80 YEARS BGR We report to you.

ON THE BALLOT

A Report from the Bureau of Governmental Research

NOVEMBER 6, 2012

INTRODUCTION

On November 6, voters will decide the fate of numerous state constitutional amendments and local propositions. In this report, BGR examines three proposed constitutional amendments, two propositions that pertain to multiple parishes in the New Orleans area, a proposed change to the City of New Orleans charter and two local tax propositions.

Based on their relevance to the New Orleans area, BGR chose to examine three of the nine constitutional amendments on the ballot: Amendment No. 2, which would bolster gun rights; Amendment No. 4, which would expand eligibility for a special tax exemption that most local jurisdictions provide to families of disabled veterans; and Amendment No. 5, which would open the way for depriving corrupt elected officials and government employees of pension benefits.

Ballots in every parish in the region, with the exception of Jefferson, will contain local option propositions to limit school board members to three terms. Voters in Jefferson, Orleans and Plaquemines parishes will collectively decide whether to impose a new toll program on the Crescent City Connection.

In New Orleans, voters will decide the fate of a proposed charter amendment that would change the way at-large members of the City Council are elected. They will also consider the extension and rededication of a tax for flood control on the east bank and for non-flood assets on the lakefront, as well as a proposed special district tax for the New Orleans Regional Business Park.

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

STATE CONSTITUTIONAL AMENDMENT NO. 2: STRENGTHENING GUN RIGHTS

What it Would Do

Currently, the Louisiana constitution declares that the right to keep and bear arms "shall not be abridged," though it contains a clause allowing laws that prohibit the carrying of concealed weapons.[1] The amendment would eliminate this clause and declare that the right to bear arms "is fundamental and shall not be infringed." It also would require that any restrictions placed on gun rights be subjected to strict scrutiny, the most stringent standard of judicial review.[2]

Background and Analysis

In 2008, the U.S. Supreme Court held that the Second Amendment protects the right to keep and bear arms for the purpose of self-defense. It did so in the context of a case that struck down a law banning handguns in homes in Washington, D.C. (Heller Case).[3] This marked the first time the Court had recognized an individual right to possess firearms.

The ruling in the Heller Case applied only to federal gun laws. Two years later, in a case overruling handgun bans in Chicago and Oak Park, Ill., the Supreme Court held that the Second Amendment applies to state and local governments (McDonald Case).[4]

In striking down the handgun bans in Chicago and Washington, D.C., the Supreme Court declared that law-abiding citizens have the right to possess a handgun in their homes for self-defense. However, the court emphasized that it did not intend to cast doubt on other "presumptively lawful" restrictions. These include long-standing prohibitions on the possession of firearms by felons and the mentally ill; laws banning guns in sensitive places, such as schools and government

Rewording Gun Rights

How the Language in the Louisiana Constitution Would Change, and What the U.S. Constitution Says

Current: "The right of each citizen to keep and bear arms shall not be abridged, but this provision shall not prevent the passage of laws to prohibit the carrying of weapons concealed on the person."

Proposed: "The right of each citizen to keep and bear arms is fundamental and shall not be infringed. Any restriction on this right shall be subject to strict scrutiny."

The Second Amendment to the U.S. Constitution: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

buildings; and laws regulating the sale of firearms.[5]

Proponents say the amendment would enshrine the Supreme Court's decision in the Louisiana constitution and prevent the erosion of existing gun rights. In fact, the amendment would go far beyond the Supreme Court's decision by applying the highest possible standard of judicial review to gun laws. It would also cast doubt on laws relating to concealed weapons.

Concealed Weapons

Louisiana is one of 45 states that require a permit to carry a concealed firearm.[6] Some states have "may issue" permit laws that require applicants to demonstrate a compelling need to carry a concealed weapon. Louisiana has a "shall issue" permit law, meaning applicants must be issued a permit as long as they meet certain criteria.[7]

The amendment would eliminate state and local lawmakers' explicit authority to ban concealed weapons. Proponents maintain that the change is not intended to strike down any existing state gun laws. Rather, they contend that the amendment is necessary to guard against future attempts to impose more stringent limitations, such as a total ban on concealed weapons or overly strict permitting laws. The state constitution currently states that concealed weapons laws are permissible, without specifying any limitations.

A proposal to alter the amendment to permit laws to "regulate," rather than "prohibit," concealed weapons was defeated during a House committee hearing in May. The change was proposed as a compromise that would prevent a ban on concealed weapons while allowing for the existing permit law. But proponents of the amendment said at the hearing that the state has a fair permit system that would withstand the strict scrutiny test. Thus, they said, it is unnecessary to give lawmakers any explicit authority to regulate concealed firearms.

Regardless of proponents' assertions, specifically eliminating the language on concealed weapons would call into question the constitutionality of concealed weapon laws in Louisiana. It would open the way for assertions that voters, in adopting the amendment, intended to prohibit such restrictions.

Strict Scrutiny

Courts use a range of standards when reviewing the constitutionality of laws. These range in degree of intensity from the rational basis test to strict scrutiny. Under the rational basis test, the government must simply demonstrate that a restriction is a reasonable means of pursuing a "legitimate" public interest.[8] At the other end of the spectrum, the strict scrutiny standard requires the government to demonstrate a "compelling" public interest before restricting constitutional rights. In addition, restrictions must be narrowly tailored. When the strict scrutiny standard applies, laws are presumed to be unconstitutional, and the burden is on the government to prove otherwise.[9]

In between the rational basis and strict scrutiny tests are a number of standards and approaches for determining the constitutionality of gun laws. These include the categorical approach, intermediate scrutiny, hybrid scrutiny and the reasonable regulation standards.

A court employing the categorical approach evaluates the constitutionality of a gun law by comparing it to the public safety exceptions discussed in the Heller and

McDonald cases. A court using intermediate scrutiny evaluates whether a law is substantially related to an important state interest. A reasonable regulation standard focuses on whether a law effectively deprives citizens of firearms for self-defense. The hybrid approach involves a determination as to whether a right is a core or peripheral right, and applies a higher standard of review to the former.[10]

The Supreme Court did not apply strict scrutiny in overturning the handgun bans in Washington, D.C., or Chicago. It stated that the laws were unconstitutional under any standard. The court indicated that the rational basis standard was not appropriate because it would permit too wide a range of gun restrictions, but otherwise did not specify what standard lower courts should use in deciding gun rights cases.[11]

Courts have rarely used the strict scrutiny standard in gun rights cases.[12] In the four years since the Heller Case, federal and state courts have ruled on more than 600 Second Amendment challenges to gun control laws, with the government prevailing in the vast majority of cases.[13] Only a handful of those cases were decided using the strict scrutiny standard of review.[14]

The proposed amendment would make Louisiana the first state to require courts to apply the strict scrutiny standard when reviewing gun laws.[15] The amendment would foreclose the possibility of using the standards that courts now commonly use in gun control cases.

Given the lack of legal precedents, it is impossible to predict how Louisiana courts would rule on challenges to specific gun laws under a strict scrutiny standard. However, it is clear that their constitutionality would be tested under a more stringent standard than currently applies. Laws that have withstood scrutiny under the Second Amendment would be subject to challenge in Louisiana under the higher standard of review. Even restrictions that the Supreme Court indicated were presumptively lawful, such as limits on concealed weapons and bans on guns in schools and government buildings, would be subject to attack under the new standard.

Other Changes

The amendment would declare that the right to bear arms shall not be "infringed," instead of the current "abridged." The proposed amendment would bring the wording of Louisiana's gun rights declaration in line with the Second Amendment as well as similar gun rights declarations in other states, most of which use "infringed."[16] Constitutional law experts told BGR that there is no case law to suggest a meaningful distinction between the two words, which have largely been used interchangeably in legal contexts. For instance, the First Amendment says free speech rights shall not be abridged, while the Second Amendment says the right to bear arms shall not be infringed.

If the amendment passes, Louisiana would be the first state to declare in its constitution that the right to bear arms is fundamental.[17] However, the declaration would not change anything at this time, since the Supreme Court has already treated the right to bear arms as a fundamental right.

Arguments from Proponents and Opponents

Proponents say the amendment, which was drafted with help from the National Rifle Association, would give Louisiana the nation's strongest gun rights protections. They say the intent is not to strike down any existing state gun laws, but to guard against future actions by judges and legislators that could erode gun rights. They argue that the two landmark gun rights cases were decided by narrow 5-4 Supreme Court majorities and could be reversed in the future.

Opponents argue that the amendment would open the door to lawsuits that could nullify many of the state's gun restrictions, including the permit requirement to carry a concealed weapon and bans on guns in bars and schools. They point out that applying the strict scrutiny standard across the board in gun law cases is unprecedented and would tip the judicial scales too far in favor of gun rights at the expense of public safety. They contend that weakened gun laws could exacerbate the state's chronic gun violence problems. Louisiana in 2008 had the nation's third-highest rate of firearms deaths,[18] and New Orleans in 2010 had the highest murder rate among cities with populations of more than 250,000.[19]

Some law enforcement officials are also concerned that, should the amendment lead to a watering down of con-

cealed weapons laws, they will lose an important crime-fighting tool. They say criminals often carry concealed weapons without a permit, enabling prosecutors to pursue charges and keep violent offenders off the streets.

