



ON THE BALLOT

A Report from the Bureau
of Governmental Research

New Orleans and Jefferson Parish Propositions, December 6, 2014

INTRODUCTION

On December 6, voters in Orleans Parish will decide the fate of a proposed tax for the upkeep of public schools in New Orleans. Voters in Jefferson Parish will decide on 11 propositions to amend the parish charter. Among them are proposed new requirements of the parish president and changes to the civil service system, as well as a proposition to require that the proceeds from the sale or lease of public hospital assets be placed in a protected fund.

This report provides an explanation of each of these 12 ballot items. It explores the arguments for and against them, and offers positions to assist voters in making informed choices.

ORLEANS PARISH: SCHOOL FACILITIES TAX

What It Would Do

Currently, the Orleans Parish School Board (School Board) levies a 4.97-mill property tax dedicated to servicing general obligation bonds. The millage, which is set each year at a rate necessary to cover principal and interest payments, is projected to decline in the coming years as the bonds are retired and expire in 2021.

The School Board is proposing a new, 10-year tax that would essentially capture for the “preservation, improvement and capital repairs of all existing public school facilities” the portion of the millage that the district would no longer need for debt service. The new tax would be levied at 4.97 mills minus the rate of the debt service tax. As a result, the proposed new tax would increase at the same rate the old tax decreases, keeping the total millage levied by the district at the current 4.97 mills.

Legislation passed in the last session (Act 543 of 2014) would govern the spending of the new tax revenue on school facilities.

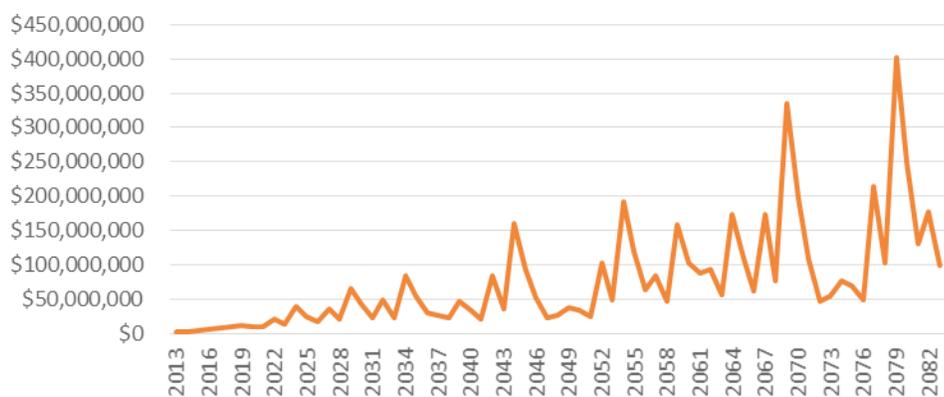
Background

Prior to Hurricane Katrina, many public school facilities in New Orleans suffered from serious deterioration, a consequence of long-term underfunding. From time to time, the board borrowed to make various capital investments, but it did not adequately fund the cyclical repair and replacement necessary to keep facilities in good shape.¹ For example, \$175 million of general obligation bonds issued in 1995 covered only 35% of the estimated need at the time.²

Following Katrina, FEMA agreed to provide the School Board and the Recovery School District (RSD) with \$1.5 billion to rebuild schools.³ While the FEMA investment and other supplemental funding will provide a fresh start for many schools, it will not cover the cost of future repair and replacement.

The most recent projection of those costs was developed in 2012 by the Blue Ribbon Capital Investment Commission, an advisory board formed by the RSD and the School Board as part of the school facilities master plan process. It analyzed future needs on a facility-by-facility basis. It estimated the expected life cycles of facility components, such as windows, roofs and air conditioning, and projected the cost of repair and replacement over time. While the timing and scope of certain school projects have changed since 2012, the commission’s combined projection, shown in the following chart, is the best available estimate of the future repair and replacement need for all schools.

Estimated Total Costs of Major Repairs, All Schools



Source: Blue Ribbon Capital Investment Commission, 2012 projection.

The program takes effect using the sales taxes regardless of whether voters approve this property tax.

The program would receive sales taxes at a rate of approximately 0.3%, or one-fifth of the School Board’s total sales tax revenue.⁵ As drafted, the act appears to require the School Board to make the payment while it is making the debt service payment.⁶ According to supporters of the act, the intent is for the preservation program to receive the 0.3% sales tax net of ongoing debt ser-

The proposed tax would provide a recurring source of revenue during the next 10 years to help meet these needs.

The Tax Proposition. The proposed tax would gradually replace an existing one levied to pay for outstanding general obligation bonds. The rate is currently 4.97 mills. It is expected to decline slightly in the coming years and then drop significantly in 2020 and 2021.⁴ It will expire after the bonds are repaid in 2021.

The School Board would levy the new tax at a rate equal to the difference between 4.97 mills and the rate needed to pay debt service on its general obligation bonds. As long as the millage for debt service is 4.97 mills, the rate of the new tax would be zero. As the millage for debt service declines, the new millage would be levied. For example, if the bond millage drops to 4 mills, the rate of the new tax would be 0.97 mills. Once the bonds are paid off, the School Board would levy the entire 4.97 mills of the new tax.

Act 543 of 2014. Expenditures of the new tax revenue would be controlled by state legislation enacted earlier this year. Act 543 established a school facilities preservation program for Orleans Parish. The program will be funded with the proceeds of any new property taxes dedicated to capital outlay – such as the proposition before voters – and a portion of the School Board’s sales taxes.

vice. As debt service declines, revenue for the program will grow.

Program revenue will be allocated between the School Board and the RSD in proportion to their shares of the February 1 student count in School Board-owned campuses.

The program has two phases. The first phase will extend until the existing bonds are retired, which is expected in 2021. During that phase, both the School Board and the RSD will receive \$15 per pupil, which may be adjusted annually, to fund their respective facilities offices. The offices will oversee the program, as well as schools’ overall maintenance of facilities and compliance with building leases.

The remaining funds will pay for emergency repair and replacement projects administered by either the School Board or the RSD.

