Guide to the Proposed Constitutional Amendments

September 27, 1986 Election

Louisiana voters will be asked to vote on seven proposed amendments to the Louisiana constitution at the September 27, 1986 statewide election:

1. **Dedicate 8 (g) Windfall.** Would dedicate to programs aimed at quality education all but first $100 million of money Louisiana will receive from federal offshore tracts within three miles of Louisiana’s coastal boundary. The dedicated money (about $540 million from initial settlement plus future recurring revenue) would be placed in a permanent trust fund. One-fourth of interest earnings and recurring revenue would remain in the trust fund. The remaining three-fourths ($30 million-$55 million a year) would go to a “support” fund for appropriation—to elementary-secondary/vo-tech and higher education.

The “8 (g)” settlement is a one-time windfall. Constitutionally limiting its expenditure would prevent future policymakers from spending these funds for recurring purposes.

Despite dedication, funding of education could still be decreased and chosen programs would not guarantee success in achieving desired results. Nevertheless, the dedication is aimed at financing programs many feel are essential to Louisiana’s progress.

2. **Limit Levee District Taxes.** Would limit to five mills the property tax a levee district must levy to pay for land or improvements used or destroyed for levee purposes after other resources are exhausted. Levee districts must provide easements used in federally-funded levee projects. Courts now may require districts to levy as high a tax as needed to pay in a lump sum the fair market value of lands used. Some districts are now foregoing federally-funded projects, fearing high mandated taxes. This amendment would allow districts to pay landowners over time and protect other taxpayers.

3. **Fill a Nominating Vacancy for New Orleans Civil Service Commission.** Would replace St. Mary’s Dominican College, which is closing, as one of the private colleges which nominates persons to serve on the New Orleans civil service commission. Two public institutions, the University of New Orleans and Southern University at New Orleans, instead would nominate two persons each and the city council would choose a commission member from these four nominees.

If the constitutional method is to be retained, an approach along these lines is necessary. The necessity of a statewide vote on this issue points up the problems in placing a local matter in the constitution rather than in a local charter. To be adopted, the amendment must be approved both in New Orleans and statewide.

4. **Permit Increase In $3 Auto License Tag.** Would authorize Legislature to increase present $3 annual license tax on private cars to a maximum of $25. If the full tax were imposed, it would add $57.2 million a year in state revenues.

The amendment also would add value to the criteria used in setting license taxes for other types of motor vehicles.

Louisiana’s $3 auto tax is the lowest in the nation; $25 would approximate the average of the 50 states.

5. **Relax Restriction on Refunding State Debt.** Would allow state to refund its short-term debt at higher interest rate if purpose is to extend the term of the debt. The state now can refund outstanding debt only at the same or lower interest rate. The interest rate on short-term debt usually is lower than for long-term debt, making it difficult to comply with the present interest rate restriction. The flexibility offered by the amendment, if used prudently, could enable the state to lower its costs of borrowing.

6. **Clarify Authority of Supreme Court to Appoint Temporary Judges.** Would give Louisiana supreme court sole authority to provide by rule for appointment of attorneys as temporary judges of lower courts. The purpose of the proposal is to clarify the constitutionality of temporary judicial appointments and overcome complaints of abuses.

7. **shorten the “Lame Duck” Period for Statewide Elected Officials.** Would change from the second Monday in March to the second Monday in January the date statewide elected officials and members of the Legislature take office, but not effective until 1992. The amendment indirectly would affect terms of members of BESE and appointees whose terms are concurrent with that of the governor. This change would provide more opportunity in their first year in office to influence the proposed state budget and allow more time for pre-session hearings.
No. 1: Dedicate 8 (g) Windfall

The Amendment Would: Dedicate all but the first $100 million to be received from the federal government in the 8 (g) settlement to a permanent trust fund for investment, and allocate three-fourths of interest earnings and future recurring revenues for appropriation to quality education programs and academic research.

Legal Citation: Act 1020 of 1985 amending Article VII by adding Section 10.1.

Analysis: A 1978 amendment to the federal Outer Continental Shelf Lands Act contains a provision, numbered 8 (g), which grants to Louisiana and six other coastal states a “fair and equitable” share of mineral revenue derived from federal submerged tracts which lie within three miles of the boundary of a coastal state. Money derived from leases (bonuses and rentals) from the federal three-mile strip after September 18, 1978 was placed in escrow until it was determined what constituted the states’ “fair and equitable” share.