The amendment's strict scrutiny provision, combined with its elimination of the Legislature's authority to ban concealed weapons, would increase the likelihood that the state's law requiring a permit for such weapons could be overturned. Opponents of the amendment are concerned that the amendment may lead to the elimination of the permit requirement for concealed weapons. This, they say, would lead to more guns in public and an increase in gun violence. They argue that if more people were armed, disputes would more often result in gunfire.

Many gun rights advocates disagree. They say that relaxing laws for concealed weapons deters crime because criminals would not be sure of whether a potential victim is carrying a hidden firearm. Research on the issue has been mixed. An influential 1997 study of 10 states that had recently begun issuing permits for citizens to carry concealed weapons concluded that violent crime dropped as a result.[20] However, a National Research Council review of that study faulted the methodology and concluded there is no evidence that right-to-carry laws decrease or increase crime.[21] Several other studies have concluded that allowing the carrying of concealed weapons is linked to an increase in homicide rates.[22]

BGR Position

AGAINST. The proposed amendment sets the stage for expanding gun rights in Louisiana far beyond those protected by the Second Amendment. By imposing a stricter standard of judicial review, the proposed amendment would make it more difficult to regulate guns in Louisiana. Both existing and newly enacted laws, such as bans on firearms in schools and bars, would be subject to challenge under the strict scrutiny standard. Furthermore, by specifically eliminating the Legislature's authority to limit concealed weapons, the amendment sends a message to the courts to strike down common-sense requirements for concealed weapons permits. This would expose the public to unnecessary risks and hamper law enforcement efforts. There is no good reason to enter this uncharted territory.

NOTES

1 La. Const. Art. I, Sec. 11.
2 La. Acts 2012, Reg. Sess., No. 874.
3 *District of Columbia v. Heller,* 128 U.S. 2783 (2008).
4 *McDonald v. Chicago,* 130 U.S. 3020 (2010).
5 *District of Columbia v. Heller*, supra, at 2817.
6 Alaska, Arizona, Vermont and Wyoming do not require a permit to carry a concealed weapon. Illinois, by contrast, does not allow concealed weapons under any circumstance. National Rifle Association's Institute for Legislative Action, "Right to Carry 2012," February 2012.
7 La. R.S. 40:1379.3(C). Applicants must be at least 21 and have no mental or physical maladies that would prevent them from safely handling a gun. They cannot have been convicted of a violent crime in the previous five years and must complete a firearms safety class.
8 Black, Henry Campbell, *Black's Law Dictionary,* (St. Paul, Minn.: West Publishing Co., 1990), p. 1262.
9 *Brown v. Entertainment Merchants Association,* 131 U.S. 2729, 2738 (2011).
10 Mehr, Tina, and Adam Winkler, "The Standardless Second Amendment," American Constitution Society for Law and Policy, Issue Brief, October 2010, pp. 2-7.
11 *District of Columbia v. Heller*, supra, at 2817.
12 Mehr and Winkler, p. 2-7.
13 Law Center To Prevent Gun Violence, "The Second-Amendment Battleground: Victories in the Courts and Why They Matter," June 14, 2012.
14 Law Center To Prevent Gun Violence, "Post-Heller Litigation Summary," September 1, 2012. According to the Law Center, six post-Heller cases were decided using strict scrutiny, with the government prevailing in all but one of those cases.
15 In a 2007 analysis, Professor Adam Winkler found that no state court had employed strict scrutiny to review gun rights cases. Winkler, Adam, "Scrutinizing the Second Amendment," *Michigan Law Review,* Vol. 105, February 2007. In a recent interview with BGR, Professor Winkler confirmed that this is still the case.
16 Schwartz, Gary T., "State Constitutional Rights to Keep and Bear Arms," *The Texas Review of Law & Politics*, Vol. 11, No. 1, 2006, pp. 192-217.
17 Ibid.
18 Louisiana had 18.6 firearms deaths per 100,000 residents in 2008. Alaska had the most with 20.7 deaths per 100,000 residents, followed by Mississippi with 19.3 deaths per 100,000 residents. Centers for Disease Control and Prevention, *National Vital Statistics Reports, Volume 59, No. 10,* Dec. 2011.
19 Federal Bureau of Investigation, *Crime in the U.S. 2010*, Table 6, www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2010/crime-in-the-u.s.-2010/tables/table-6.
20 Lott, John R. and Mustard, David B., "Crime, Deterrence, and Right-to-Carry Concealed Handguns," *The Journal of Legal Studies,* 26 (1997), pp. 1-68.
21 National Research Council of the National Academies, Committee on Law and Justice, *Firearms and Violence: A Critical Review*, The National Academies Press: Washington, D.C., 2004.
22 Donohue, John J., "The Impact of Concealed-Carry Laws," in Ludwig, Jens, and Cook, Philip J., eds., *Evaluating Gun Policy Effects on Crime and Violence* (Washington D.C.: The Brookings Institution, 2003). Ludwig, Jens, "Concealed-Gun-Carrying Laws and Violent Crime: Evidence from State Panel Data," *International Review of Law and Economics*, Vol. 18, No. 3, pp. 239-254. McDowall, David, et al., "Easing Concealed Firearms Laws: Effects on Homicide in Three States," *Journal of Criminal Law and Criminology*, Vol. 86, No. 1, p. 193.

STATE CONSTITUTIONAL AMENDMENT NO. 4: PROPERTY TAX EXEMPTION FOR SPOUSES OF DECEASED DISABLED VETERANS

What it Would Do

Currently, owner-occupied properties are eligible for a homestead exemption that shields the first $7,500 of assessed value ($75,000 of market value) from property taxes. A 2010 amendment to the state constitution authorized local option elections to double the exemption for properties owned and occupied by a veteran with a service-related disability of 100 percent, or his surviving spouse. However, for the surviving spouse to qualify, the exemption had to be in place before the veteran's death.[1] The proposed amendment would make the surviving spouse eligible for the additional homestead exemption regardless of when the veteran died.

Background and Analysis

Voters in 48 of Louisiana's 64 parishes, including every parish in the metro area except Orleans, have approved the doubled exemption.[2]

Proponents of the measure say the current arrangement unfairly denies the benefit to the spouses of disabled service members who died before the exemption was in place. In their view, there is no basis for giving the exemption to one group of surviving spouses, but not the other.

BGR opposed the initial constitutional amendment authorizing the additional homestead exemption. In its analysis, it noted, among other things, that the amendment did not cover spouses of veterans killed in action. Under the current proposition, this anomaly would remain.

Local taxing authorities will have to absorb the revenue losses resulting from the exemption. BGR was unable to obtain the information needed to estimate the fiscal impact of the expanded exemption. However, it is likely to be small. Currently, 1,800 properties throughout the state qualify for the doubled exemption.[3] According to the assessor's office in St. Tammany Parish, the expanded exemption covers 151 properties and costs tax-recipient bodies $111,000 a year. The Jefferson Parish Assessor's Office reported that 136 properties receive the doubled exemption at a cost of about $75,000 a year.

BGR Position

FOR. BGR has historically opposed efforts to expand the homestead exemption and it continues to do so. However, it supports this amendment because it would make the exemption more equitable in parishes that have opted to provide it. Similarly situated spouses should have equivalent benefits.

NOTES

1 La. Const. Art. VII, Sec. 21(K)(1).
2 Louisiana Department of Veterans Affairs, *A Letter From Secretary Lane Carson on the Louisiana Homestead Exemption for Disabled Veteran Homeowners*, January 17, 2012. Louisiana Secretary of State, Elections Division, "Election Results," http://staticresults.sos.la.gov.
3 Legislative Fiscal Office, Fiscal Note on S.B. 337, April 13, 2012.

STATE CONSTITUTIONAL AMENDMENT NO. 5: FORFEITURE OF RETIREMENT BENEFITS FOR PUBLIC SERVANTS CONVICTED OF FELONIES

What it Would Do

The proposed amendment would authorize the Legislature to provide for the forfeiture of all or part of the government pensions of public employees and elected officials convicted of felonies related to their jobs. It would allow the Legislature to apply such a forfeiture to any unfunded liability in the applicable pension fund. The amendment would condition the receipt of public retirement benefits on "the rendition of honorable service by the public official or employee."[1] It would apply only to people employed, re-employed or elected on or after Jan. 1, 2013, and to benefits earned from that date forward.

Companion legislation exercising the power would go into effect if the constitutional amendment passes.

Background and Analysis

Currently, state law allows government entities to garnish retirement benefits of public servants convicted of job-related felonies, but only to pay court-ordered restitution, fines and incarceration costs.[2] There is no provision for forfeiture, a punitive measure that can result in the loss of the entire pension.