After the existing bonds are retired, the School Board and the RSD will continue to fund their facilities offices off the top. However, the remaining money will then be divided into per-campus shares, based on enrollment at those campuses.

For 20 years, a portion of each per-campus share would be used to fund separate revolving loan funds for the School

Board and the RSD. These funds would provide interest-free loans to schools for either emergency or planned capital repairs, typically those too large for pay-as-you-go funding (e.g., a roof replacement). Schools would repay the loans from the per-campus share remaining after the deductions.

Contributions to the loan funds are calculated differently, depending on the degree to which the campus has been renovated. The annual deductions are the greater of \$150 per pupil or 17% of the per-campus share for schools built prior to September 1, 2005, and not having since received a renovation valued at more than half of the building’s replacement cost. (BGR refers to such schools as “not substantially renovated.”) For all other schools, the deductions are the greater of \$300 per pupil or 35% of the per-campus share.

The School Board and the RSD will place the rest of each per-campus share in a “school facility account” dedicated to each campus. Under the formula, schools in facilities built prior to September 1, 2005, and not substantially renovated since then – whose long-term needs will be greater – will keep more of their per-campus share in their accounts. The table illustrates the effect with two hypothetical schools of 500 students each.

School operators will make expenditures from the accounts, subject to a host of restrictions. Any expenditures must conform to a facility plan for the campus. The charter school board must approve individual expenditures and then seek approval from either the School Board or the RSD, as applicable. School operators must follow public bid law and comply with applicable School Board or RSD policies, including disadvantaged business enterprise (DBE) policies. If school operators change, the funds remain tied to the campus.

The legislation prohibits the School Board from refinancing the existing bonds or otherwise delaying their retirement. However, it does not prohibit the board from issu-

Examples of Act 543 Distribution of School Facility Funds in 2022 After Debt Is Retired

	School Built Prior to 9/1/05 and Not Substantially Renovated	School Built or Substantially Renovated After 9/1/05
Number of Students	500	500
Estimated Per-Campus Share of Facility Funds, 2022*	\$366,175	\$366,175
Less: Annual Deduction for OPSB or RSD Revolving Loan Fund	\$75,000	\$150,000
Balance to School Facility Account	\$291,175	\$216,175

* In calculating the per-campus share of facility funds, BGR used an RSD estimate of the student count in School Board-owned campuses in 2022 (51,744) and its own estimate of facility funds, less allocations to facilities offices (\$37.9 million).

Source: Recovery School District and BGR calculations.

ing new general obligation bonds.⁷ If the board did so, the facilities tax millage would be reduced by the millage levied for debt service on those bonds.

Analysis

With the help of the federal government, the School Board and the RSD have been able to dramatically improve the quality of school facilities in New Orleans. The School Board, the RSD and the residents of New Orleans have an obligation to preserve that investment for both today’s students and future generations.

Ultimately, the new tax would produce substantial recurring revenue for that purpose. It would help to avoid a back-slide into the old cycle of underinvestment, decay, rising costs and expensive borrowings.

Using conservative assumptions, BGR estimates that annual revenue would grow from \$0.5 million to \$1.5 million through 2019, and increase to more than \$4 million a year in 2020 and 2021. After the bonds are retired in 2021, BGR estimates that the new revenue will jump to approximately \$14.8 million a year.⁸

In addition, it estimates sales tax revenue for the program will begin at \$6.4 million in 2016 and rise to \$8.6 million in 2021.⁹ After the sales tax-supported debt is paid off that year, BGR projects \$23.9 million annually will flow to the program.

BGR estimates that total program revenue will cover projected repair and replacement expenses during the life of the millage and, if it is renewed, at least 30 years.¹⁰

Taxpayers would pay the same overall rate, 4.97 mills, they paid in 2014. A homeowner with a homestead-exempt property valued at \$200,000 would continue to pay \$62.13. For each additional \$100,000 of value, the tax would be \$49.70. Commercial property owners would continue to pay \$69.58 per \$100,000 of value.¹¹ Of course, the new tax would be levied for a longer period than the existing one.

One question some voters may have is whether it is necessary to act now. While recognizing the need for facility investment, they may question whether the new tax should be considered closer to the time when the existing tax expires in 2021. However, the relatively small revenue stream generated between now and then is needed to help meet capital repair expenses arising through 2021.

Some observers have concerns about the program being funded by the tax. Those in favor of centralized management think that facility repairs should be managed at the district level, rather than the school level. They worry that school operators will not have the expertise needed to manage the projects. Proponents counter that centralized district management is not necessarily better; indeed, the reform era in New Orleans has demonstrated the benefits of devolving power to the schools themselves. Districts should instead play an oversight role through their respective facilities offices. Further, proponents note that each school operator must live with the results of its repair decisions, a practical incentive for proper management.

Some observers at the school level worry that the districts will exercise too much control over schools' spending of facility funds. They are concerned that the complex set of checks and balances – including compliance with district policies and approval of individual expenditures at the district level – will hamper their ability to make

repairs. Still, they believe the new framework in Act 543 will be more effective than the status quo of being completely dependent on a central project manager. Proponents of Act 543 add that striking a balance between school autonomy and central oversight is important for public accountability.

BGR Position

FOR. With new and renovated schools coming on line, the need for regular repair and replacement of New Orleans' school facilities is growing once again. The tax proposition would go a long way toward avoiding past practices of neglect and ensuring that school buildings are preserved for generations of students to come.

JEFFERSON PARISH: CHARTER AMENDMENTS

On December 6, Jefferson Parish voters will decide whether to adopt a host of amendments to the parish's home rule charter. The proposed amendments are organized into 11 ballot propositions.¹²

The amendments are the product of a comprehensive review of the parish charter. At least once a decade, the parish charter must be reviewed by an advisory committee.¹³ In 2012, the Jefferson Parish Council initiated the most recent review by forming the Jefferson Parish Charter Advisory Board. The board consisted of 15 citizens, with seven appointed by the Parish Council, two by the parish president and six by the presidents of local colleges and universities.

