

# Constitutional Amendments & Referendum for 2010 Ballot Pros & Cons

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## QUESTIONS ON THE NOVEMBER 2010 BALLOT

There are five Constitutional Amendments and one state-wide referendum question on the Nov. 2<sup>nd</sup>, 2010 ballot for Georgia voters to decide. In considering whether to support or oppose the amendments, the legal language can often make it difficult to determine what the actual effect of the amendment or question would be.

**Constitutional amendments are difficult to overturn; therefore it is very important for voters to understand what the impact would be and how long-term it will be.**

The following is an explanation of the amendments and referendum question in layman's terms, which allows citizens to decide how they want to vote on these issues.

The resolution which passes the legislature to put a Constitutional Amendment on the ballot is often very simple and basically lays out the question. For most Constitutional questions to be put into effect, enacting legislation must be passed which specifically addresses the issue that the Constitutional Amendment allows. Normally, but not always, this legislation is passed after the constitutional question is settled.

### **AMENDMENT NO. 1**

**"Shall the Constitution of Georgia be amended so as to make Georgia more economically competitive by authorizing legislation to uphold reasonable competitive agreements?"**

This is an example of a question being crafted with the ballot in mind. Frankly there is no way a citizen could determine from the question what you are allowing here. The question is designed to lead the reader to a positive conclusion without much of an explanation.

Enacting legislation passed in 2009 (HB 173, Ga. Laws 2009, pg 231) but will only be put into effect if this constitutional amendment passes.

The present constitution prohibits or impairs "non-compete" contracts typically between companies and employees which limit what they can do if they leave the employment of that company-hence the "non-compete" clause. This Amendment would change the current rule in Georgia regarding employment contracts. Currently a covenant not to compete is enforceable if it is reasonable as to the scope, time and method of the restriction. (In other words, a non-compete for 2 years, in Cobb County, with current customers is OK but a non-compete for 10 years, in the Southeast region with any customer past or present is probably no good). The change is as follows: under the current rule, if the agreement is not reasonable it gets thrown out. Under the new rule, **a judge** would be able to "rewrite it" to what he/she thinks is reasonable.

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*Pro: This change will free companies to write tighter contracts with employees and protect trade secrets and/or competitive information and lengthen the time and scope of the contract. Examples of these contracts given were an agreement between an employer and an employee that limits employment in competing industries when leaving the current employer. Judges could also, under this amendment, alter an agreement's provision to satisfy legal requirements.*

*Con: With Georgia being a Right-to-Work State contracts are the only form of protection that workers/executives have with corporations. To allow judges to disregard the contract nullifies the contract and agreement. The broadening of these clauses inhibits a person's ability to practice his or her profession in a competitive industry or in the profession for which they are specifically trained in Georgia or the surrounding states. It empowers corporations to impact individual workers/executives access to job opportunities within and outside the state. The State Bar of Georgia is AGAINST this Amendment. The problem is that if this change is allowed, an employee has no idea what his restrictions are when he signs the contract. Since most of these are signed on a "take it or leave it" basis, the employee never gets to negotiate. Right now, business have to be reasonable because the consequence is that it gets thrown out of court if they are too broad. If the rule changes, they can be as broad as they want because the worst that will happen is that a judge will define the terms AFTER the employee has operated on the terms in the contract as signed.*

### **AMENDMENT NO. 2**

**"Shall the Constitution of Georgia be amended so as to impose an annual \$10.00 trauma charge on certain passenger motor vehicles in this state for the purpose of funding trauma care"**

#### **Georgia Trauma Care Funding Amendment (SR 277 Ga.L. 2010, p.1260)**

One of the most discussed amendments on the ballot. This constitutional amendment would allow the collection of an additional tag fee of \$10 which would not go into the state treasury but would be constitutionally directed to fund trauma hospitals around the state. The Georgia Trauma Commission has been set up to monitor and dispense the funds. The fee is estimated to raise about \$82 million dollars which would not be comingled in the state treasury but be directed to the Trauma Commission.

While this may be viewed as a tax increase by some, it is doubtful that funding for anything like this will be forthcoming from state coffers in the foreseeable future. The goal is to create a network of trauma

*Pro: Creating a statewide network of that encompasses ambulances, 911 call centers, emergency medical technicians, trauma nurses and doctors. Over a period time it should result in the upgrading of Georgia's emergency medical delivery system significantly and create multiple access points to trauma care.*

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*Con: (1) Metropolitan areas of the State carry the majority of the state's population, therefore money would be coming mostly from metro voters/residents to fund facilities outside of metropolitan areas of Georgia. Augusta, Atlanta and Savannah have level 1 trauma care facilities. (2) Decisions made by a commission that is appointed and have no accountability to voters. (3) Commission does not have bi-partisan appointments. (4) Commission does not have representation from Fulton & DeKalb Hospital Authority which is funded by the voters & citizens of Fulton and DeKalb Counties.*