If voters approve the amendment, Louisiana would join 25 other states that have enacted laws for the forfeiture of government retirement benefits.[3] The federal government also has a pension forfeiture law for federal employees who commit felonies related to national security.[4]

The proposed constitutional amendment is designed to address citizen concerns about public servants who leave office in disgrace but remain eligible for taxpayer-funded retirement benefits. Proponents of the amendment argue that elected officials and government workers who violate the public's trust should not enjoy a retirement funded by the public. Proponents also say the amendment would send a powerful anti-corruption message in a state that during the 2000s had the nation's highest rate of public corruption convictions per capita.[5]

Opponents counter that a government pension is a form of deferred compensation that public employees have earned. They argue that seizing retirement benefits is no more appropriate than forcing public employees convicted of felonies to repay past wages. Opponents acknowledge that public corruption is a significant problem, but say it should be dealt with through existing remedies, including imprisonment, criminal fines, restitution and civil lawsuits. Other options include increasing fines.

Opponents also argue that employees have a property right in vested pension benefits. The proposed forfeiture law seeks to avoid this issue by requiring new employees and elected officials to sign forms agreeing to the forfeiture provisions.

Opponents of the proposition note that federal law prohibits seizure of vested retirement benefits in the private sector, and they question why public employees should be treated differently.[6]

Adopting the proposed amendment would activate the companion legislation. The legislation is subject to change by the Legislature, without voter approval, as long the changes are within the confines of what the amendment allows.

The companion legislation would give judges the authority to order the forfeiture of retirement benefits for public employees and elected officials convicted of certain job-related felonies.[7] The remedy would be available only for crimes from which the public employee or a third party benefited financially or to cases in which the employee committed a criminal sexual act against a minor associated with the employee's job.

Specifically, the companion legislation would require judges to determine whether a public servant's crime warrants forfeiture or garnishment. In making that determination, the court would have to consider various factors, including the nature of the offense, the prior service of the public servant and any mitigating factors.

The convicted public servant would get back the money he contributed to his pension, with no interest. However, the court could order that any restitution owed the government be subtracted first. The court also could

award some of the forfeited pension to the public servant's spouse, former spouse or dependent, depending on whether they knew about or contributed to the crime.

The law states that the forfeiture cannot "impinge on any judicially recognized community property interest of a current or former spouse," such as an interest recognized in a divorce proceeding.

The companion legislation suffers from a number of serious ambiguities and unresolved legal questions.

First, it is unclear whether a sentencing court has the ability to order a partial, as opposed to a complete, forfeiture of a pension.[8] Without flexibility on this point, it is not possible to tailor a forfeiture remedy to the seriousness of the crime.

Second, it is unclear whether forfeiture and garnishment are mutually exclusive remedies, or whether a judge would have the option to order both.

Third, it is unclear how the companion legislation would affect a spouse's community property interest. The legislation states that forfeiture does not affect any judicially recognized community property interests, but is silent on those that have not been so recognized. As a result, it is unclear whether a forfeiture order could extend to a spouse's interest in the pension.

Finally, the forfeiture law, which directs sentencing courts to take certain actions, is unlikely to have a significant impact. It would not apply to the federal court system, which is where most corruption cases in Louisiana are prosecuted.[9]

These shortcomings are part of the companion legislation, not the proposed constitutional amendment. Thus, lawmakers can address the problems by amending the legislation.

BGR Position

FOR. Public corruption is a significant problem in Louisiana, and allowing the Legislature to provide for forfeiture of all or part of an employee's pension benefits is appropriate. However, the companion legislation contains significant flaws. At a minimum, lawmakers should amend it during the next legislative session to remove ambiguities and address potential community property issues. Lawmakers should also explore alternate approaches that would apply irrespective of whether a case is brought in the federal or state courts.

NOTES

1 La. Acts 2012, Reg. Sess., No. 868.
2 La. R.S. 11:292(B)(1).
3 National Association of State Retirement Administrators, "Selected State Policies Governing Termination or Garnishment of Public Pensions Compiled by NASRA," August 2012, www.nasra.org/resources/Forfeiture_statutes.pdf.
4 The Hiss Act of 1954 listed a wide range of job-related felonies that would result in forfeiture of retirement benefits for federal workers. In 1961, the law was amended to eliminate felonies that are not related to national security.
5 From 2001 to 2010, Louisiana had 8.5 public corruption convictions for every 100,000 residents. North Dakota was second with 8.2 convictions per 100,000 residents, followed by South Dakota with 7.2 convictions. United States Department of Justice, *Report to Congress on the Activities and Operations of the Public Integrity Section for 2010*, pp. 31-34.
6 See the Employee Retirement Income Security Act of 1974, 29 U.S.C. Sec. 1002.
7 La. Acts 2012, Reg. Sess., No. 479.
8 La. R.S. 11:293(B)(2)(a) says "the court shall determine if the conviction warrants forfeiture as provided in this subsection or garnishment."
9 Federal sentencing laws do not authorize federal judges to order pension forfeitures. 18 U.S.C Sec. 3551.

LOCAL OPTION ELECTION: TERM LIMITS FOR SCHOOL BOARD MEMBERS

What it Would Do

Voters in all but two Louisiana school districts will decide in local option elections whether to limit their school board members to three consecutive four-year terms. The exceptions are Jefferson and Lafayette parishes, which already limit school board members to three terms.[1]

If approved, the limits would apply only to terms that begin on or after Jan. 1, 2014. Thus, all current board members would be eligible to serve three terms beyond that date.

Background and Analysis

The law requiring the votes on term limits is part of the package of education reforms that the Legislature passed last spring. Among other things, the reform package curtailed teacher tenure protections, created new paths for chartering schools, reallocated decision-making powers within school systems, and created a statewide school voucher program and a tax rebate program for scholarships to private schools.

Term limits currently apply to a number of locally elected officials. The mayor of New Orleans and the presidents of the six other parishes in the metro area are subject to them. Council members in those jurisdictions also face term limits, with the exception of the St. Tammany Parish Council. At the state level, members of the Legislature are limited to three four-year terms and the governor is limited to two four-year terms.

Many other elected officials, including state judges, sheriffs, district attorneys, assessors, coroners and clerks of court, have no term limits. At the statewide level, term limits do not apply to the lieutenant governor, the secretary of state, the treasurer, the attorney general, the commissioner of agriculture and forestry, or the commissioner of insurance.

The arguments for and against term limits are well-known. Supporters argue that term limits prevent incumbents from amassing enough power through patronage, favors and campaign contributions to remain in office indefinitely. They view term limits as an important institutional check in case an officeholder's integrity and the voters' vigilance fail. Supporters further argue that term limits encourage new candidates to come forward. Term limits may also encourage officeholders to make tough decisions that they might avoid if they were seeking re-election.

Term limit opponents respond that the limits are inherently undemocratic and that voters should have the opportunity to elect the best-qualified candidate. Opponents of term limits also say that they turn elected officials into lame ducks and unnecessarily deprive citizens of the services of public officials with demonstrated abilities and institutional knowledge. They argue that an elected official with the potential to remain in office may be more inclined to opt for long-term solutions rather than quick fixes.

Proponents of term limits for school board members say that research on best practices in education is constantly evolving and that new board members can help school districts keep up to speed. They also claim that the proposed 12-year limit for school board members is adequate because it matches the "educational lifespan" of a student.

Opponents counter that the dearth of school board term limits in Louisiana indicates voters have not seen a need for them. They say the Legislature's decision to require local option elections for term limits on school board members and not for other elected officials suggests the move is part of a push to weaken local school boards and increase state control over public education.

Proponents respond that the Legislature has the authority to set election rules for school board members, but not other local offices.[2] It would take a constitutional amendment to impose term limits on other officials, such as sheriffs, district attorneys, assessors, coroners or clerks of court.

Term limit opponents point out that there is no financial incentive for board members to try to stay in office indefinitely. They note that school board membership is a part-time position with monthly stipends capped by state law at $800 for regular board members and $900 for board presidents.[3] However, financial gain is just

one factor that can cause entrenchment. The power and influence board members wield may also play a role.

BGR Position

FOR. BGR is generally supportive of term limits for local government executives and legislators, and it believes school board members should not be an exception. The proposed 12-year limit is four years longer than most term limits, providing ample time for school board members to make their contributions. Also, a provision that starts the term-limit clock ticking in 2014 will help to prevent boards from being disrupted by a sudden and sweeping turnover in membership.

NOTES

1 La. Acts 2012, Reg. Sess., No. 386.
2 La. Const. Art. VIII, Sec. 9(A).
3 La. R.S. 17:56(A)(1).

TOLL PROPOSITION: CRESCENT CITY CONNECTION

What it Would Do

Voters in Jefferson, Orleans and Plaquemines parishes will decide whether to renew tolls on the Crescent City Connection bridge (CCC). If approved, tolls would continue for the next 20 years, until December 31, 2033.

Toll revenues could be used only on the bridge and "along" the rest of U.S. 90Z, which includes a portion of the Pontchartrain Expressway and all of the Westbank Expressway. The revenue would be dedicated solely to the following purposes: "operations, maintenance, landscaping, grass cutting, trash pickup, functional and ornamental lighting, policing, inspections, motorist assistance patrols and capital projects on the bridge, approaches and roadways."

If voters reject the measure, tolls on the bridge will expire at the end of 2012.

