

State and Local Government in Louisiana: An Overview 2012-2016 Term

CHAPTER 3 — LOCAL GOVERNMENT

Part D. Local Government Finance

Authority to Tax

The general taxing power or authority for parish, municipal, and other local public purposes is granted to political subdivisions in Article VI, Section 30 of the Constitution of Louisiana. The legislature by general, local, or special law may create or authorize the creation of special districts, boards, agencies, commissions, and authorities of every type and define their powers, including the power of taxation and the power to incur debt and issue bonds. (Const. Art. VI, §19) Such local governmental functions as fire protection, garbage collection, and sewerage districts have been statutorily authorized under those provisions.

Political subdivisions or political corporations are authorized by the constitution to engage in cooperative endeavors, including financing, for a public purpose with each other, the state, the United States or its agencies, or with any public or private association, corporation, or individual. (Const. Art. VI, §20, Const. Art. VII, §14(C))

Ad Valorem Tax

The ad valorem tax (property tax), the oldest form of taxation presently in use in the nation, traditionally has been the financial mainstay of local governments, and during most of the period prior to World War I, it represented the largest single source of public revenues. Difficulties in administration of this tax have included problems associated with assessment levels applied to different types of property, various tax exemptions on homestead and industrial properties, and the impact of the tax on different classes of taxpayers.

The general alimony or maintenance taxes available to parishes and municipalities (Const. Art. VI, §§26, 27) and all other property tax millages of political subdivisions are levied on the assessed value of properties as listed on the local tax rolls. For the purposes of such taxation, all properties are appraised at fair market value, and the assessed value is then determined as a percentage of such fair market value as follows: land – 10%; improvements for residential purposes – 10%; electric cooperative properties, excluding land – 15%; public service properties, excluding land – 25%; and all other property – 15%. (Const. Art. VII, §18)

Bona fide agricultural, horticultural, marsh, and timber lands are defined by law and are assessed for tax purposes at ten percent of use value rather than fair market value. (Const. Art. VII, §18; R.S. 47:2301 et seq.)

In computing the actual proceeds expected from the imposition of a certain millage, consideration also must be given to the amount of property eligible for the homestead exemption (\$7,500 of assessed value) and other property exemptions listed in the constitution. The homestead exemption does not apply to municipal ad valorem taxes except in Orleans

Parish. (Const. Art. VII, §§20, 21)

The Louisiana Tax Commission is a state agency vested with extremely broad authority as to the administration and enforcement of the state property tax and assessment laws. The commission is composed of five members appointed by the governor from the state public service commission districts. The members of the commission serve at the pleasure of the governor. In addition to reviewing and accepting assessment lists from each parish, with the authority to reject or order individual changes, the commission devises and issues all forms used for property tax implementation and prepares and issues rules and regulations which very narrowly prescribe how assessors are to perform their duties and responsibilities.

An important function of the commission is the assessment of public service properties. These properties, such as telephone companies, pipelines, railroads, and other utilities, are actually assessed by the commission staff rather than the individual assessors. The commission forwards this information to the assessors for use in preparing the tax rolls.

Pursuant to the commission's grant of authority to promulgate rules and regulations for the administration of property tax laws, the commission promulgates a new set of real/personal property rules for use by each assessor for purposes of reassessment. This update of applicable rules is performed each time there is a reassessment of property as required by the constitution – at least once every four years. (Const. Art. VII, §18(F))

Of particular importance to taxpayers is the roll-up/roll-back provision of the constitution which mandates millage adjustments in order to prevent the increase or decrease of total taxes collected because of reappraisal or changes in the homestead exemption; taxes realized from increased millages or additional property on the tax rolls are not affected. A taxing authority may choose to collect the additional revenues to be gained from such changes by reinstating all or a portion of the prior year's millage. A reinstatement does not require voter approval, but does require a two-thirds vote of the governing body of the taxing authority at a public hearing. The hearing requires considerable public notice via press release, internet, and newspaper. (Const. Art. VII, §23; R.S. 47:1705)