The Charter Advisory Board met more than 20 times between April 2012 and May 2013. With the assistance of its own legal counsel and the Parish Council research staff, it reviewed proposals put forward by its members, the council, the parish president, the Personnel Board, the inspector general and citizens. The Parish Council then received the advisory board's recommendations, made some changes, organized the amendments into 11 propositions and approved them for the ballot.

The following discussion summarizes each of the 11 propositions and provides analysis and recommendations to assist voters in making informed decisions.

PROPOSITION 1: PARISH COUNCIL INVESTIGATIONS

What It Would Do

The charter currently grants the Parish Council broad authority to investigate parish affairs.¹⁴ It may investigate any department, office, agency or special district of the parish, or any person in service of the parish. It may subpoena witnesses, administer oaths and gather evidence. It can punish any person who fails or refuses to obey “any lawful order of the Council.” In addition, the charter gives the council authority to investigate “any person in service of the parish for lack of qualifications, incompetence, neglect of duty, failure to comply with a lawful directive of the Council or gross misconduct in reference to that person’s duties.”¹⁵

Proposition 1 would modify these investigatory powers in two ways. First, it would limit the “lawful orders” of the council to orders pertaining to an investigation.¹⁶ Second, the proposition would remove “incompetence” as a basis for an investigation of a parish employee. The Charter Advisory Board recommended these changes to remove ambiguity and the potential for subjective interpretation.

Finally, the proposition would broaden the description of evidence that the council may gather from “books and papers” to “books, papers and other evidence.”

BGR Position

FOR. Proposition 1 would remove unnecessary subjectivity from the council’s investigatory powers under the charter.

PROPOSITION 2: PARISH PRESIDENT

What It Would Do

The charter currently is silent on whether the parish president can have outside employment or compensation while in office.¹⁷ It is also silent on whether the president and the Parish Council can receive sick leave or annual leave. Proposition 2 would specify that the president is a full-time parish official, prevent him from having outside

employment and restrict his allowable outside income to portfolio income, such as capital gains or dividends, and passive income as defined by the IRS. This is income either from rental activities, such as leasing an apartment, or from trade or business activities in which he owns an interest but does not “materially participate.”¹⁸ Proposition 2 would also prohibit the president or the council from receiving sick leave or annual leave benefits.

Background and Analysis

In 2012, former Parish President Aaron Broussard pled guilty to federal charges that included receiving \$66,000 in bribes from a parish contractor.¹⁹ The bribes were disguised as compensation for outside legal work performed by Mr. Broussard for the contractor.

In response to the Broussard scandal, the Charter Advisory Board has proposed constraining the parish president’s ability to have outside employment or income. Proponents of the amendment believe it would clarify what citizens expect of the parish president – that he devote his full time and effort to his office. They also believe it would limit the parish president’s ability to use his office to enrich himself through outside business interests.

As a consequence of the charter change, the public could have a smaller pool of candidates to choose from as some business owners may be discouraged from seeking the post. However, the amendment recognizes the reality that managing an enterprise as large as Jefferson Parish government requires an individual’s full attention and energies.

Finally, the proposition would prevent the president and the Parish Council from receiving sick leave or annual leave benefits. Currently, they do not receive such benefits on the theory that they are elected officials and not parish employees. The amendment would make the current practice permanent.

BGR Position

FOR. The full-time work requirement and the constraints on outside employment and compensation are appropriate given the scale of Jefferson Parish government.

PROPOSITION 3: LAYOVERS OF COUNCIL ORDINANCES

What It Would Do

The charter currently requires that every ordinance be introduced in writing. It does not specify that the ordinance must be introduced in full, and the practice has been to introduce it in summary form only.

The charter also requires publication of a summary of the ordinance, together with notice of when and where it will be given a public hearing and considered for final passage, in the official newspaper. Publication must occur after introduction of the ordinance and at least one week prior to the advertised time for the hearing.²⁰

Proposition 3 would retain the requirement to introduce ordinances in writing and publish a summary and notice in the official journal. However, it would drop the requirement that the publication occur at least one week prior to the hearing. It would add a requirement that ordinances lay over a minimum of six calendar days beginning the day after their introduction. It would enshrine in the charter the current practice of allowing amendments without a layover.²¹

In addition, it would allow for publication of notices in electronic form if state law ultimately permits this.

Background and Analysis

Proponents of the charter amendment have indicated that its purpose is to reduce the period of time that must elapse between the introduction and consideration of an ordinance to two weeks.

Currently, the Parish Council schedules its regular meetings on certain Wednesdays.²² Its practice is to post the completed agenda, including summaries of ordinances introduced at the meeting, on the parish's website two days later. Also by practice, the council publishes the minutes of the meeting, including the summaries, in the official newspaper on the following Wednesday. According to the council clerk, publication before then is not possible because of the time involved in preparing the minutes, packaging them with other parish notices, delivering them to

the newspaper, typesetting and proofing. This typically is not finished until Tuesday.

Because the charter requires publication in the official newspaper at least a week before the council considers an ordinance, the council is sometimes unable to take up newly introduced ordinances at its next meeting. The issue arises when the meetings are held two weeks apart. In that case, the ordinance has to lay over until the next meeting. Depending on the schedule, that meeting could take place anywhere from 28 to 35 days after the ordinance was introduced.

By shortening the time between introduction and consideration of a proposed ordinance, the amendment would enable the council to act more swiftly. However, it would eliminate an important safeguard: the requirement that summaries of ordinances be published at least a week before they are taken up by the council. Once the minimum time period is eliminated, the door is opened to giving the public very short notice – even less than a day. This could seriously affect the public's ability to absorb and respond to proposed ordinances. While the public can currently find ordinance summaries on the council's website, posting on the website is not required by law and is subject to change.

We note that the proposed amendment does not address a fundamental problem: the absence of a requirement to introduce draft ordinances in full.

Finally, the proposition would also change the term “official newspaper” to the broader term “official journal” and add a set of general requirements for the official journal. This would allow for publication of notices in electronic form if state law were changed to permit this.²³

BGR Position

AGAINST. Proposition 3 would eliminate a charter safeguard that ensures that the public receives adequate notice of proposed ordinances in the newspaper. While citizens can currently access summaries and notice on the council's website, the practice of posting them is subject to change.

