



ON THE BALLOT

A Report from the Bureau of
Governmental Research

Issues on the Ballot for October 20, 2007

Introduction

ON OCTOBER 20, Louisiana voters will be asked to approve four constitutional amendments. In addition, voters in St. Tammany Parish will consider a charter amendment. Two of the proposed constitutional amendments deal with State supplemental pay for local public safety employees. The third amendment would tighten funding requirements for future State pension benefits. The fourth would extend a property tax exemption to jewelers for consigned jewelry and artwork. The proposed amendment to the St. Tammany charter would remove the present term limit on the office of parish president.

Constitutional Amendment No. 1: Guaranteeing Supplemental Pay

What it would do

The Louisiana Constitution requires the Legislature to provide supplemental pay to most local law enforcement officers and firefighters. It also prohibits the Legislature from reducing the amount of the supplement below the 2001 level (\$300 per month) without a two-thirds vote of both houses and the signature of the governor. This year the Legislature raised the supplemental compensation from \$300 per month to \$425 per month (\$5,100 a year). The proposed amendment would protect the recent increase and any future increase that the Legislature enacts.

Analysis and impact

The State supplements the locally paid salaries of most local law enforcement officers and firefighters. To be eligible for supplemental pay, the recipient must work

full-time in active law enforcement or fire protection, must have worked for one year, and must be certified by a peace officer standards and training program or an approved firefighters' training program.

The State has budgeted \$98.4 million in supplements for the 2008 fiscal year. This outlay will supplement the pay of approximately 19,600 local government employees. It amounts to \$8 million in Jefferson Parish, \$12.1 million in Orleans Parish and \$3.9 million in St. Tammany Parish.

It should be noted that local governmental employers must shoulder some extra costs due to the supplement. This is because they must factor in the rate of the State salary supplement when calculating locally paid employee benefits and overtime.

State supplemental pay has become an integral part of the compensation of local law enforcement and firefighting personnel. A reduction in the level of the supplement would have the effect of reducing the compensation of such personnel, creating pressure on local government to make up the difference. The amendment would provide local governments with greater assurance that they would not be placed in this uncomfortable position.

While the amendment has benefits for local finances, it would further limit the budgetary discretion of the State. The State's discretion to shift resources is already significantly constrained by constitutional and statutory dedications. This means that in times of belt-tightening, those portions of the budget that are subject to discretion – notably higher education and health care – would feel the pinch.

(Amends Louisiana Constitution Article VII, Section

10(D)(3)(a) and (c))

BGR Position:

Against. The amount of supplemental pay should be determined through the State's appropriation process, rather than guaranteed in the constitution. BGR's "against" position is limited to the constitutional guarantee and should not be interpreted as a stance against the concept of supplemental pay.

Constitutional Amendment No. 2: Extending Supplemental Pay

What it would do

The proposed amendment would allow the Legislature to supplement the salaries of full-time law enforcement officers of the State and its agencies who patrol waterways and riverfront areas and of firefighters employed by a port authority. It would also allow the Legislature to require supplements for such employees from a department, agency or political subdivision.

Passage of the amendment would implement companion legislation granting supplemental pay to employees covered by the proposed amendment, but only in Orleans Parish.¹ The Legislature has appropriated funds only to employees of the Port of New Orleans.

Analysis and impact

The constitutionally mandated supplemental pay program for law enforcement officers and local firefighters applies to local, but not State, employees. In 1999, the Legislature passed a law providing supplemental pay to State law enforcement officers patrolling levees, waterways, riverfront areas and bridges in Orleans Parish. The State Civil Service Commission challenged the law on the grounds that it violated the Commission's exclusive power to set pay for State employees. The Louisiana Supreme Court agreed with the Commission, holding that the Legislature lacked the authority to provide supplemental pay for State employees. The proposed amendment would give the

Legislature the necessary authority.

If the constitutional amendment passes, the State will provide supplemental pay for approximately 54 law enforcement and fire protection employees of the Port of New Orleans. The initial cost is estimated at \$275,400.

Advocates of the narrowly crafted amendment say it is required in order to supersede the Supreme Court's ruling and provide supplemental pay to those employees. They claim that the amendment would merely extend to them a financial benefit that is already available to local government employees with similar responsibilities. They maintain that the supplement will help to address difficulties in recruiting and retaining personnel.

From a local perspective, State supplemental pay would help the Port of New Orleans, an economic engine for the region, pay for important security measures. Port of New Orleans employees protect almost 25 million square feet of cargo or passenger related facilities, four bridges and 1,000 acres of industrial property. Supplemental pay would help narrow the pay gap between New Orleans police and Harbor Police. The lower pay is one reason recruits are reluctant to fill vacant positions.