The constitution authorizes a levee district to impose property taxes without voter approval for purposes incidental to flood protection. The amount of authority varies based on when the district was created. Levee districts created before 2006 may impose up to five mills of property tax without voter approval. These districts may also impose additional property taxes subject to voter approval. Voter approval is required for all property taxes levied by a levee district created after 2005. (Const. Art. VI, §39) With regard to payments required for property which has been used or destroyed for levee purposes, if a levee district has no other funds or resources from which it can make payment, the district is required to levy property taxes sufficient to provide for such payment. (Const. Art. VI, §42)

School boards realize local funds for the support of public elementary and secondary schools from the imposition of an ad valorem maintenance tax not to exceed five mills (thirteen mills in Orleans Parish), which tax is authorized without the necessity of voter approval. For additional support to public schools, any parish or city school board and school or subschool district may levy a property tax for a specific purpose, upon voter approval and subject to limitations provided by law. The legal maximum millage (above the constitutionally authorized maintenance millage) is 70 mills. (Const. Art. VIII, §13(C)) The maximum duration of such taxes is ten years, with the exception of taxes levied solely for maintenance of capital facilities or installation of climate control mechanisms in existing classroom facilities which may be

imposed for 20 years. (R.S. 39:812)

Sales Tax

The other major source of tax revenue for local governments is the sales and use tax (sales tax). The constitution grants sales tax authority to all parishes and municipalities (local governmental subdivisions) and school boards. Imposition of all sales taxes for local government subdivisions and school boards is subject to local voter approval. The constitution authorizes a maximum sales tax rate of three percent in the aggregate for the local governmental subdivisions and the school board within any parish (in addition to the state sales tax). However, the legislature, by general or by local law, may authorize sales taxes for local governmental subdivisions and school boards which are above that limit, subject to voter approval. Additionally, this limitation does not apply to special taxes for works of public improvement and taxes of certain political subdivisions, the approval of which is left solely to the discretion of local voters. Numerous statutory provisions authorize various rates of sales taxes generally and specifically for municipalities, parishes, school boards, special taxing districts, and sheriffs. The constitution requires all sales and use taxes within a parish to be collected by a single collector. (Const. Art. VI, §§29, 30 and 32, and VII, §3(B))

Other Taxes

Additional constitutional provisions authorize financing mechanisms for specific local functions and services. Works of public improvement may be financed by special taxes or assessments. (Const. Art. VI, §§32, 36) In keeping with the general authorization to engage in cooperative endeavors, the legislature may enact laws to enable political subdivisions and their agencies to comply with federal laws and regulations in order to secure federal participation in funding capital improvement projects. (Const. Art. VII, §17)

The constitution prohibits political subdivisions from levying a severance tax, income tax, inheritance tax, tax on motor fuel, or motor vehicle license fee. (Const. Art. VII, §§4(C), 5) However, the constitution does authorize municipalities and parishes to impose an occupational license tax not greater than that imposed by the state, unless a greater rate is approved by a two-thirds vote of the legislature. Despite repeal of the state occupational license tax in 1981, this taxing authority with respect to local governments has been continued and in 1986 was the subject of a major legislative revision providing for five consolidated rate schedules and the collection and administration of such taxes. (Const. Art. VI, §28; R.S. 47:341 et seq.)

Municipalities and parishes are authorized by law to collect a license tax on chain stores within their respective boundaries. Notwithstanding the imposition of the tax, each parish or municipality may elect to suspend the effect of the tax. (R.S. 47:10)

Other supplementary revenues may be derived from a local beer tax (R.S. 26:492), requirements for various permits and fees, and the lease of lands and properties to which political subdivisions have title, custody, or possession.