A final settlement of the 8 (g) controversy was reached through a 1986 amendment to the Outer Continental Shelf Lands Act.

Under terms of this federal amendment, Louisiana received an initial settlement of 27% of money held in escrow; deferred payments over the next 15 years to settle a disagreement on how much money should have been escrowed and divided in the initial settlement, and 27% of future revenue (bonuses, rentals and royalties) derived from the federal strip. The federal government kept all money derived from mineral activity in the area prior to September 18, 1978.

Louisiana will receive the following amounts, based on the 1986 federal act and information provided by the U.S. Department of Interior to staff of the U.S. Senate Energy Committee:

1. An estimated $640 million on October 1, 1986. A special provision in the federal act delayed Louisiana’s payment from April 14, the disbursement date for the other six states, until October 1. Louisiana was due $615.9 million as of April 14, based on a federal accounting. Because of the five-and-a-half month delay, the federal government is paying interest on this amount, estimated at $15 million. Royalties during that period are estimated at $10 million.

The amount of Louisiana’s settlement originally was reported to be $605 million, based on amounts estimated in the federal law.

2. $84 million in deferred payments spread over a 15-year period, due April 15, and paid from leases of all of the federal outer continental shelf, not only the 8 (g) strip. The $84 million is heavily weighted to the later years and does not include interest.

(Continued on page 3)

How The 8 (g) Money Would Be Used

1. Federal government sends settlement money to Louisiana on October 1, 1986 — Will also send recurring 8 (g) money in future years

2. State Treasurer receives money

3. General Fund. $100 million not dedicated

4. 1986 Legislature appropriated the $100 million

5. Education Quality Trust Fund. All of remainder invested by Treasurer — 25% of interest, 25% of recurring revenue remain in fund, up to $2 billion maximum*?

6. Quality Education Support Fund. 75% of interest and 75% of recurring revenues available for appropriation

7. BESE recommends appropriations for elementary-secondary/vo-tech

8. Board of Regents recommends appropriations for higher education

9. Legislature appropriates money to BESE and Regents (not more than 50% to each) in amounts and for purposes stipulated in appropriations

*If and when fund reaches $2 billion, excess interest would go to Education Support Fund and excess recurring revenue to state General Fund.
(Continued from page 2)

<table>
<thead>
<tr>
<th>Five-Year Period</th>
<th>Annual Payment (Millions)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1987-1991</td>
<td>3% or $2.52</td>
</tr>
<tr>
<td>1992-1996</td>
<td>7% or $5.88</td>
</tr>
<tr>
<td>1997-2001</td>
<td>10% or $8.40</td>
</tr>
</tbody>
</table>

3. An unknown amount (possibly $5 million-$15 million a year) from revenues received in the future on leases of the three-mile strip (27% of bonuses from new leases, rentals and royalties). The extent of future leasing of this limited area as well as the price of oil will determine the amount Louisiana actually receives.

For the first full year that Louisiana has the 8 (g) money (fiscal 1987-88), approximately $30 million-$35 million would be available for appropriation, and this amount would increase gradually as the amount in the permanent trust fund increases.

This proposal represents a new Louisiana policy in handling a windfall by placing the money in a permanent trust fund and using interest earnings as a recurring source of revenue.

Previous windfalls, such as the $2 billion that Louisiana received in fiscal 1979-80 through fiscal 1981-82 from federal deregulation of the price of oil, were spent—mainly to finance a higher level of recurring spending.

The 1985 legislative session anticipated settlement of the 8 (g) controversy and approved two acts to dedicate the bulk of the money—this proposed constitutional amendment and Act 949, a similar statutory dedication not dependent on ratification of this proposal. Act 949 established the Louisiana Education Quality Trust Fund (permanent trust fund) as of July 1, 1985, so when the state receives the 8 (g) money in October, all but the first $100 million will go into the permanent trust fund established by statute. If this amendment is approved, the permanent trust fund will have constitutional status as of January 1, 1987.

Act 949 also established the Louisiana Quality Education Support Fund as of July 1, 1986 to receive 75% of both interest earnings and recurring revenues. Neither the statutory dedication nor this proposed amendment allows money to be disbursed from the support fund until January 1, 1987.