Background

Currently, the bridge and the Algiers, Gretna and Chalmette ferries are operated, maintained and policed by the Crescent City Connection Division (CCC Division) of the Department of Transportation and Development (DOTD). The CCC Division is also responsible for the maintenance, landscaping, lighting and policing of approximately 13 miles of roadways and approaches to the bridge, including the Westbank Expressway, Mardi Gras Boulevard, Shirley Drive, a part of Gen. DeGaulle Drive, as well as U.S. 90Z to the Broad Street overpass on the east bank.[1]

The CCC Division receives its revenue from two main sources: tolls on the CCC and a special transportation fund known as State Highway Fund No. 2.[2] The tolls, which have been in place since 1989, are currently set at $1 for drivers paying cash and 40 cents for drivers using electronic toll tags. They generated $20.7 million in fiscal 2011, which accounted for 80% of the CCC Division's total budget.[3]

In the past, the CCC Division has spent only a small share of toll revenues on the bridge itself. In its April 2011 report, *Over the River: The Future of the Cres-*

cent City Connection Bridge and Ferries, BGR calculated that for every dollar of bridge tolls paid in fiscal 2010, only 19 cents went to maintaining and policing the bridge. The largest slice, 32 cents, went to operating and maintaining the ferries; 16 cents went to collecting and administering the tolls; and 5 cents went to beautification services, such as grass cutting and trash pickup, on surrounding roadways. Another 9 cents went to debt service and 6 cents to various capital projects, with the remaining 13 cents going to a capital reserve fund.[4]

The tolls on the bridge are scheduled to expire at the end of the year.[5] In response to this looming deadline, the Legislature enacted two laws addressing the future of the CCC and the ferries. One addresses the end of the existing toll program; the other will govern the new toll program if voters approve it.

The Transition Away from Existing Tolls

Act No. 866 eliminates the CCC Division effective January 1, 2013, and places the responsibility for administering the bridge and operating the ferries with the DOTD.[6] The act also ends the dedication of State Highway Fund No. 2 to the bridge and ferries, redirecting the revenue into the state's Transportation Trust Fund (TTF) for use statewide.

The act also provides for the disposition of the CCC Division's remaining funds. It transfers funds remaining at year end to a Transition Fund. The DOTD can use the first $4 million for the ferries. The balance will be transferred to the Regional Planning Commission (RPC) for lighting of the east bank and west bank approaches to the bridge, as well as improvements to ingress and egress points and lighting, maintenance, grass cutting and landscaping needs on the Westbank Expressway and its connecting arteries. Interestingly, no provision is made for the bridge itself.

The New Toll Proposition

Act No. 865 puts the issue of renewing the tolls before voters. It also sets forth legislation setting the tolls, penalizing motorists who commit toll violations, prescribing the use of toll funds and directing some non-toll revenue to the Algiers Ferry. The legislation is contingent upon approval of the toll proposition by voters in Jefferson, Orleans and Plaquemines parishes.

Under the legislation, tolls would remain at their current level. However, the rate would be subject to change by the Legislature.

If voters approve the tolls, a minimum of $10 million in revenue would be deposited each year into a capital projects fund. The Legislature could appropriate up to $2 million of the remaining toll revenue for the State Police to compensate it for patrolling the bridge and the rest of U.S. 90Z. (The governor has directed the State Police to take over the duties of the CCC Police Department.) The Legislature could also appropriate an unspecified amount to the DOTD for "operations, maintenance, landscaping, grass cutting, trash pickup, functional and ornamental lighting, inspections, motorist assistance patrols and capital projects on the bridges, approaches and roadways along U.S. 90Z from Interstate 10 to U.S. 90, including ingress and egress points to the Crescent City Connection Bridge." Any funds remaining after these appropriations would go to the capital projects fund. It should be noted that these dedications are subject to change by the Legislature.

Monies in the capital projects fund could be used to fund projects on a pay-as-you-go basis, as a match of federal funds or to support bonds. The legislation lists specific projects for which bond proceeds could be used: repainting the bridge; improving on-ramps and exits to and from U.S. 90Z at Annunciation Street, Barataria Boulevard, Tchoupitoulas Street and the MacArthur Drive Interchange; and rehabilitating the Harvey Tunnel. If funds were available after the financing of these projects, they could be used to finance additional capital projects on the bridge or the rest of U.S. 90Z.

The RPC would prioritize any additional projects. It would also serve as an advisory body on a wide range of operational and maintenance issues, and would have access to information on revenues, expenditures and the status of capital projects. It would advise the DOTD on setting non-commuter rates for the Algiers ferry.

The legislation would also provide funding for the Algiers-Canal Street ferry, but without using toll revenue. It would dedicate the equivalent of the portion of State Highway Fund No. 2 collected in Orleans Parish for

the CCC Division to the ferry's operations. Based on collections from the previous five years, the Legislative Fiscal Office estimates that the ferry will receive $880,000 per year.[7]

The act would also authorize the DOTD to privatize, franchise or enter into contracts for toll collection and operations and maintenance. However, the DOTD would have to act on this provision before July 1, 2014, or lose the right to do so.

Analysis

The new toll program would provide a significant and dedicated source of revenue for operating, lighting, maintaining and repairing the CCC. At least initially, the toll revenue would allow the DOTD to maintain the bridge and continue to provide the same level of services currently provided by the CCC Division on the bridge and expressway.[8] It would provide an amount of money for capital expenditures along U.S. 90Z similar to what typically has been available under the current toll program.[9]

If voters do not renew the tolls, the CCC would have to compete, to an extent it has not before, with other transportation arteries throughout the state for operating, maintenance and capital funds. The DOTD has indicated that it will continue to inspect the bridge and provide regular maintenance and repair.

As noted above, Act 866 allocated all but $4 million of the Transition Fund for lighting bridge approaches and for maintenance and landscape-related expenses for the Westbank Expressway and its connecting arteries. Based on current state practice, the cost of lighting the bridge will immediately fall mainly to the City of New Orleans.[10] The cost of lighting the rest of U.S. 90Z will fall on New Orleans, Gretna, Westwego and Jefferson Parish once the Transition Fund is exhausted.

According to the DOTD, the CCC Division's lighting costs, including electricity, materials, personnel and maintenance, total approximately $800,000. The costs for the decorative lighting on the CCC itself are far lower, at just $68,000 in 2011.[11] The remaining expenditures go to lighting U.S. 90Z. The DOTD does not have a breakdown of these costs on a jurisdictional basis.

The DOTD has stated that eliminating tolls would lead to less frequent grass cutting, less frequent sweeping and, in some locations, less frequent trash pickup.[12] Landscaping services would be discontinued altogether. However, the DOTD will continue to fund regular maintenance and inspections, and Motorist Assistance Patrols will remain at the same level.[13]

The size of the Transition Fund is somewhat uncertain. The DOTD projects that the CCC Division will have $10 million to $15 million in surplus funds at year end. However, the Legislative Fiscal Office estimates that at the end of 2012 the Transition Fund will contain $10.3 million, leaving the RPC with $6.3 million if the DOTD capitalizes the ferries.[14] If these remaining funds were dedicated solely to paying for lighting, BGR estimates that they would be enough to cover those costs for nearly eight years.

The governor has ordered the State Police to assume responsibility for patrolling the bridge and the rest of U.S. 90Z regardless of whether voters approve the new tolls. Ordinarily, this responsibility would fall to the local police, unless the bridge is located in an unincorporated area. However, in this case the CCC Police will be dissolved, and the State Police intends to absorb the CCC Police Department's officers into its force for the purpose of patrolling U.S. 90Z.

Arguments For and Against

One argument in favor of the tolls is that they provide a dedicated source of funding for the bridge and U.S. 90Z. Over 20 years, they would also, if properly directed, provide at least $200 million for capital projects on the bridge and its approaches, some of which would address high priorities for the region. It is unclear whether the DOTD would or could provide a similar level of funding to the bridge and connecting roadways without the tolls.

Without the tolls, the CCC and the rest of U.S. 90Z will have to compete, to an extent it has not before, with other high-priority roads and bridges throughout the state for funding. The DOTD estimates current capital needs on all state bridges and roadways at approximately $12 billion, and toll proponents hold out the specter of an unsightly, deteriorating hulk across the river if

tolls end.

It is undeniable that the state has limited funds to meet its infrastructure needs and that eliminating the tolls carries a certain level of risk. To some extent, funding for capital projects would be at the discretion of the DOTD and susceptible to political pressure.

While the lack of a dedicated funding source creates risk, it is an acceptable one. The DOTD has categorically stated that it will inspect, maintain and repair the bridge and U.S. 90Z. Because of the bridge's importance, the upkeep of the CCC is likely to remain a high funding priority. We note that the bridge went without tolls for 25 years, from 1964 to 1989. During that time, the state supported the bridge and connecting roads out of general state transportation funds and State Highway Fund No. 2. It could support it again.