PROPOSITION 4: LAW ENFORCEMENT DISTRICT

What It Would Do

The charter currently gives the parish finance director custody of all public funds belonging to or controlled by the parish or any parish department, office, agency or special district.²⁴ It specifically excludes from his purview the Jefferson Parish School Board and the 24th Judicial District Court, both of which are separate from the parish government. The charter is silent, however, on the Law Enforcement District, a special financing district governed by the sheriff that is also separate from the parish government. Proposition 4 would make explicit in the charter that the Law Enforcement District is excluded from the finance director's purview.

BGR Position

NO POSITION. The amendment would remove any ambiguity in the charter relative to the exclusion of the Law Enforcement District from the parish finance director's purview. However, the amendment is unnecessary because the district is not part of parish government.

PROPOSITION 5: PARISH PERSONNEL ADMINISTRATION

What It Would Do

The charter currently establishes a civil service system that covers all employees of parish government except those specifically exempted in the charter or, in the case of parish firefighters, by the state constitution.²⁵ It also establishes the Personnel Department to administer the system. The department is led by the Personnel Director, who is appointed by the Personnel Board.

Proposition 5 would make dozens of changes to the personnel administration section of the charter, Sec. 4.03. In summary, it would:

- Explicitly limit the scope of the civil service system to the classified service.²⁶
- Restrict the investigatory authority of the Personnel

Board.

- Make the position of Personnel Director permanently classified.
- Change the governance of the Personnel Board by modifying provisions related to board size, nominating process, appointment process and members' terms.
- Update and expand the list of unclassified positions.
- Exempt certain individuals from any parish personnel administration, whether classified or unclassified.
- Set forth an approval process for the unclassified pay plan.

In the following discussion, BGR will describe each of these charter changes and analyze the key ones.

Background and Analysis

Explicitly limiting the scope of the civil service system to the classified service. While the Personnel Board and Personnel Department have clear jurisdiction over classified employees, their authority over unclassified employees is somewhat ambiguous. During the Broussard administration scandals, controversy arose over the board's attempt to investigate two unclassified employees. The Charter Advisory Board proposed amendments to limit the authority of the board, the department and the director to classified employees.

Proposition 5 would change terminology, renaming the Personnel Department, Personnel Director and Personnel Board as the Civil Service Department, Civil Service Director and Civil Service Board. It would change references to "personnel system" and "personnel rules" to "civil service system" and "civil service rules."

The amendment also would make clear that unclassified personnel are not subject to the civil service provisions of the charter or the rules adopted pursuant to those provisions. It would state that the board's authority to develop and administer a pay plan, to investigate employees, and to hold disciplinary hearings extends only to classified employees.

Restricting the investigatory authority of the Personnel Board. Currently, the Personnel Board has broad power to

make any investigation regarding personnel management in the parish service. The proposed amendment would limit that authority by prohibiting the board from conducting investigations of individual employees or conducting any investigation that compromises its quasi-judicial authority under the charter. The Civil Service Director would still have the duty to investigate violations of rules prohibiting political activity. Appointing authorities would still have the responsibility to investigate and impose disciplinary action for individual violations of other civil service rules.

Making the position of Personnel Director classified. The charter is currently silent on whether or not the Personnel Department's director is a classified employee. Proposition 5 would specify in the charter that the position is classified.

Historically, the director has been a classified employee. As a civil servant, the director can be dismissed only for cause and is guaranteed certain rights of appeal. The classified status of the director is typical of most civil service directors in Louisiana.²⁷

The Charter Advisory Board recommended making the Personnel Department's director an unclassified position. This would have given those directors the same at-will employment status as the heads of other parish departments. The director still would have been appointed by the board and not the parish president. The Parish Council rejected this recommendation and took the contrary approach, adding language specifying the director's classified status.

Supporters of the proposed charter amendment argue that a classified director is less vulnerable to political pressure than an unclassified one. Without civil service protection, the director can be removed without cause by a board appointed by the parish president.

Opponents of the charter change think a classified director may be less responsive in implementing the board's directives. They expressed concern that a classified director's personal interests align with those of classified employees, creating a conflict of interest and giving him a vested interest in maintaining the status quo. They note that the Personnel Department vets all candidates for the director position, increasing the likelihood that a candidate sup-

portive of the current system will emerge.

Changing the governance of the Personnel Board. The board currently has three members. All are appointed by the parish president. The president has full discretion in his appointment of one member, subject to council approval. He appoints the other two without council approval from lists of three nominees submitted by the presidents of Tulane and Loyola universities individually. If the parish president fails to appoint from the lists within 30 days, the first named nominee is automatically seated.

Members must be registered voters, hold no other public office or position in the parish, and be "known to be in sympathy with merit principles of public personnel administration." They serve six-year terms. There are no term limits.

The proposed charter changes would:

- Increase the size of the board from three to five members.
- Provide for appointment of four of the five members from lists of three nominees submitted by seven university presidents, acting individually on a rotating schedule to be set by council ordinance. The parish president would retain full discretion in the selection of the fifth member.
- Require Parish Council ratification of all appointments made by the parish president.
- Delete the current requirement that members must be "known to be in sympathy with merit principles of public administration."
- Reduce members' terms from six years to five years, and stagger the terms so that one expires each year.
- Impose a one-term limit.

Board composition. When there are only three board members, two members constitute a quorum under the open meeting law. As a result, board members cannot have any one-on-one conversations relating to board business.

Proponents of the amendment maintain that expanding the board to five members would eliminate this problem. They also claim that expanding the board would allow for greater diversity of opinions in board discussions. They claim that the expanded nominating process and council ratification of all appointments would somewhat reduce the potential for the president to stack the board in his favor.

Supporters of the one-term limit argue that members can become too entrenched and that the board needs fresh thinking. Furthermore, a one-term limit would allow a member to do what he thinks is right without worrying about the effect on his reappointment. Others counter that imposing a term limit would unnecessarily deprive the board of experienced citizens who are willing to serve. They note that a board member's term would come to an end just as he has developed a working knowledge of the complexities of the civil service system. However, staggering the terms would help to counteract the loss by preserving institutional knowledge at the board level.