Bonded Indebtedness

Bonded indebtedness has become an increasingly integral aspect of local government financing as pressures arising from population increase and accelerated urbanization have resulted in continuing demand for such governmental facilities as schools, roads and bridges, hospitals, and community centers. Limitations on the bonded indebtedness of political subdivisions are set

forth in R.S. 39:562 et seq. as required by the constitution (Const. Art. VI, §34) and Louisiana has further sought to insure prudent issuance of debt by its political subdivisions through a requirement for prior State Bond Commission approval of all bond and other debt issues. (Const. Art. VII, §8)

Major provisions of the constitution authorize political subdivisions to share in the economic impact of local industrial enterprises through the issuance of industrial bonds; to provide facilities deemed necessary by the electorate in approving propositions for funding by general obligation bonds, subject to statutory limitations; and to issue bonds or other debt obligations to construct, acquire, extend, or improve any revenue-producing public utility or work of public improvement, such obligations to be secured solely by revenues and properties of the facility. (Const. Art. VI, §§21, 33, 34, 37; R.S. 39:551 et seq.) Political subdivisions also may use tax increment financing as a source of funding infrastructure and other needs in securing and expanding economic development projects. (R.S. 33:7602, et seq. 33:9023, et seq., and 47:8001, et seq.)

Statutory provisions additionally authorize the creation of express public trusts to issue obligations and to provide funds for the furtherance and accomplishment of any public purpose or function, such as health, housing, education, transportation, water and sanitation systems, correctional services, educational services, and community development facilities and activities. Creation of any such trust is subject to express approval of a majority of the governing authority of the beneficiary governmental unit and the State Bond Commission. The Louisiana Public Facilities Authority is a trust created under these statutory provisions. (R.S. 9:2341 et seq.)

Limitation on Unfunded Mandates

No law or state executive order, rule, or regulation requiring increased expenditures for any purpose shall become effective within a political subdivision until approved by the governing authority of the political subdivision and then only if the legislature appropriates funds for that purpose or the effected political subdivision or the legislature provides for a local source of revenue therefore. (Const. Art. VI, §14) This provision does not apply to school boards. There are a number of other exceptions to this prohibition against unfunded mandates including legislation requested by the affected political subdivision; legislation defining a new crime or amending an existing crime; legislation enacted to comply with a federal mandate; legislation providing for civil service; minimum wages, working conditions; or legislation providing for retirement benefits, hours, or sick leave of firemen or policemen. A further exception is made for any law enacted by a two-thirds vote of the elected members of each house of the legislature.

State Aid to Local Governments

State aid to major units of local governments – as used herein means parish governing authorities, municipalities, school districts, sheriffs, and district attorneys – may be divided generally into three types of aid allocations: (1) shared aid which is returned to the jurisdiction of origin; (2) categorical aid which is targeted for a specific purpose; and (3) general aid distributed by formula. Financial assistance to local governments is allocated and distributed via state general fund and dedicated fund appropriations in the General Appropriation Bill, Capital Outlay Bill, and other appropriation bills, and constitutional allocations which do not require an appropriation.

Shared aid is comprised of severance tax, royalty funds, the Video Draw Poker Device Fund, and state sales tax dedications to local entities. Severance tax and royalty funds are both

constitutional allocations of funds in which the monies are returned to the jurisdiction of origin. Severance taxes (*Const. Art. VII, §4(D)*) are allocated to the governing authority of the parish from which the resource is severed or production occurs, as follows: 1/3 of tax on sulphur not to exceed \$100,000; 1/3 of the tax on lignite, not to exceed \$100,000; 3/4 of the tax on timber; and 1/5 of the tax on all other natural resources other than sulphur, lignite, and timber, not to exceed a maximum amount of \$850,000. Beginning in 2008, the \$850,000 maximum amount was adjusted annually in accordance with the annual increase in the Consumer Price Index. Furthermore, effective April 1, 2012, this maximum amount may be increased if certain natural resource revenue forecasts are achieved. One-tenth of the royalties from mineral leases on state-owned lands and lake and river beds are allocated to the parish governing authority where severance or production occurs (*Const. Art. VII, §4(E)*). Twenty-five percent of the monies received by the state from fees, fines, and penalties assessed on video draw poker devices are statutorily dedicated (*R.S. 27:312*) for distribution to district attorneys and their assistants for increased compensation and to parishes, municipalities, and sheriffs for enforcement of the video poker codes. All or a portion of the state sales tax on hotel occupancy collected in each parish is appropriated to virtually all of the respective parishes to support tourism, economic development, and other purposes.

