public services.

The large guaranteed budget also raises accountability issues. Major guaranteed funding remains in place

regardless of results. This is ironic given the OIG's mission to eliminate waste and promote performance measures.

The funding provision contains a significant loophole allowing the Council to change the dedicated percentage "in cases of natural disaster or other extreme circumstances." What constitutes "extreme circumstances" is unclear. While the Council may have envisaged an event like the 2005 levee failures, the phrase is not defined in the Charter, Municipal Code or state law. Leaving it to the Council to determine what circumstances are extreme enough to warrant funding cuts invites the very problem that the proposed amendment is intended to prevent, untoward pressure on the OIG.

BGR Position

FOR. An independent review of New Orleans' government, including police complaint procedures, is vital to fighting corruption and reducing waste. If this proposed amendment does not pass, there is a chance that a future Council might eliminate the Office of Inspector General altogether or impede its operations by not funding it properly. Although BGR supports the amendment, it is concerned about permanently dedicating revenues on the scale proposed for an entity that has not produced its first investigative or performance report.

END NOTES

¹ La. Rev. Stat. § 33:9001 *et seq.*

² While the Civil and Juvenile court facilities are part of the draft facilities plan, at this time neither is likely to move to the Tulane and Broad complex. The Civil District Court is likely to stay in the CBD and the Juvenile Court would like to move to a site close to the Youth Study Center.

³ The Charter contains a prohibition against a city employee performing an audit of any office or public body that receives or expends city funds. Home Rule Charter of the City of New Orleans, Sect. 6-108.

⁴ Ordinance No. 23,146 MCS, Section 1 (8).

⁵ In December 2006, the Mayor appointed new members.

⁶ The 2008 General Fund portion is about \$460 million of the total \$912.5 million operating budget.

⁷ The proportion is 0.2% if the separate independent police review authority is added. City of Chicago. *2008 Line Item Budget-Budget Summaries, Summary F: Distribution of Proposed Appropriations by Function and Organization Units*. BGR calculations.

⁸ The \$912.5 million budget as adopted includes FEMA reimbursements for prior year expenses and federal and state loans that must be repaid beginning five or, with permission, 10 years after use.

⁹ Estimate based on the 2005 General Fund budget.

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