The Charter Advisory Board recommended removing the requirement that board members be "in sympathy with" merit principles on the basis that it is no longer necessary or desirable as a qualification. The requirement was intended to bolster the original civil service system in the 1957 charter.

Updating and expanding the list of unclassified positions. For a position to be exempt from the classified service, it must be listed in the charter or exempted by the constitution. The current list of exempt employees includes individuals who are not even parish employees, such as members of boards and other unpaid bodies, and parish contractors. Proposition 5 would remove those positions from the list.

At the same time, it would expand the list. It would declassify all positions in the office of the parish president or the Parish Council that are currently classified.²⁸ These total 58 positions.²⁹ However, all but nine of them are special positions limited to the current term of the official who appointed them.

Finally, the charter change would declassify all positions in the office of the parish attorney. The change would

have minimal impact, since all positions other than clerical ones are already declassified. Currently, there are only five clerical staff and they would retain their civil service protection.³⁰

Supporters of the amendment argue that the parish attorney should have the flexibility to hire and dismiss all staff, as do private law firms and the New Orleans city attorney.³¹ They point to the difficulty of disciplining employees through the civil service system. They have not, however, articulated a basis that would justify treating the law department's clerical employees differently from similar employees in other departments.

Some on the Charter Advisory Board raised concerns about the risk of increased political influence in administrative hiring in the parish attorney's office. These concerns could be partially addressed by a provision in Proposition 6 that, should it pass, would give the Parish Council authority to set minimum qualifications for employees in the service of the parish attorney.

Exempting certain individuals from any parish personnel administration, whether classified or unclassified. Proposition 5 would create a list of positions not subject to any parish personnel regulation. Most of those mentioned in the list do not fall under parish personnel administration currently.³² However, the proposed amendment would create a new exemption for the inspector general and positions in the Office of Inspector General (OIG) and the Ethics and Compliance Commission.

Currently, the charter places the inspector general and "his assistants" in the unclassified service. This means they fall within the pay plan and personnel policies administered by the parish's human resources department. Other positions in the office are classified. The amendment would remove all the employees from the parish pay plan and administration and give the inspector general full control over his staff. Proponents argue that this change would boost the office's independence.³³

Setting forth an approval process for the unclassified pay plan. The unclassified pay plan was developed after the original charter was written. The parish administration, through its human resources department, develops the plan and submits it to the Parish Council for approval.

The proposed charter change would require an unclassified pay plan and set forth the existing approval process.

BGR Position

NO POSITION. Proposition 5 is a mixed bag. On the plus side, the proposition would more clearly define the scope of the civil service system in parish government. It would expand the system's governing board, potentially broadening its viewpoints. It would also give the inspector general independent control over his staff. However, the proposition also takes the undesirable steps of enshrining the Personnel Director's classified status in the charter and imposing an overly restrictive one-term limit on board members. In addition, it would declassify the remaining classified positions in the parish attorney's office without a clear reason for doing so.

PROPOSITION 6: PARISH ATTORNEY AND SPECIAL COUNSEL

What It Would Do

The legal services section of the charter establishes a department of law headed by a parish attorney.³⁴ It allows the parish attorney to appoint and remove his "assistants," a term that does not extend to classified clerical positions. It further allows assistant parish attorneys to work part-time, but requires them to be registered voters of the parish.

The charter provides that the parish attorney shall serve as the legal counsel to the Parish Council, the parish president, and all parish departments, offices, agencies and special districts. It directs him to perform such other legal duties as may be set forth in administrative regulations. For example, the parish attorney must consent to the removal of records from the official personnel files of unclassified employees.³⁵ The parish attorney also performs duties set forth by council ordinance or resolution, although the charter is silent on that. For instance, the parish attorney assists in the parish's adjudication process for blighted property.³⁶

Proposition 6 would extensively rewrite the legal services section of the charter. It would:

- Change the employment requirements for employees in the legal department. Specifically, it would:
 - Change terminology to be consistent with Proposition 5's provision making all employees in service of the parish attorney at will.
 - Direct the Parish Council to establish minimum qualifications for those employees by ordinance.
 - Eliminate part-time employment for assistant parish attorneys, as well as the requirement that they be registered voters in Jefferson Parish.
- Redefine the scope of the parish attorney's legal duties by incorporating current practices into the charter. Specifically, it would:
 - Make clear that the council can direct the parish attorney to perform legal duties by ordinance or resolution.
 - Provide a basis in the charter for the parish attorney's broad power and authority to prosecute, defend or intervene in legal matters affecting the parish.³⁷
- Specify that the council can retain or employ special legal counsel to represent it or any of the districts it governs.

Background and Analysis

Employees in the service of the parish attorney. As discussed above, Proposition 5 would amend the personnel administration section of the charter to make all future employees in the service of the parish attorney, including clerical employees, unclassified. Proposition 6 would change terminology in the legal services section to conform with proposed changes to the personnel administration section. BGR notes that, if Proposition 6 passes but Proposition 5 fails, or vice versa, there will be an inconsistency in the charter. In one place, only the parish at-

torney's assistants would be at will; in another, all of the parish attorney's employees would be.

The provision requiring the Parish Council to set minimum qualifications for employees in the legal department is intended to provide a buffer against future political hiring. It is the Charter Advisory Board's response to the Broussard administration scandal in which the parish president directed the parish attorney to give his girlfriend a paralegal supervisor job for which she was not qualified.³⁸

The Jefferson Parish voter registration requirement for assistant parish attorneys is the only residency requirement imposed by the charter on professionals employed by parish government. Proponents maintain that eliminating it will expand the pool and allow the parish to hire the best qualified staff, regardless of where they are registered to vote.

Responsibilities of the parish attorney. Currently the parish code gives the parish attorney broad authority to prosecute, defend or intervene in legal matters affecting the parish.³⁹ This enables the parish attorney to act to protect the parish's interests without having to seek prior council approval. Proposition 6 would incorporate the authority into the charter. Proponents claim that, if the ordinance were ever repealed, it could slow the parish attorney's ability to act and put the parish's interests at risk.