Opponents of the amendment believe it would erode the authority of the State Civil Service Commission by allowing the Legislature to intervene at its discretion in pay matters for a group of State classified employees. In addition, the amendment could undermine the concept of uniform pay by allowing the Legislature to change the pay for employees of selected agencies, without making a similar adjustment for similar employees of other agencies. Direct intervention by the Legislature in salary matters also injects politics into pay decisions.

The proposed constitutional amendment would affect a very small group of people and continues the trend of cluttering what should be a broadly crafted document. If approved, it is likely to result in requests for constitutional amendments for other State law enforcement personnel, such as those employed by levee boards or bridge authorities.²

While the amendment is necessary to allow State supplemental pay, it is not a prerequisite for raising the salaries of the affected personnel. The Civil Service Commission has pointed out that the Port of New Orleans already has the flexibility under current pay scales to increase the salaries of its law enforcement and firefighting employees. The Port is currently considering possible increases, which it estimates would cost at least an additional \$400,000 a year. The Legislature could, if it desired, fund the increase through an appropriation to the Port. (Currently, the Legislature does not appropriate any State funds for the operating expenses of the Port.)

The proposed constitutional amendment appears to allow the Legislature to provide supplemental pay from any available funds of the State, its departments and agencies, or political subdivisions. This arguably opens the door for unfunded mandates directing local governments to use their funds for supplemental pay. It is unclear whether such a mandate would operate independently of Article VI, Section 14 of the constitution, which prohibits most such mandates unless specified conditions are met.

(Amends Louisiana Constitution Article X, Section 10(A)(1))

BGR Position:

Against. While BGR is not opposed to increased pay for public safety personnel, it believes that the amendment is inappropriate since funding for the pay could be provided through the appropriation process. Furthermore, the amendment would have the effect of weakening the State Civil Service Commission.

Constitutional Amendment No. 3: Constraining New Pension Liabilities

What it would do

The amendment would limit the Legislature's ability to provide new benefits to members of State retirement plans by requiring the Legislature to identify a funding

source adequate to pay off any related unfunded accrued liability within a 10-year time frame. Currently, the Legislature may increase State pension liabilities without specifying a funding source and may spread costs over 30 years.

Analysis and impact

Louisiana has four State retirement systems: the Louisiana State Employees' Retirement System, the Teachers' Retirement System of Louisiana, the State Police Pension and Retirement System and the Louisiana School Employees' Retirement System. Each of these systems has a defined benefits plan with obligations guaranteed by the State.

When the projected value of a pension system's assets is inadequate to meet future obligations, the system has an unfunded accrued liability. The Louisiana Constitution requires the State to fully fund the State pension funds' unfunded accrued liabilities that existed as of 1989 within a 40-year period ending in 2029. Currently, the constitution does not address unfunded accrued liabilities resulting from post-1989 increases in benefits. However, State law requires that such liabilities be funded over 30 years.

The proposed amendment would not address the existing unfunded liabilities, which are quite large. For example, the State employee and teacher systems listed unfunded liabilities of \$4.1 billion and \$6.6 billion respectively as of June 30, 2006.³ Rather, it is geared toward more careful consideration of the cost of additional benefits. Legislators would have to immediately identify a funding source. The 10-year time frame forces legislators to consider the fiscal effects of their actions instead of leaving them for succeeding legislators to confront.

The 10-year time frame would mean higher payments during those 10 years, but it would significantly lower costs in the long run. The Legislative Actuary estimates that the savings from amortizing a \$1 million liability over 10 instead of 30 years would be \$1.1 million.

Supporters of the amendment maintain that it is irre-

sponsible to increase the State's large unfunded accrued liabilities without providing a source for repayment within a reasonable period of time. It places the burden unfairly on future generations. Critics of the amendment argue that it may create undue pressure on the State budget, particularly in times of hardship, forcing cuts in other important areas. They maintain that the State should be able to "buy" more benefits for retirees by stretching benefits over more years.

(Amends Louisiana Constitution Article X, Section 29(E)(5))

BGR Position:

For. BGR considers the proposed amendment an improvement over current law.

Constitutional Amendment No. 4: Addressing Consigned Jewelry

What it would do

Last year voters passed a constitutional amendment exempting artwork consigned to an art dealer from property taxation. The proposed amendment would include jewelry as a type of artwork eligible for the exemption. It would also expand the exemption to artwork held on consignment by a jewelry dealer.

Analysis and impact

The amendment is intended to exempt consigned jewelry held by a jeweler from taxation. It also would exempt any other form of artwork held on consignment by a jeweler.

According to representatives of the Louisiana Jewelers Association, jewelry held on consignment has become a larger part of many jewelry stores' inventory. A retailer may offer a manufacturer's more expensive pieces without paying the manufacturer until customers buy them. In order to avoid paying taxes on such items, stores with a large amount of consigned jewelry are likely to ship the jewelry back to out-of-state manufac-

turers at year end. (The tax is assessed on goods held as of January 1 of each year.) Jewelers assert that the amendment would allow them to keep more items on hand, increasing the potential for sales and sales taxes.