Furthermore, federal law requires regular inspections of bridges, and sets inspection standards for states.[15] A recently signed law imposes more rigorous inspection standards and new penalties for noncompliance with the standards by requiring the U.S. Department of Transportation to redirect federal funds from the state toward the proper inspections.[16] If the federal Department of Transportation finds that a bridge has not been "properly maintained," it must notify the state, give it 90 days to remediate the problem and, failing that, withhold funding to the state until the bridge "shall have been put in proper condition of maintenance."[17] And, as part of its inspection procedures, the federal government requires that structural or safety-related deficiencies be resolved immediately.[18]

At any rate, the DOTD has stated unequivocally that it intends to regularly inspect and maintain U.S. 90Z.[19]

Another argument in favor of tolls is that they allow for an enhanced level of services, such as decorative lighting and additional beautification services. The CCC Division claims that it currently provides grass-cutting, sweeping and trash pickup at a higher level than DOTD normally provides, and that it will cease the supplemental services if tolls are not renewed. Toll opponents dispute the level of service currently provided, leading to questions of whether these services would be robust under a new toll program.

The most significant enhancement provided by the CCC Division, a dedicated police force stationed at the bridge, will remain regardless of whether the new toll program is implemented. The State Police has clearly stated that it intends to maintain the current level of service on the CCC. If voters reject the tolls, policing costs will be paid from the State's General Fund. However, if voters approve the new tolls, the Legislature can transfer up to $2 million of toll revenue to the State Police to defray its costs.

Finally, approval of the tolls would ensure a minimum level of funding for the Algiers ferry. The funding from the collection of Orleans Parish vehicular license taxes for the ferry line is estimated at approximately $900,000. This would cover nearly 30% of the line's 2011 expenditures. It would also recoup for the region a part of the funding stream that will be lost when the dedication of State Highway Fund No. 2 to the CCC ends. Without the allocation to the ferry, the money could be used anywhere in the state.

There are also disadvantages associated with the imposition of tolls. The tolls would cover some expenses that the state would otherwise pay. These include basic maintenance, repairs and capital expenses that the state pays elsewhere. By paying tolls to support these basic expenses, drivers in the New Orleans area will relieve the state of the costs associated with these services. As a result, they will indirectly subsidize transportation infrastructure in the rest of the state. And, since the Legislature can appropriate up to $2 million of toll revenue to the State Police for services it will provide regardless of whether tolls are renewed, drivers will even subsidize the state's general fund.

Toll opponents maintain that tolls constitute double taxation. In their view, drivers crossing the bridge already pay taxes and fees into the TTF for roads and bridges – including U.S. 90Z.

The proposition itself creates some unnecessary problems. The area in which toll revenue can be expended is overly broad and unnecessarily vague. The proposition before voters refers to the bridge, approaches and roadways "along" U.S. 90Z. It is unclear what geographical limitations are imposed by the word "along," and there is no clear definition of what constitutes approaches

and roadways.

The accompanying legislation allows the Legislature to appropriate toll funds for capital projects on a pay-as-you-go basis. The bonding authority within that legislation lists specific bridge-related projects, including painting the downriver span, improving ingress and egress at certain locations, and rehabilitating the Harvey Tunnel. It allows the Regional Planning Commission to prioritize other projects, funds permitting. But without a clear picture of where toll money can and cannot be spent, there is a risk that revenues could be used to support projects completely unrelated to the bridge.

Another area of ambiguity is the fate of four unfinished capital projects eligible for funding from excess toll revenues under the current toll program.[20] It is unclear whether these projects could be funded with future toll revenue. DOTD estimates the cost to complete these projects at $183.2 million.[21]

Another concern is the lack of information on the lighting costs that each jurisdiction will have to assume without new tolls. This information is necessary for voters to understand the fiscal impact on local governments of not renewing tolls.

An underlying concern with the proposition is the scope of the electorate deciding it. The measure allows voters in Plaquemines Parish to participate, despite the fact that no portion of the roadway in question is contained in that parish and no costs resulting from a rejection of the measure would fall to that parish's government. Furthermore, only 3% of drivers paying the toll with toll tags currently reside in Plaquemines, compared to 46% in Jefferson and 31% in Orleans.[22] Plaquemines even lags drivers in Lafourche, who have 8% of the tags but will not be able to vote on toll renewal.

In its 2011 report, BGR recommended that legislators allow tolls to expire at the end of 2012. BGR based this recommendation on five key arguments:

- The tolls were imposed in order to pay down debt that would be repaid by November 2012, meaning their original raison d'etre was about to disappear.
- Tolls are meant to be user fees. The current CCC tolls are not because only a small portion is spent on the bridge.
- The cost of collecting the tolls is disproportionate to the revenue generated for the bridge.
- Without the expense of toll collection, ferry subsidization and unrelated capital projects, bridge expenses could be covered from State Highway Fund No. 2 and the TTF.
- It is unfair for the state to force New Orleans-area drivers to pay a toll to cross the CCC while it covers expenses for other Mississippi River bridges out of state and federal funds.

BGR made these arguments in the context of the existing toll program. They do not apply to the same extent to the program before voters.

Under the program before voters, the tolls would be closer to true user fees. Toll revenue would no longer be spent on ferries, but would be dedicated to the bridge, its approaches and roadways. The Legislature has ended the dedication of State Highway Fund No. 2 to the bridge, eliminating the possibility of covering bridge expenses from that source. Therefore, if voters do not renew tolls, the CCC will no longer have a dedicated revenue source.

The state would no longer be forcing drivers to pay a toll to cross the CCC while it covers expenses for the other bridges. Voters will decide whether to impose a toll on themselves in order to receive a guaranteed level of services, some of which the DOTD states it will not otherwise provide.

As BGR stated in its 2011 report, charging tolls on significant bridges and roads throughout the state could be an effective and equitable way to increase state transportation funding.[23] Tolls may also be appropriate for unique roadways, such as the 24-mile Lake Pontchartrain Causeway. They provide a more direct way of charging drivers for using public infrastructure than gas taxes, the traditional method to fund transportation needs. Through tolls, drivers pay directly for their use of a particular roadway or bridge. The resulting revenue

can then be used to support the operations and maintenance of the road or bridge being tolled.

BGR Position

AGAINST. The tolls would provide a dedicated source of funding for infrastructure investments at the local level. However, the need for continued tolls has not been established.

The tolls would cover many expenses that the state would otherwise meet from other sources available for those purposes. The State Police have stated that they will assume responsibility for patrolling the bridge regardless of whether there are tolls. Likewise, the DOTD has indicated that it will inspect, maintain and repair the bridge regardless of whether there are tolls. The extent to which the state would fund the proposed capital projects without tolls is unclear.

There is another uncertainty about future expenditures that prevents voters from making an informed decision. Because of the vagueness of the proposition and accompanying legislation, the geographical limits on the expenditure of toll funds are open to interpretation.

The fiscal impact of lighting expenses on the individual local jurisdictions has not been quantified. However, the DOTD's current expenditures for these purposes total $800,000, a fraction of what would be collected through tolls. Furthermore, there will be enough money in the Transition Fund to cover these costs for a number of years. This will provide plenty of time for local jurisdictions to work out a strategy for these services.

Finally, drivers need not fear that the bridge will become unsafe. Under federal law, the state must regularly inspect the bridge to ensure proper maintenance and immediately address any safety-related deficiencies. Even if that were not the case, it is unlikely that the state would fail to prioritize one of its most vital arteries.

NOTES

1 La R.S. 48:1101.1 (B)(2)(b).
2 Currently, State Highway Fund No. 2 receives 30% of the motor vehicle tax from vehicle owners in Jefferson, Orleans, St. Charles, St. John the Baptist, St. Tammany and Tangipahoa parishes. Half of that amount is dedicated to the CCC Division. The other half goes to the Greater New Orleans Expressway Commission, which is responsible for the Lake Pontchartrain Causeway.
3 Louisiana Legislative Fiscal Office, Fiscal Note to HB 1212, June 11, 2012, p. 1. In 2011, tolls accounted for $20.7 million and State Highway Fund No. 2 for $4.7 million. Ferry revenue, rental income, scrip revenue from the bridge and the ferry and interest on investments accounted for the remaining income.
4 BGR, *Over the River: The Future of the Crescent City Connection Bridge and Ferries*, April 2011, p. 5.
5 La. R.S. 47:820.5 (B).
6 La. Acts 2012, Reg. Sess., No. 866.
7 Louisiana Legislative Fiscal Office, Fiscal Note to HB 1212, p. 2.
8 In 2011, toll revenues were $20.7 million. Based on this figure, if $12 million is allocated to the Capital fund and State Police, more than $8 million would remain for operating and maintaining the bridge and surrounding roadways. In its 2011 report, BGR found that, in 2010, it cost a total of $7.7 million to collect and administer tolls, maintain and operate the bridge, and provide beautification and lighting for the bridge and surrounding roadways. Toll collection and administration was $4.1 million, bridge operations and maintenance $1.8 million, beautification $1.2 million and lighting $0.6 million. BGR, p. 6.
9 From 2000 to 2010, the CCC Division spent $121.7 million on capital projects. BGR calculation based on numbers provided by the DOTD. BGR, p. 7.
10 A small portion of the bridge is in Gretna.
11 DOTD response to BGR information request, July 13, 2012.
12 Anderson, Ed, "Bill Permits 'Market-rate Fares' on N.O. ferries; Bridge Legislation Clears House Panel," *The Times-Picayune*, May 15, 2012.
13 "Crescent City Connection Services Plan," presentation by Sherri LeBas, DOTD Secretary, before Jefferson Parish Council, August 8, 2012.
14 Louisiana Legislative Fiscal Office, Fiscal Note to SB 599, p. 2.
15 23 U.S.C. Sec. 144 et seq.
16 The president signed the Moving Ahead for Progress in the 21st Century Act, better known as MAP–21, in July. The pertinent amendment is contained in 23 U.S.C. Sec. 144.
17 23 U.S.C. Sec. 116.
18 23 C.F.R. Sec. 650.313 (H). See also 23 C.F.R. Sec. 650.303. According to the Office of Bridge Technology in the Federal Highway Administration, Department of Transportation, it is rare that federal transportation officials must force state action.
19 "Crescent City Connection Services Plan," presentation by Sherri LeBas, DOTD Secretary, before Jefferson Parish Council, August 8, 2012.
20 The projects were established in Act No. 36 of 1994, Sec. B(2) and Act. No. 59 of 1998. The remaining unfunded projects include an extension of Peters Road; expanding Lapalco Boulevard; improvements to Barataria Boulevard and Terry Parkway; and an upgrade to the MacArthur Drive Interchange.
21 CCC Division, p. 4.
22 DOTD.
23 BGR, p. 1.