Hiring special counsel. The charter is currently silent on the council's authority to hire special legal counsel. The council currently does so pursuant to its general powers granted by the charter. The proposed charter amendment would make its power to hire special counsel explicit. There are no limitations on the council's current powers, or those proposed to be included in the charter.

There are circumstances in which it may be appropriate to hire special counsel. For example, it might be more effective and efficient for the parish to hire special counsel to handle non-routine legal matters requiring special expertise. In addition, it might be more cost-efficient to hire special counsel to supplement the law department's resources at times when it is overstretched. However, the proposed charter amendment does not limit the council's authority to situations where there is a demonstrated need.

This increases the risk of patronage and unnecessary expense for the parish.

BGR Position

NO POSITION. This proposition presents a mixed bag for voters. On the one hand, it would give the parish attorney greater flexibility in hiring and firing staff, subject to the check and balance of minimum qualifications set by the council. It would also bolster the parish attorney's authority to protect the parish's interests in legal matters. On the other hand, the proposition would enshrine in the charter the council's unfettered discretion to hire special legal counsel. Allowing such hiring without a demonstrated need increases the risk of patronage and unnecessary expense for the parish.

PROPOSITION 7: PLANNING AND ZONING BOARDS

What It Would Do

Currently, the charter directs the Parish Council to create by ordinance a Planning Advisory Board and a Board of Zoning Adjustments and, among other things, prescribe their "advisory or quasi-judicial duties." The council has done so, giving the Planning Advisory Board strictly advisory duties and the Board of Zoning Adjustments a quasi-judicial function.

Proposition 7 would allow the council to give the Planning Advisory Board and the Board of Zoning Adjustments policy-making duties. With such duties, the Planning Advisory Board would be more akin to planning commissions in other cities and parishes. For example, the charter change would enable the council, if it so desired, to authorize the Planning Board to approve major re-subdivisions and site plans that meet all parish requirements. Without a specific proposal, however, it is not possible to determine the effect of a beefed-up planning board.

In addition, the charter currently authorizes the council to create by ordinance any other "advisory boards" it deems necessary. It does not specify the types of duties the council may prescribe for these boards. Proposition 7 would formally allow the council to give them "advisory, policy-

making or quasi-judicial duties.” It would refer to them as “boards and commissions,” instead of advisory boards.

To avoid any confusion between the roles of the council and the boards it creates, the proposition further states that the council shall be the “sole legislative authority of the parish.” It would prohibit the delegation of legislative authority to, or the exercise of such authority by, any board or commission.

BGR Position

FOR. Proposition 7 would allow for the possible expansion of the parish planning board’s duties, although no specific expansion proposal is on the table. The proposition would also expand the possible range of duties of boards and commissions created by the council.

PROPOSITION 8: INSPECTOR GENERAL

What It Would Do

Currently, the charter directs to the Office of Inspector General (OIG) and the Ethics and Compliance Commission the proceeds of any special tax dedicated to their operations and approved by voters.⁴⁰ It further requires those offices to forward any unused funds to the parish’s general fund at the end of each fiscal year.⁴¹

Proposition 8 would allow them to retain unused funds from year to year. The reserve would be capped at an amount equal to a year’s worth of tax revenue.

The creation of an operating reserve would give the OIG greater fiscal stability and a cushion against revenue fluctuations from year to year. These could be caused by declines in the tax base or by the council setting the tax rate for the OIG at a lower level than what voters have authorized. The reserve would also allow the OIG to take on complex investigations with less fear of exhausting its budget.

Proposition 8 would also allow the inspector general to issue a cease-and-desist order if he determines that another parish investigation is interfering with his, and the investigating party does not voluntarily agree to suspend

such investigation. Currently, the Parish Council and the Personnel Board each have investigative authority under the charter. Under the amendment, the inspector general would have preference and priority over other parish entities in conducting investigations of the same person or activity. The current inspector general proposed, and the Charter Advisory Board recommended, this preference as a pre-emptive measure to head off possible conflicts.

BGR Position

FOR. Proposition 8 would increase the independence and the fiscal stability of the OIG and head off possible conflicts between that office and other parish entities over investigations.

PROPOSITION 9: UNIVERSITY NAME CORRECTIONS

What It Would Do

The Ethics and Compliance Commission consists of five members appointed by the parish president from lists of three nominees submitted by the presidents or chancellors of five colleges and universities, acting individually. The names of three universities (Loyola, Xavier and UNO) as stated in the charter are outdated. Proposition 9 would correct them.

BGR Position

FOR. Making a technical amendment to correctly reflect names is appropriate.

PROPOSITION 10: PARISH HOSPITALS AND JEDCO

What It Would Do

Proposition 10 would establish a special fund to hold the proceeds from future leases or sales of hospital district assets. It would also formally protect the present autonomy of the hospital districts and the Jefferson Parish Economic Development and Port District (JEDCO) relative to the parish administration. It would incorporate into the char-

ter the current organization and structure of the districts.

In addition, the proposition would recognize the council's existing authority to retain or employ, or authorize the employment of, special legal counsel for the districts.

Background and Analysis

Establishing a special fund. The proposed charter amendment would require the parish finance department to place the proceeds from "the sale or lease of any or all of the assets of a hospital service district" in an interest-bearing fund. The principal of the fund would not be available for expenditure.⁴² However, the parish could spend up to 80% of the earnings in its annual budget. All expenditures would have to be made in conformity with the purposes of the hospital district from which the funds were derived. These include running hospitals, performing health care research, promoting the general health of the community, cooperating with other providers of hospital and health services to district residents, and administering other health care activities (collectively, "health care purposes").⁴³

In addition, funds would have to be used within the geographic boundaries of the district. Thus, proceeds derived from Hospital Service District No. 1 (West Jefferson Medical Center) would have to be spent for health care purposes on the West Bank, and proceeds derived from Hospital Service District No. 2 (East Jefferson General Hospital) would have to be spent for health care purposes on the East Bank.

If the amendment does not pass, sale or lease proceeds would remain with each district. The Parish Council, as the governing authority for the districts, could spend the proceeds at will, as long as it used the money for eligible purposes and the geographic area of each district.