### **AMENDMENT NO. 3**

**“Shall the Constitution of Georgia be amended to allow the Georgia Department of Transportation to enter into multiyear construction agreements without requiring appropriations in the current fiscal year for the total amount of payments that would be due under the entire agreement so as to reduce long-term construction costs paid by the state?”**

**Allows the State of Georgia to Execute Multiyear contracts for long-term transportation projects.  
(SR 821 – Ga, K, 2010, p. 1263)**

In the turmoil last year concerning the Dept. of Transportation (DOT) contracts, an Attorney General's opinion concluded that DOT could not start multiyear projects and obligate any of those funds from future revenues. The ruling was that the entire amount of a project had to be on hand when the contract was awarded.

Our research shows that multiyear awarding of contracts is fairly common practice in many states although there are safeguards normally built in that limit the total of funded out-year projects. Our research does not show any state that obligates beyond 3 years. This amendment has no controls and does not have a time limit. This amendment allows DOT to work around the procurement process that DOT currently operates under.

This amendment allows the DOT to issue multiyear contracts on large projects without having all of the funds required actually on hand. The key here is the enacting legislation and whether there are sufficient controls to keep the department from overextending the state's obligations. This amendment does allow for the cancellation of any multiyear contract due to insufficiency of funds.

The enacting legislation being proposed for the 2011 Session would create an 8% “pot” which could not be exceeded with multiyear obligations.

*Problem: Currently, public entity contracts must encumber their entire amount for any contact amount due so as not to encumber future budgets with unpaid bills from past years. Often bonds are sold for such projects. Florida's DOT enters into 2-3 year agreements.*

### **AMENDMENT NO. 4**

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**“Shall the Constitution be amended so as to provide for guaranteed cost savings for the state by authorizing a state entity to enter into multiyear contracts which obligate state funds for energy efficiency or conservation improvement projects?”**

(1) Allows the State of Georgia to execute multiyear contracts for projects to improve energy efficiency and conservation (SR 1231 Ga. L.2010, p. 1264)

This amendment allows the state to execute multiyear contracts to improve energy efficiency and conservation; the contracts would be limited to 25 years. Presently the state is prohibited from entering into multiyear contracts with vendors. In this case, for equipment and so forth would be guaranteed through a contract with vendors with the lease payments to be gained from increases in energy efficiencies.

The enacting legislation allows for multi-year contracts for state agencies for very narrow purposes involving generating energy savings and with those savings from energy costs being the payback instrument. Vendors offering these contracts must place funds into escrow accounts and those funds could be drafted if the promised savings do not materialize yearly.

The enacting legislation (Act No. 669, Ga Laws 2010, page 352) is available, at probate judges 'office for public inspection.

*Pro: The state would have its buildings upgraded to become more energy efficient. They would only tie-up as much cash as they could use in one year. The operating expenses would go down with every building that is retrofitted. The retrofitting includes: low-flow toilets, double-pane windows, better insulation, etc.*

*Con: If the State chose not to appropriate funding in future years there is no assurance that the work of upgrading the buildings would continue. Funding is dependent on annual legislative appropriations. There are no caps on the number of contracts that could be entered into at one time, placing a burden on funding.*

### **AMENDMENT NO. 5**

**“Shall the Constitution of Georgia be amended so as to allow the owners of real property located in industrial areas to remove the property from the industrial area?”**

Allows owners of industrial-zoned property to choose to remove the industrial designation from their property (HR 136 Ga. L. 2010,p. 1259)

This constitutional amendment only applies to two counties, Chatham and Jeff Davis. This amendment allows property owners to remove their property from a specific industrial area. Because the land was established years ago under a “local constitutional amendment” – a practice the General Assembly no longer uses – a constitutional amendment is needed to annex the land parcel in question.

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*Pro: Local property owners gain access to water and sewer lines of the adjacent municipality.*

*Con: While the author of the bill indicates this only applies to Chatham and Jeff Davis Counties, that wording is absent from the Amendment/bill being presented to voters. Does that make it applicable statewide? Can have impact on local zoning ordinances.*

### **PROPOSED STATE-WIDE REFERENDUM QUESTION**

**“Shall the Act be approved which grants an exemption from state ad valorem taxation for inventory of a business?”**

This referendum question is redundant in that it exempts business inventory from the one quarter mill the state receives from property taxes. During the 2010 legislative session, lawmakers passed two tax cuts, one of which was the phasing out of the one quarter mill the state gets from local property taxes. So business inventory and in fact, all property will be free from state taxation by 2016.

*The state budget has a structural deficit of over \$1billion annually. If passed this would only exacerbate that deficit. This is redundant given the tax cuts that are already passed.*