There is no estimate of the value of consigned jewelry that jewelry stores move out of state to avoid personal property tax on goods. Nor is there data available to determine the amount of revenue generated by consigned jewelry in the past or to project the potential cost to local tax recipient bodies. The Legislative Fiscal Office anticipates a minimal decrease.

At the time of the original art exemption amendment, proponents noted that the tax created a hardship for the artists who had to pay the tax, and that the taxes were being applied unevenly. Those points are not at issue in this case. Because of the prior amendment, artisans who create jewelry can already sell their works on consignment free of property taxation through art dealers.

The amendment may not add anything to the jewelry dealer's bottom line. Under Louisiana law, a jewelry dealer who pays the personal property tax on consigned pieces may claim a 100% state income tax credit for the property tax paid on inventory (La. R.S. 47:6006).

The proposed amendment would further limit the revenue sources available to local government by removing a type of personal property from the local tax base. In addition, it may encourage more piecemeal constitutional amendments of that type. Consignment of goods for sale is not limited to artwork or jewelry. Issues with the taxation of consigned goods should be considered comprehensively, rather than through a series of product-specific exemptions.

(Amends Louisiana Constitution Article VII, Section 21(C)(19))

BGR Position:

Against. The taxation of consigned goods should be considered comprehensively rather than through ad hoc amendments for the benefit of specific types of business.

St. Tammany Charter Amendment: Lifting Term Limit on Parish President

What it would do

The proposed charter amendment would remove the term limit on the position of parish president. The present St. Tammany Parish home rule charter contains a provision that limits a parish president to three consecutive four-year terms.

Analysis and impact

In 1998, the voters of St. Tammany Parish adopted a home rule charter. The charter limited the parish president to three consecutive four-year terms of office. It did not impose any term limits on the 14 councilmembers. The proposed amendment would eliminate the term limit on the president.

The current parish president, who is the first to serve under the current charter, is running for a third term in the fall. The proposed amendment would allow him to run for additional consecutive terms of office. He has said that he does not wish to campaign for or against the proposition.

Ideally, a charter amendment eliminating or loosening term limits would not apply to the incumbent. When it does, the public is likely to view the vote as a referendum on the current officeholder instead of a broader public policy question.

Term limit debates are nothing new. Term limit supporters argue that limits prevent the entrenchment of politicians and their associates. They say the limit is a protection against an incumbent amassing enough power through patronage, favors and campaign contributions to remain in office indefinitely. They maintain that term limits serve as an important institutional check on the power of an officeholder, operating as a brake should an officeholder's integrity and the voters' vigilance fail. Supporters of term limits argue that they encourage new individuals to come forward with their ideas.

Term limit opponents respond that the likelihood of

entrenchment is exaggerated and that the power of the executive is checked by the legislative branch and voters. They argue that term limits are inherently undemocratic and that voters should be free to elect the best qualified candidate, regardless of incumbency. Opponents of term limits argue that they turn elected officials into lame ducks and unnecessarily deprive citizens of the services of public officials with demonstrated abilities.

Those supporting the proposed St. Tammany charter amendment argue that it would establish a sort of parity with parish council members, who do not have term limits. On the other hand, parity could be established through an amendment to place term limits on council members.

The charter amendment was proposed by the Parish Council, without thorough evaluation or review. St. Tammany citizens have expressed interest in a number of other charter provisions, including council reorganization and clarification of the legal effect of the parish's master plan. In light of this, a more measured approach would be to evaluate term limits and other provisions comprehensively.

BGR Position:

Against. BGR is generally supportive of term limits for local government executives and legislators and believes that the issue of parity would be better addressed through term limits on parish council members than through the repeal of such limits for the parish president. It further notes that the eligibility of the sitting parish president distorts consideration of the term limit issue.

BGR's position is based on its appraisal of the proposition before the voters. It should not be interpreted as a position in favor of or against the current parish president.

End Notes

1. The actual language limits the pay to employees of agencies with headquarters in a municipality with a population in excess of 450,000 according to the latest federal decennial census. Currently only New Orleans qualifies but it may not qualify after the 2010 census.

2. An argument can be made that levee board law enforcement officers are already covered. Although a reference to law enforcement personnel who patrol levees and bridges were deleted from earlier drafts of the constitutional amendment, they patrol some river-front areas.

3. Another measure of pension fund health is the ratio of assets to liabilities. As of June 30, 2006, the State employee system had a ratio of 64.9%, an increase from the previous year but still in the bottom 22% of 64 state pension plans. *Louisiana State Employees' Retirement System Financial Report of June 30, 2006*, p. 9, and *2007 Wilshire Report on State Retirement Systems: Funding Levels and Asset Allocation*, March 5, 2007, p. 6.

http://www.wilshire.com/BusinessUnits/Consulting/Investment/2007_State_Retirement_Funding_Report.pdf

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