NEW ORLEANS CHARTER AMENDMENT: ELECTION OF AT-LARGE COUNCILMEMBERS

What it Would Do

Currently, all candidates for the city's two at-large council seats are grouped in a single field, with voters allowed to choose up to two candidates. The charter change would establish separate races for the at-large council seats, starting with the 2014 election.[1] Candidates would have to declare which of the two seats they are seeking.

Background and Analysis

New Orleans' charter states that the seven-member City Council shall include two at-large council seats, but it does not specify how those seats are to be filled. State law provides the rules for determining the winners in such single-field elections. Under those rules, the two candidates with the highest number of votes in a New Orleans at-large election win, provided that each receives more than 25% of the total number of votes cast in that election. If a top-scoring candidate falls short of that threshold, there is a run-off between that candidate and the third-place one.[2]

If all voters cast two votes in an at-large election, a candidate needs the support of at least 50% of the voters to meet the 25% threshold. If some voters cast only one vote in that election, the threshold can be met with the support of a smaller number of voters. In practice, a candidate can win the at-large race with support from 40% to 45% of the voters.[3]

Having two at-large seats is not unusual in the metro area. The methods of election vary. For instance, Slidell, Mandeville and Covington hold single-field elections like New Orleans currently does. Jefferson Parish and Kenner have separate races for their two at-large seats, and allow candidates to declare for either. St. Bernard, St. Charles and St. John the Baptist parishes also have separate races for their two at-large seats, but the candidates are not free to pick which seat they will seek. Instead, they are divided based upon the part of the parish in which they live. No such geographic divisions would be used for New Orleans' at-large seats under the proposition. Rather, it would mirror the approach used in Jefferson Parish and Kenner.

The central argument in favor of the proposed amendment is that it would require both at-large candidates to receive more than 50% of the vote. This, proponents contend, is a basic tenet of democracy. However, there are many offices in the United States for which a majority vote is not required. In states that do not use a run-off system, governors, members of Congress and city and county councils can be elected without majorities.[4] Also, 15 U.S. presidents have been elected with less than 50% of the popular vote.[5]

Some supporters have said the proposed switch could increase African-American representation on the council, because candidates would have to obtain a majority of the entire electorate, nearly 60% of which is African-American.[6] However, neither election method guarantees a particular outcome. The two current at-large councilmembers are white, and they defeated African-American candidates in single-seat elections governed by the same rules as those proposed in the charter amendment.

Proponents also note that the change would bring the two at-large elections in line with other citywide offices, such as mayor and assessor, that require a majority vote.

Proponents of the charter amendment also argue that the current system can be manipulated. They point out that, in the past, candidates have appealed to voters to vote for only one candidate. The practice, called "single shooting," effectively gives the vote more weight. Proponents say this introduces a strategic element that makes the election less of a straightforward expression of the public's will.

BGR estimates that in the past five at-large primaries, 18% to 39% of voters cast ballots for just one candidate.[7] It is impossible to know how many of the single-shot votes were cast strategically and how many were cast by voters who were unaware they could vote for two candidates.

Opponents argue there is nothing undemocratic about single shooting, and maintain that many voters value the option of weighting their vote toward one candi-

date. They also assert that the proposed change would not preclude political games. In fact, they contend it may even encourage backroom deals in which candidates agree to run for separate at-large seats for strategic reasons.

The proposed switch also could result in more uncontested races if a formidable at-large candidate prompts all would-be challengers to qualify for the other seat. By contrast, the current system fosters open competition because all at-large candidates must face off in the same field. It also provides greater choice to voters, because it allows them to cast votes for their two favorite candidates. The proposed system would force voters to pick one over the other if both run in the same race.

BGR Position

NO POSITION. Both election methods have significant advantages and disadvantages. The current method gives voters the greatest choice and enhances competition among candidates. However, it fails to ensure that winners are backed by a majority of voters. The proposed method would require winners to gain the support of at least 50 percent of voters, but it would encourage more political maneuvering by candidates.

NOTES

1 New Orleans City Council, Ord. Cal. No. 29,053, adopted June 28, 2012.

2 La. R.S. 18:511(A). The law establishes the following formula for determining the threshold: divide the total number of votes cast by the number of seats to be filled and divide the results by 2. If a total of 100 votes were cast in an election to fill two at-large seats, a majority would be 25 votes, or 25% of the total (100 votes ÷ 2 seats = 50 votes, and 50 votes ÷ 2 = 25 votes). The formula applies regardless of how many seats are available. For instance, in Harahan all five city council seats are at-large positions and candidates are grouped in a single field. Voters may choose up to five, and candidates need only 10% of the total vote to win in the primary.

3 In the 2010 primary, 146,415 votes were cast in the at-large City Council race, meaning that a candidate needed at least 36,604 votes to reach the 25% threshold to win. A total of 82,801 people voted in the five district races. Assuming the same number had voted in the at-large race, the 36,604 votes that were needed to win were equivalent to support from 44.2% of voters. Similar calculations for other primary elections show that the 25% threshold was equivalent to support from 41.5% of voters in 2006; 40.2% of voters in 2002; 42.0% of voters in 1998; and 45.5% of voters in 1994. BGR calculations using Louisiana Secretary of State election results, http://staticresults.sos.la.gov.

4 FairVote, *Plurality Wins in Major American Elections, 1992-2004*, archive.fairvote.org/?page=1654. From 1990 to 2004, 38 governors were elected with less than 50% of the vote. From 1992 to 2002, 22 U.S. senators and 90 members of the House of Representatives were elected with pluralities.

5 The Library of Congress, *American Presidency Project: Presidential Election Data*, www.presidency.ucsb.edu/elections.php.

6 Data provided by the Orleans Parish Registrar of Voters. Of the city's 240,137 registered voters, 142,055 or 59.2% are African-American, 80,226 or 33.4% are white, and 17,856 or 7.4% are other ethnicities.

7 The analysis assumed that the number of voters who cast ballots in the at-large race – a figure that is not included in election results – was the same as the total number who voted in races for the five district seats. In the 2010 primary, for instance, a total of 82,801 people voted in the five district races. Assuming the same number voted in the at-large race, there would have been 165,602 at-large votes if everyone voted for two candidates. The actual at-large vote total was 146,415, which suggests that 19,187 people, or 23%, voted for just one candidate. Similar calculations for other primary elections yielded single-shot estimates of 34.1% in 2006, 39.4% in 2002, 31.9% in 1998, and 18.2% in 1994. BGR calculations using Louisiana Secretary of State election results, http://staticresults.sos.la.gov.

ORLEANS LEVEE DISTRICT PROPERTY TAX

What it Would Do

Voters on the east bank of Orleans Parish will decide whether to authorize the Southeast Louisiana Flood Protection Authority-East (the Flood Protection Authority) to levy for 30 years a property tax of 6.07 mills on property in the Orleans Levee District. Approval would result in the renewal of an existing tax of 5.46 mills, and a millage increase of 0.61 mills. The millage increase would reverse millage roll-backs and return the tax to the level voters approved in 1983.

If the proposition passes, 5.46 mills, or about $13.9 million a year, would be dedicated to constructing and maintaining levees, levee drainage, flood protection, hurricane flood protection and related purposes, including debt service payments, in the Orleans Levee District. The remaining 0.61 mills, or about $1.5 million a year, would be dedicated to the operation and maintenance of the district's non-flood assets that do not produce revenue, including Lakeshore Drive and adjacent parkland. If some of the proceeds are not needed for that purpose, they would be used for flood control.