The rationale for constitutional status for the permanent trust fund is to prevent future policymakers from reverting to past practices of spending windfall money for recurring purposes. Under the proposal, none of the money in the permanent trust fund could be appropriated; the "corpus" would increase, up to a maximum of $2 billion by retaining a fourth of both interest earnings and future revenue.

The proposed amendment is relatively long and detailed. The detail on how money in the support fund could be appropriated is to assure financing of programs that many feel are essential to Louisiana's future—upgrading education at all levels and researching ways to diversify the state economy.

Many of the programs financed from earnings anticipated for the last nine months of fiscal 1986-87 were approved in 1984 and 1985 as reforms but were not funded. While the Legislature's "power of the purse" may be restricted by the enumeration of purposes for which 8 (g) money can be spent, the Legislature would retain considerable flexibility.

The proposal prohibits using 8 (g) money to "displace, replace, or supplant" general fund appropriations to finance the Minimum Foundation Program (state aid to local schools formula), funding for higher education or vo-tech education. Despite these prohibitions, the 8 (g) dedication does not assure that education will receive more money. For example, the enacted operating budget for the current 1986-87 fiscal year reduces general fund appropriations for education. The 8 (g) dedication does give preferred status to programs chosen for funding.

There is no assurance that dedicating the 8 (g) money to certain education and research programs aimed at improved quality and economic development will, by itself, bring about the desired results. Success will depend on whether the programs selected have the potential for effecting desirable change, and how well they are monitored and implemented.
No. 2: Limit Levee District Taxes

The Amendment Would: Place a five-mill limit on the property taxes a levee district must levy to pay for land or improvements used or destroyed for levee purposes after its other available resources and constitutional millage authority have been exhausted.

Legal Citation: Act 1019 of 1985 amending Article VI, Section 42 (A).

Analysis: Levee districts construct and maintain levees for flood control. Eighteen districts are created under state law and additional districts operate under parish governing authorities. The districts may levy a five-mill tax (two and one-half mills for the Orleans Levee District) and additional taxes with voter approval. Some districts have other revenues including mineral royalties and acreage assessments.

Levee districts frequently must acquire property or rights-of-way for construction projects. Major river levees are generally constructed by the U.S. Army Corps of Engineers with federal funds, but the rights-of-way must be provided and paid for by the districts.

Under the 1921 constitution, levee districts were required to pay owners the assessed value of property used. If the district had no other funds, it could levy a tax in the district sufficient to pay for the property. Land used for levees usually was assessed at very low levels and payment generally could be made from normal revenues. In some cases, districts sold bonds to pay for rights-of-way.

The 1974 constitution required that payment for property used be made as provided by law and made the additional tax levy mandatory (without voter approval) when other revenues were not available. A 1978 act provided that owners of such property be paid the fair market value to the full extent of the loss. This change greatly increased a district’s costs. The current statute requires payment within one year if the levee board has available revenue. However, the law is ambiguous regarding when, if revenues are not sufficient, payments must be made and who must make them. The state is authorized to appropriate money for this purpose.

Under current law, a court may mandate a levee district to levy a tax sufficient to pay off a judgment or judgments in one payment.

One district which had formerly paid $10 to $20 an acre recently has faced judgments as high as $5,000 an acre. One project resulted in 30 lawsuits asking more than $1.3 million. In fiscal 1985-86, the state appropriated $3.5 million to pay judgments against this district. Through state aid, compromise and other actions, this levee district avoided being forced to levy the additional millage which, because of the district’s low tax base, could have been in excess of 100 mills in one year.

Major federal projects planned for Louisiana will require levee districts to acquire many more rights-of-way. Currently, the inability of some districts to purchase rights-of-way is preventing the spending of federal construction money for flood protection.

The proposed five-mill limit is designed to protect property owners in a levee district from the potential of receiving inordinately large tax bills to pay judgments. The proposal would permit districts to stretch out payments of judgments over a period of years. This could encourage owners to seek compensation from the state when a district continued to take land after exhausting its resources.

Most levee boards now levy taxes at or near the constitutional five-mill limit and some do not have available resources to pay owners. Property owners in these districts face the risk of sudden and massive tax increases when levee projects are undertaken.

The proposed amendment addresses the constitutional provision authorizing unlimited court-ordered taxes which has a chilling effect on levee district projects and would offer protection for district taxpayers.