The purpose of the charter amendment is to protect any sale or lease proceeds for future needs of the districts, including the possible resumption of public operation of a hospital if a lease deal should go sour. Voters would have to approve another charter amendment if the parish wanted to tap the principal of the fund to meet these needs.

Parish and hospital district officials told BGR that the

proposed amendment originated in 2013 when they obtained state legislative approval to allow the leasing of parish hospitals without a public vote.⁴⁴ At that time, they promised state lawmakers they would protect any lease proceeds in a trust fund. The proposed amendment was not considered by the Charter Advisory Board.

The concept of preserving the proceeds from an extraordinary transaction for future use is a good one. However, there are two concerns with the proposition.

First, it is not limited to a lease or sale of an entire hospital. Rather, it would cause the proceeds from the sale or lease of *any* asset of a hospital service district, without regard to absolute or relative value, to be placed in the fund. The broadly worded amendment appears to cover the sale of equipment and other property owned by the hospitals.

Second, the ban on spending any of the fund's principal is highly restrictive. Some trust funds and endowments set an annual spending limit based on a percentage of fund assets, such as 5%, instead of prohibiting principal withdrawals altogether. Proponents argue the proposition's restrictions on spending will help preserve the capital and offset the effects of inflation.

Protecting the autonomy of the hospital districts and JEDCO. The Parish Council created the hospital districts by ordinance pursuant to a general state law, while the State Legislature created JEDCO directly.⁴⁵ Throughout their history, the hospital districts and JEDCO, the parish's economic development arm, have operated with substantial independence from parish government.

Although they are special districts, they have been treated by parish government as exempt from charter provisions generally applicable to special districts. These include administration and supervision by the parish president, financial and budgetary control by the parish finance director, and civil service administration. Proposition 10 would specifically exempt them from such provisions. While the provisions would strengthen autonomy vis-à-vis parish government, another amendment would affirm the Parish Council's control over the hiring of special legal counsel for the hospital districts and JEDCO.

In addition, Proposition 10 would incorporate the current organization and structure of the hospital districts into the charter. It would specify the council as the governing authority of any hospital district and recognize the council's authority to create boards to oversee the districts.

Parish administration and council officials indicate that the amendments are intended to protect the hospital districts from future changes to state law relating to the control of the districts. In their view, placing the structure and organization of the districts in the charter would prevent state law amendments that are inconsistent with them.⁴⁶ BGR notes that this is a matter that would ultimately have to be decided by a court.

BGR further notes that insulating the hospital districts' current structure and organization from change would consolidate the Parish Council's current control over the districts. This may not be in the parish's best interest. The troubled, contentious and politicized negotiations for leases of the two parish hospitals suggest that there may be serious problems with the current governance structure of the hospital districts. Incorporating that structure in the charter could unnecessarily impede desirable reforms.

Proposition 10 would also incorporate JEDCO's current organization and structure in the charter. The reason for the change is unclear.

BGR Position

AGAINST. While taking measures to preserve the capital from the sale or lease of hospital assets is a good idea, the proposition is unnecessarily restrictive. In addition, the proposition would insulate the hospital districts' current structure and organization from change and consolidate the Parish Council's current control over the districts. Given the serious problems manifested in the recent attempts to lease the parish's hospitals, protecting the status quo is unwise.

PROPOSITION 11: CHARTER ADVISORY COMMITTEE RECORDS

What It Would Do

The charter currently does not discuss the keeping of meeting transcripts, draft proposals and other records of the parish's charter advisory committees after their work is done. The parish is subject only to state law governing the retention of public records. This proposition would require the council to establish a repository for all charter advisory committee records by ordinance.

BGR Position

FOR. Safekeeping of historical records of charter reviews is desirable.

ENDNOTES

1 Voters approved a small millage in 1988 to fund air conditioning, asbestos removal and facility maintenance. Today, revenue from the 2.32-mill tax – approximately \$6.4 million per year, according to the School Board’s bond counsel – is distributed to schools on a per-pupil basis to pay for non-capital building maintenance and upkeep.

2 Bureau of Governmental Research, *BGR Analysis of the City of New Orleans’ and the Orleans Parish School Board’s Bond Proposals on the July 15, 1995 Election Ballot*, June 30, 1995, p. 3.

3 FEMA provided \$1.8 billion for schools in a lump sum settlement with the School Board and the RSD in 2010. The \$1.8 billion included approximately \$1.5 billion for school renovation and construction and \$300 million for temporary school facilities. The funding is split proportionately between the School Board and the RSD.

4 Debt service will remain at \$12.6 million until it declines to \$9.9 million in 2020 and 2021. Total outstanding principal at the beginning of this fiscal year (2014-15) is \$71 million, according to current School Board debt service schedules.

5 The rest of the School Board’s 1.5% sales tax is distributed on a per-pupil basis to schools to fund operations.

6 Act 543 defines the sales tax revenue as “the proceeds of local sales taxes at a rate equivalent to the rate being used as of July 1, 2014, by the school board to pay school facility debt.” It does not specify that the sales tax proceeds shall be net of the debt service. The RSD claims that Act 543 implies this by requiring the School Board to continue to follow the debt service payment schedule in effect on July 1, 2014, and not delay the retirement of those bonds.

7 General obligation bonds are public debts approved by voters and secured by the School Board’s legal obligation to levy and collect property taxes at a rate sufficient to pay principal and interest on the bonds as they mature. The School Board’s authority to issue such bonds comes from La. Const. Art. VI, Sec. 33(B).

8 BGR assumed conservative 1.5% annual growth in the tax base over the 2014 level. It arrived at the annual revenue amounts by reducing the gross tax revenue by 4% for collection fees charged by the city and the assessor, and then by the annual general obligation debt service. Figures are not adjusted for inflation.

9 BGR assumed 2% annual growth in sales tax collections. Figures are net of annual debt service requirements.

10 BGR compared the Blue Ribbon Capital Investment Commission’s estimated repair costs to the total program revenues. To project future program revenues, BGR assumed continued 1.5% annual growth in property taxes and 2% annual growth in sales taxes. BGR also projected alternative revenue scenarios by adjusting each growth rate 1% lower and 1% higher. The projection of at least 30 years of coverage of repair costs reflects the more conservative scenario of 1% lower growth rates.