Categorical aid is aid which is targeted for specific purposes. Categorical aid falls into four general groupings: education aid, supplemental pays, transportation funds, and miscellaneous.

Educational aid is targeted at elementary and secondary education functions performed by the local school systems. Most of the state money distributed to the local systems is the constitutionally mandated Minimum Foundation Program, MFP (*Const. Art. VIII, §13(B)*). The formula is developed and adopted by the Board of Elementary and Secondary Education and then reviewed and adopted by the legislature in the form of a resolution. The legislature annually appropriates monies sufficient to fund the most recently adopted formula. The constitution also mandates the legislature to appropriate funds to provide free textbooks for the children of the state; this item is now a part of the MFP. (*Const. Art. VIII, §13(A)*) Local school boards also receive the bulk of the investment income of the Education Excellence Fund (EEF), a special fund constitutionally established within the Millennium Trust with a portion of the state's proceeds from the "tobacco settlement" agreement. Interest and other earnings from the EEF may be appropriated to each school system based on the system's proportion of total students and subject to a plan submitted by the school system and approved by the Department of Education and the legislature. (*Const. Art. VII, §10.8 and R.S. 17:3805*) (The MFP and EEF are discussed in more detail in another part of this book.) Annual state general fund appropriations for non-formula, educational functions such as vocational education, adult education, food service, and PIPs, among others, are also made by the legislature to local school districts.

Among the most significant annual legislative appropriations for local government purposes are extra compensation for public safety personnel (generally referred to as supplemental pay). These funds are earmarked for local public safety by supplementing the salaries of municipal police and marshals (*R.S. 33:2218.2*), deputy sheriffs (*R.S. 33:2218.8*), constables and justices of the peace (*R.S. 13:2591*), and firefighters (*R.S. 33:2001 et seq.*). State supplemental pay for municipal police, deputy sheriffs, and firefighters was statutorily increased from \$300 per month to \$425 per month in 2007 and from \$425 per month to \$500 per month in 2008. Constitutional amendments approved by the voters in November 2002 and October 2007 require the state to fully fund the amount of supplemental pay established by law. Reductions may only be made by the governor according to the Act containing the appropriation, and are subject to approval of two-thirds of the members of each house. (*Const. Art. VII, §10(D)(3)*)

Monies targeted at assisting local governments with upgrading and maintaining their road and bridge systems come primarily from the constitutional provisions of the Transportation Trust Fund as they relate to the Parish Transportation Fund. (Const. Art. VII, §27(B) and R.S. 48:756). Under these provisions, no more than 20% of the trust funds may be appropriated for the Parish Transportation Fund, state police for traffic control purposes, ports, and Statewide Flood-Control Program; however, the Parish Transportation Fund is guaranteed a minimum of the avails of one cent of the gasoline and special fuels tax. The first \$34 million is distributed to the parishes on a per capital basis; any appropriation over \$34 million is distributed to the parishes based on parish road mileage. The legislature has also provided funding for mass transit in the larger cities. Additional monies have been provided from time to time for other transportation needs; in recent years. Monies to entities such as levee boards, port commissions, or terminal districts are not reported here.

The largest general formula and distribution is Revenue Sharing (Const. Art. VII, §26), an annual \$90 million state general fund constitutional allocation that is distributed solely on the basis of population and the number of homesteads in each parish. The current formula weights the two factors, population and homesteads, 80% and 20%, respectively, in determining the amount for each parish. The constitution provides that population figures be based on the latest federal decennial census unless otherwise provided by the legislature; the legislature generally uses annually revised parish population estimates.

Local fire departments receive assistance from the proceeds of a two percent tax on the amount of fire insurance premiums collected by every foreign or alien insurer from any business which insures property of any nature or description against loss or damage by fire. All such revenues are credited to a special fund. Monies in the fund are used to pay group insurance and workers' compensation for volunteer firefighters and \$210,000 is allocated to firefighter training programs in the state. The remainder is distributed to each parish governing authority in accordance with rules and regulations established by the state treasurer based on the most recent parish population estimates.