Background and Analysis

Prior to Hurricane Katrina, the Orleans Levee District was managed by the Orleans Levee Board. The district's mission has always been flood control, but beginning in the 1930s it began to amass an array of assets not related to flood protection, including an airport, two marinas, various commercial properties, Lakeshore Drive and adjacent parklands. It even leased dock space to a riverboat casino. Although certain assets generated revenue for flood protection projects, BGR and other critics pointed out that managing the diverse ventures was a distraction from the Orleans Levee Board's core responsibilities.

In the wake of the Katrina disaster, state voters approved a constitutional amendment allowing the Legislature to replace the balkanized system of local levee boards in the New Orleans area with two regional flood protection authorities separated by the Mississippi River. The Flood Protection Authority assumed responsibility for flood protection on the east banks of Jefferson and Orleans parishes as well as in St. Bernard, St. Tammany and Tangipahoa parishes.[1] While the levee districts in those areas continued to exist, their boards were replaced by the Flood Protection Authority's board. At the same time, control and management of the Orleans Levee District's extensive non-flood assets were transferred first to the state's Division of Administration and then to the Non-Flood Protection Asset Management Authority (Non-Flood Asset Authority).[2]

When management of the non-flood assets was transferred to the Division of Administration in 2007, all of the property tax revenue stayed with the Orleans Levee District to be overseen by the Flood Protection Authority.

Flood Protection Millage

The Orleans Levee District currently levies three taxes totaling 11.67 mills. It collects 5.46 mills from its constitutionally authorized general tax, 0.75 mills from a maintenance tax and 5.46 from the Special Levee Improvement Project (SLIP) tax. The SLIP tax, which is set to expire in 2015, is the subject of the proposed renewal.

Together, the taxes for the fiscal year that will end June 30, 2013, total about $29.4 million. Of that amount, the district plans to spend $16.3 million, leaving a projected $13.1 million surplus. This will further bolster the levee district's significant reserves, which already total approximately $73 million.

However, major new expenses loom on the horizon. As early as 2013, the Flood Protection Authority must begin paying an estimated $10 million a year for 30 years to pay its share for flood-protection improvements that the U.S. Army Corps of Engineers is making across the metro area. It will be on the hook for another $4 million per year to operate and maintain the new infrastructure, including the Lake Borgne Surge Barrier and the Seabrook floodgate on the Industrial Canal.

Millage proponents say extending the SLIP millage is critical for the levee district to cover these impending flood protection costs. They acknowledge that the proposed 30 years is longer than most millage extensions, but they say the time period is warranted because it equals the payment period for the matching funds.

Non-Flood Asset Millage

The non-flood share of the millage would be dedicated to maintaining Lakeshore Drive and several green areas including: parks along Lakeshore Drive and the levees (202 acres); interior parks and greenways within the Lakeshore, Lake Vista, Lake Terrace and Lake Oaks subdivisions (55 acres); and the New Basin Canal Park between Pontchartrain and West End Boulevards (50 acres).[3] At the lakefront, the parkland includes a public boat launch, the Frank Davis Fishing Pier, four playgrounds, four picnic shelters,15 picnic pavilions, the Mardi Gras Fountain and two other architectural fountains.

The land occupied by the four lakefront subdivisions was created beginning in the 1930s when the levee district built the Lake Pontchartrain seawall and backfilled the area on the protected side with lake sediment. When it sold the land for residential developments, the levee district sought to entice buyers by agreeing in property deeds to maintain the green spaces in perpetuity.

The Non-Flood Asset Authority's fiscal 2012-13 budget projects expenses of $6.9 million, but its operating revenues are insufficient to cover them. The entity anticipates $5.2 million from its revenue-generating assets, including the Lakefront Airport, Orleans Marina, South Shore Harbor, the Lake Vista Community Center and about 14 commercial lots. The budget also includes the second of two, state-mandated $700,000 transfers from the Flood Protection Authority. That leaves a $1 million operating deficit.

To make up for annual revenue short-falls, first the Division of Administration and then the Non-Flood Asset Authority have been drawing from a $7.4 million settlement with the Belle of Orleans riverboat casino, which broke its lease at South Shore Harbor after Katrina and never returned.[4] The settlement fund has about $1 million left, meaning that at the current pace it will be exhausted next year.

The operating deficit is attributable to the assets that generate no revenue. It costs the authority about $2 million to maintain these assets, including Lakeshore Drive and its parkland.

After exhausting the payments from the Flood Protection Authority and the riverboat settlement, the Non-Flood Asset Authority says it will not have sufficient revenue to maintain these assets. Therefore, it argues, a new revenue source must be found to pay for Lakeshore Drive and the parkland.

Proponents say the millage dedicated to non-flood assets would cover most of the costs to maintain Lakeshore Drive and the parkland, which is a prized community asset. It also would ensure that the Orleans Levee District meets its legal obligations to maintain the green spaces within the lakefront subdivisions.

Supporters also point out that the proposed tax would not take any money from the Flood Protection Authority, which currently receives 5.46 mills and did not initially request an increase.[5] Dedicating 0.61 mills for the lakefront would reduce the possibility that the state would again turn to the Flood Protection Authority to subsidize the Non-Flood Asset Authority. Proponents also point out that the existing millage was approved with a dedication for both flood projects and Lakeshore Drive, and that the renewal should reflect and continue this dual purpose.

On the other hand, it is not clear that the current approach to the non-flood assets is optimal. The Non-Flood Asset Authority holds a collection of disparate assets, with little in common except their location. Some, such as the airport and the marinas, are similar to assets managed by other government entities.

State law allows the authority to dispose of the assets,[6] but it has not done so. Non-Flood Asset Authority officials told BGR that they are focused instead on rebuilding and bringing the Katrina-damaged assets back to financial stability. They say that they are reluctant to dispose of the properties without broad public input and consensus. However, it is unclear how such a consensus would be achieved unless the authority first proposed a plan to divest itself of the assets.

In the past, revenue-generating assets provided funding for flood protection. Keeping some of the assets could make sense if they were generating revenue for flood protection. However, this is clearly not the case. Although the Non-Flood Asset Authority is required by law to transfer any income generated by a non-flood

asset to the Flood Protection Authority,[7] the Flood Protection Authority has yet to receive any money from the non-flood assets. On the contrary, the Legislature has ordered the Flood Protection Authority to make two $700,000 payments to the Non-Flood Asset Authority to help pay Lakeshore Drive maintenance costs.

Today, the revenue-producing assets not only fail to subsidize flood protection, they are inadequate to cover the costs of maintaining Lakeshore Drive and the parkland. In the midst of this upside-down situation, voters are asked to support a proposition that may have the effect of cementing the current management structure for another 30 years. But there are numerous alternatives that deserve consideration.

These include completely disposing of the Orleans Levee District's non-flood assets or transferring management of them to other managers. For instance, it is unclear that the Non-Flood Asset Authority should manage an airport, when the New Orleans Aviation Board could handle that duty. It is unclear that the authority should oversee the marinas, when the city has a separate Municipal Yacht Harbor Management Corp. overseeing both park and marina properties, adjacent to the levee district's marina at West End. It is unclear that the authority should maintain parkland, when an array of entities, including the adjacent City Park, the city's Department of Parks and Parkways, the Audubon Commission and other public entities are already handling parklands in the city.

It should be noted that, if the millage fails, there is a risk that the state Legislature could direct the Flood Protection Authority to subsidize the non-flood assets out of its own revenues, as it has done in the past.

BGR Position

AGAINST. Although the millage would provide essential funding for flood protection on the east bank of Orleans Parish, the portion that would go to the Non-Flood Asset Authority is problematic. While the 30-year extension for the Flood Protection Authority is appropriate, this is far too long a period for the Non-Flood Asset Authority and premature at best. Before turning to taxpayers for any revenue, the Non-Flood Asset Authority should work with public officials to determine which assets to divest itself of, and for the city and Legislature to determine the best way to manage any remaining assets in the long term. Since the millage renewal for the Flood Protection Authority is not needed until 2014, there is sufficient time before the existing millage expires to come up with a better solution.

NOTES

1 La. R.S. 38:330.1.
2 La. R.S. 38:330.12.
3 BGR calculations based on maps provided by the Non-Flood Asset Authority.
4 Non-Flood Protection Asset Management Authority, "Operating Budget FY 2012-13," p. 1.
5 The Flood Protection Authority had initially sought the millage renewal at the rolled-back rate of 5.46 mills. The Non-Flood Asset Authority opposed this approach, arguing that it should receive some money to maintain non-revenue-generating assets under its control. The Louisiana State Bond Commission, which must approve placement of local millage proposals on the ballot, directed both sides to try to reach a compromise. This led to the proposal to seek an extension of the full 6.07 mills that were previously authorized, with the Non-Flood Asset Authority to receive the remaining 0.61 mills.
6 La. R.S. 38:330.12(B)(2).
7 La. R.S. 38:330.12(C).

NEW ORLEANS REGIONAL BUSINESS PARK TAX

What it Would Do

Approval of the proposition would authorize the New Orleans Regional Business Park (the Business Park) to levy a property tax of up to 20 mills within its boundaries for 20 years. Residential and personal property within the district would be exempt. Although the tax would be levied only within the district, it is subject to a citywide vote.