11 For commercial property, BGR assumed that land value accounts for 20% of total value.

12 The specific revisions that would take effect upon voter approval of each proposition are set forth in Jefferson Parish Council Ordinance No. 24820, adopted September 3, 2014.

13 Jefferson Parish Charter, Sec. 6.08.

14 *Ibid.*, Sec. 2.01(A)(4).

15 *Ibid.*, Sec. 2.01(A)(10).

16 The proposed charter amendment would insert the phrase “pursuant to this paragraph” to clarify the meaning.

17 Jefferson Parish Charter, Sec. 3.01(A).

18 The IRS generally defines “participation” as any work done in connection with an activity in which the taxpayer owns an interest. The IRS considers a taxpayer to have “material participation” in a trade or business activity if he meets any of seven tests. One test, for example, is participation in the activity for more than 500 hours in a tax year. Another test looks back to material participation in the activity for any five of the 10 immediately preceding tax years. For those performing a personal service activity, such as accounting or law, a test is material participation for any three preceding tax years. See IRS Publication 925 (2013), p. 5.

19 See factual basis for Broussard’s guilty plea in *USA v. Aaron Broussard*, Criminal No. 11-299, U.S. District Court, Eastern District of Louisiana.

20 Jefferson Parish Charter, Sec. 2.07(B).

21 This would be added to Sec. 2.07(D).

22 The charter does not dictate the day or time of regular council meetings. It lets the council set them, but does require at least one regular meeting per month. Jefferson Parish Charter, Sec. 2.06(C).

23 La. R.S. 43:140 et seq.

24 Jefferson Parish Charter, Sec. 4.02.

25 See La. Const. Art. 10, Sec. 15.

26 The “classified service” means all offices and positions of trust or employment in the parish service, except those placed in the unclassified service by the charter. Jefferson Parish, Department of Personnel, *Personnel Rules of the Classified Service*, p. 1B.

27 Information provided by the Louisiana Civil Service League.

28 According to the 2014 adopted budget, the Parish Council has 13 unclassified positions and the parish president, 8. They are unclassified because they are considered heads of principal offices under Sec. 4.03(A)(2) of the charter.

29 According to the 2014 adopted budget, the Parish Council had 44 classified positions; the parish president, 14. Proposition 5 would also clarify that elected officials control the promotion, discipline and dismissal of employees in their service.

30 The charter currently exempts the parish attorney “and his legal assistants” from civil service. Traditionally, the parish interpreted this to mean assistant parish attorneys, paralegals and investigators. In April 2013, the Louisiana Attorney General opined that the term “legal assistant” also encompassed legal secretaries. See La. Atty. Gen. Op. No. 2013-0003, April 8, 2013. Under Ord. 24768, adopted June 25, 2014, current classified personnel in those positions retain their civil service protection. Upon separation of employment of the current employees, the positions will be deemed unclassified. This leaves only clerical staff as formally classified positions in the office.

31 For the civil service exemption for employees of the New Orleans city attorney, see La. Const. Art. 10, Sec. 2(B)(10).

32 They include members of boards and commissions who are not parish employees; parish contractors; employees of the parish hospital districts; employees of the Jefferson Parish Economic Development and Port District (JEDCO), the parish’s economic development arm; and firefighters, who are constitutionally exempt from the parish civil service system and covered instead by a separate civil service board established in state law.

33 Proposition 5 would make a few other technical amendments to Sec. 4.03. It would delete a grandfather clause in Sec. 4.03(F) that applied to parish employees working at the time the original 1957 charter took effect. It would also delete an outdated reference to the parish retirement system at Sec. 4.03(D)(3)(h).

34 Jefferson Parish Charter, Sec. 4.04.

35 Jefferson Parish, Administrative Management Policies, No. 205 Employee Files, Sec. 4.3.

36 Jefferson Parish Code of Ordinances, Sec. 2-5.5.

37 See Jefferson Parish Code of Ordinances, Sec 2-141 et seq.

38 See factual basis for Broussard’s guilty plea in *USA v. Aaron Broussard*.

39 See Jefferson Parish Code of Ordinances, Sec. 2-141 et seq.

40 *Ibid.*, Sec. 4.09(D)(1). In 2011, voters authorized a half-mill tax for 10 years, from 2012 to 2021.

41 Jefferson Parish Charter, Sec. 4.09(D)(2).

42 The exact amount of any proceeds is unknown, as lease negotiations for West Jefferson Medical Center continue.

43 La. RS. 46:1052.

44 La. Acts 2013, No. 111, effective June 5, 2013.

45 See La. R.S. 46:1051 et seq. for the general authority to create hospital service districts and La. R.S. 34:2021 et seq. for the enabling legislation for JEDCO, which is formally named the Jefferson Parish Economic Development and Port District.

46 See La. Const. Art. VI, Sec. 6.



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BGR POSITIONS

ORLEANS PARISH SCHOOL FACILITIES TAX | FOR

JEFFERSON PARISH CHARTER AMENDMENTS

PROPOSITION 1: PARISH COUNCIL INVESTIGATIONS | **FOR**

PROPOSITION 2: PARISH PRESIDENT | **FOR**

PROPOSITION 3: LAYOVERS OF COUNCIL ORDINANCES | **AGAINST**

PROPOSITION 4: LAW ENFORCEMENT DISTRICT | **NO POSITION**

PROPOSITION 5: PARISH PERSONNEL ADMINISTRATION | **NO POSITION**

PROPOSITION 6: PARISH ATTORNEY AND SPECIAL COUNSEL | **NO POSITION**

PROPOSITION 7: PLANNING AND ZONING BOARDS | **FOR**

PROPOSITION 8: INSPECTOR GENERAL | **FOR**

PROPOSITION 9: UNIVERSITY NAME CORRECTIONS | **FOR**

PROPOSITION 10: PARISH HOSPITALS AND JEDCO | **AGAINST**

PROPOSITION 11: CHARTER ADVISORY COMMITTEE RECORDS | **FOR**