Background and Analysis

The Louisiana Legislature created the Business Park in 1979 as a special taxing district for the purpose of stimulating industrial and commercial development in the district. It is a vast, 7,000-acre area in eastern New Orleans bounded by the CSX Railroad tracks, the Industrial Canal, the Intracoastal Waterway and the Maxent Canal.[1]

The Business Park collected a real property tax of approximately 20 mills from businesses in the district between 1982 and 2011. Voters defeated a proposed renewal of the tax last year. The proposition before them would reinstate the defeated tax.

There are nearly 2,000 parcels in the district, but the vast majority – more than 1,700 – are small plots of vacant land that generate very little in taxes. According to the Business Park, approximately 80 businesses operate within the district.[2] If voters approve the tax and all other tax-recipient bodies in Orleans Parish maintain their same millage rates, those businesses would see their real property tax rate increase 13.6%, from 147 to 167 mills, in 2013.

Most of the taxes would be paid by a small number of the businesses in the district. In 2011, the two largest taxpayers, Folgers Coffee Company and Entergy, paid 28% of the taxes. The top 15 taxpayers in the district paid 60% of the taxes.[3]

The Business Park's 2012 budget includes $378,000 in revenue and $440,000 in expenditures. Almost all of the revenue is from rent and utility reimbursements paid by tenants in the Enterprise Center, an office complex and warehouse owned by the Business Park. However, according to the Business Park, unless it can attract new tenants between now and the end of the year, revenues will fall roughly $100,000 short of that projection, leaving the park with a deficit of $160,000.

The Business Park's expenditures cover the salaries and benefits of three employees, marketing expenses, contracts for legal and accounting services, office expenses and a variety of expenses, such as insurance and utilities, related to the Enterprise Center. Any budget shortfall would have to be plugged using the Business Park's reserves of approximately $345,000.

In January, the Business Park hired a new executive director, the fifth to hold the position in either an interim or permanent capacity since Hurricane Katrina. When asked about the Business Park's activities and plans, he informed BGR that he has been meeting with businesses in the district to gauge their needs. The Business Park is also working to re-establish a defunct business owners' association and planning to resuscitate a business incubator program that has been dormant since Hurricane Katrina.

If voters approve the millage proposal, it is expected to generate approximately $220,000 for the Business Park each year. According to its executive director, the Business Park plans to use the funds to begin providing certain services in the district, such as grass cutting and debris cleanup. It would also use the funds to offer a higher level of services than it otherwise would at its business incubator.

If voters reject the millage, the Business Park says it will continue its efforts to reestablish the business owners' association and business incubator, but it will be unable to provide any services in the district. Its revenue base would be limited to whatever rental income it can generate from the Enterprise Center and grants.

Proponents of the millage say that the tax is necessary to provide services in the district and create an inviting environment in what they consider a prime location for future development. They argue that the tax does not impose an undue burden on businesses in the district and that voter rejection of it would be a setback for an area in need of positive momentum.

There are several arguments against renewing the pro-

posed property tax.

First, the Business Park has a weak track record. Despite the park's seemingly strategic location, it has struggled throughout its 30-year history to provide services and attract new development projects. The district suffers from serious drawbacks, including illegal dumping, poor soil conditions, deteriorating infrastructure and minimal city services. Businesses in the district reported deteriorating streets, street lights that do not work, clogged drains, overgrown and debris-filled lots, minimal public transportation and a weak police presence. Some of the road concerns will be addressed soon, however. The city plans to invest $6.2 million in street improvements within the Business Park at the end of this year.[4]

The Business Park over the years has floated a host of development ideas – including a motor speedway, a youth sports complex and a modern office park – but none came to fruition. Its business retention and expansion efforts have produced mixed results. Before Hurricane Katrina, the Business Park donated land and secured funds to help Folgers build a new electrical substation. The substation played a role in the company's decision to consolidate its roasting operations in New Orleans. The Folgers project was perhaps the Business Park's most notable accomplishment. But the fact that the Business Park can point to so few other stories like it illustrates its lackluster performance in the areas of business retention and expansion.

Another argument against the tax is that the Business Park has not used the revenue it generated to address the fundamental infrastructure and service needs of the district. Throughout its history, the Business Park has devoted the bulk of its resources to employing a modest staff focused on recruiting and incubating businesses.

The new leadership at the Business Park has emphasized that it intends to focus more on serving the businesses that are already located in the district, and leave major business recruitment efforts to the NOLA Business Alliance, the city's economic development entity. However, it does plan to continue business development efforts through its planned incubator program.

Unless the Business Park can substantially increase its rental income or find a way to drastically reduce expenses, any plans for increased services in the district will fall victim to the more immediate need of plugging the Business Park's budget deficit. As noted above, the Business Park anticipates a deficit of $160,000 this year from its office expenses and current activities. If the deficit related to those operations were to persist, it would consume more than 70% of the millage proceeds. This would leave very little funding for enhanced services in the district.

Another fundamental problem with the tax is that it simply generates too little revenue. Given the scale of the infrastructure and service delivery problems reported by businesses in the district, it is doubtful that even an energized, tightly-run management entity could fix them. If voters approve the tax and rental income meets projections, the Business Park would collect roughly $600,000 in revenue in 2013. Even if it devoted its entire budget to infrastructure and services, rather than staffing, business incubation and property management, the Business Park would have insufficient revenue to make the improvements needed in the district.

When researching the proposed tax renewal last year, BGR contacted several businesses within the district for their perspectives on the tax. None could identify any benefits they derived from it. They said that the Business Park's operations in the district have been so limited over the years that they would not notice a difference if the entity were eliminated altogether. Some had owned or managed businesses in the district for more than a decade. They made clear that they did not support paying a tax that supported a small administrative operation that did not provide benefits for businesses in the district.

BGR Position

AGAINST. The New Orleans Regional Business Park has a poor track record, and those who pay the tax have not benefited from it. Because administrative costs consume so much of its budget, and the millage would generate insufficient funds for significant service upgrades or infrastructure improvements, the Business Park is not positioned to promote economic development. On the contrary, by increasing the property taxes of businesses in the district by 13.6%, it would act as a disincentive to development.

NOTES

1 The district was previously known as the New Orleans Business and Industrial District, or NOBID, and before that, the Almonaster Michoud Industrial District, or AMID.
2 Many of the businesses operate on multiple parcels. List of 2011 Taxpayers in the New Orleans Regional Business Park, provided to BGR by the City of New Orleans, July 26, 2011.
3 List of 2011 taxpayers in the Business Park, provided to BGR by the City of New Orleans, July 26, 2011.
4 City of New Orleans, "Facilities Infrastructure and Community Development," www.nola.gov/GOVERNMENT/Facilities-Infrastructure-and-Community-Development/.

BGR Research Staff

Janet R. Howard, President & CEO
Peter Reichard, Projects Manager
Kevin Murphy, Research Analyst
Paul Rioux, Research Analyst
Vincent Rossmeier, Research Analyst

BGR

The Bureau of Governmental Research is a private, non-profit, independent research organization dedicated to informed public policy making and the effective use of public resources for the improvement of government in the New Orleans metropolitan area.

This report is available on BGR's web site, **www.bgr.org**.

Become a Member

To preserve its independence, BGR relies on financial support from a diverse membership of individuals, corporations and foundations. To find out how you can become a part of BGR, go to www.bgr.org/membership or call us at 504-525-4152 x108.

80 YEARS
BGR
We report to you.

BUREAU OF GOVERNMENTAL RESEARCH
938 Lafayette St., Suite 200
New Orleans, LA 70113
Phone 504-525-4152
Fax 504-525-4153
www.bgr.org

BGR Board of Directors

80 YEARS

BGR

We report to you.

BUREAU OF GOVERNMENTAL RESEARCH
938 Lafayette St., Suite 200
New Orleans, LA 70113
Phone 504-525-4152
Fax 504-525-4153
www.bgr.org

Nonprofit Org.
U.S. Postage
PAID
New Orleans, LA
Permit No. 432

BGR POSITIONS

STATE CONSTITUTIONAL AMENDMENT NO. 2: STRENGTHENING GUN RIGHTS | **Against**

STATE CONSTITUTIONAL AMENDMENT NO. 4: PROPERTY TAX EXEMPTION FOR SPOUSES OF DECEASED DISABLED VETERANS | **For**

STATE CONSTITUTIONAL AMENDMENT NO. 5: FORFEITURE OF RETIREMENT BENEFITS FOR PUBLIC SERVANTS CONVICTED OF FELONIES | **For**

LOCAL OPTION ELECTION: TERM LIMITS FOR SCHOOL BOARD MEMBERS | **For**

TOLL PROPOSITION: CRESCENT CITY CONNECTION | **Against**

NEW ORLEANS CHARTER AMENDMENT: ELECTION OF AT-LARGE COUNCILMEMBERS | **No Position**

ORLEANS LEVEE DISTRICT PROPERTY TAX | **Against**

NEW ORLEANS REGIONAL BUSINESS PARK TAX | **Against**