No. 3: Fill a Nominating Vacancy for New Orleans Civil Service Commission

The Amendment Would: Replace St. Mary’s Dominican College as one of the colleges whose president nominates persons to serve on the New Orleans city civil service commission.

Legal Citation: Act 1018 of 1985 amending Article X, Sections 4 (B) and (D) and adding Section 4 (E).

Analysis: St. Mary’s Dominican College is in the process of closing.

This proposal would substitute nominations by the presidents of the University of New Orleans and Southern University at New Orleans. Each would nominate two persons and the city council would appoint one of these four nominees as the fifth member of the commission. This member would succeed the last member nominated by the president of St. Mary’s Domin- (Continued on page 5)
(Continued from page 4)

American College whose term ends in 1987.

Nominations by private colleges often are used in Louisiana to fill certain public positions which are desired to be politically neutral, such as civil service commissions. It is believed that this selection method lessens the impact of politics on the nomination process and offers more independence and insulation to a commission. The proposal, however, would replace a private college with two public universities due to the declining pool of private colleges in the New Orleans area from which to draw.

If the amendment does not pass, the constitution provides a way to fill the vacancy that would occur in 1987. If a nominating institution no longer exists when a vacancy occurs, the constitution provides that the city council would appoint a person to fill the vacancy.

This proposal must be approved both in New Orleans and statewide. Detail on the operation of a particular local government, such as that related to the New Orleans civil service commission, normally is included in the charter of a home rule city.

If the constitutionally prescribed method of nomination is to be retained, it is apparent that some approach along the lines of Proposition 3 is required. The necessity of a statewide vote on this issue, however, points up the problems inherent in placing essentially local material in the basic governing document of the state.

No. 4: Permit Increase In $3 Auto License Tag

The Amendment Would: Authorize the Legislature to levy an annual license tax on private automobiles (now $3) to a maximum of $25 and add value as a criterion for license taxes levied on other types of motor vehicles.

Legal Citation: Act 1080 of 1986 amending Article VII, Section 5.

Analysis: The present $3 flat rate annual automobile license tax has been mandated by the constitution since 1940. If it had been increased at the same rate as inflation, it would now be over $23.

No enabling legislation was passed during the 1986 session so the voters do not know what the Legislature will determine the in-

(Continued on page 6)
(Continued from page 5)

The state would receive an additional $57.2 million in annual revenue should the $25 maximum be imposed. This would increase total revenue from all motor vehicle license taxes from $55.6 million to $112.7 million.

Absent implementing legislation, the tax would remain at $3.

No. 5: Relax Restriction on Refunding State Debt

The Amendment Would: Allow the state to refund short-term debt at a higher interest rate when the purpose is to extend the time for repaying the debt.

Legal Citation: Act 1083 of 1986 amending Article VII, Section 6 (A).

Analysis: Refunding means to replace existing bonds, notes or other debt with new obligations. Reasons for refunding are to take advantage of lower interest rates, extend or restructure the repayment schedule, or eliminate onerous terms of outstanding debt.

The constitution presently allows the state to refund outstanding indebtedness (short or long term) but only at the same or a lower effective interest rate. For example, the state could be paying 4.5% on a short-term debt incurred as a temporary alternative to a higher rate (such as 7%) for long-term debt. The state could not refund the 4.5% notes into 7% long-term bonds even though it might in the long run be in the best interest of the state. The state currently has outstanding short-term debt of $139 million at a 4% interest rate. Normally, no payments are made to reduce the principal during the term of the short-term debt.

The proposed amendment would allow acceptance of a higher interest rate if the purpose is to extend the term of short-term outstanding indebtedness, for example, turning the short-term debt into long-term debt. Under certain conditions, it also may be desirable to roll over short-term debt into more short-term debt.

The state uses short-term debt, primarily bond anticipation notes, to finance capital construction projects on a temporary basis as an alternative to long-term bonds when the market for long-term bonds has undesirably high interest rates or to provide interim financing for a construction project until the total cost of the project is known. The bond anticipation notes are to be retired from the proceeds of the long-term bonds to which they are related.

The greater flexibility afforded by the proposed amendment, if used prudently, could enable the state to lower its costs of borrowing. For example, the Treasurer’s Office estimates the state saved $53 million in 1982 by using two-year bond anticipation notes and waiting for the bond market to improve rather than issuing long-term bonds.

The proposal would permit the state to convert the notes to long-term bonds when interest rates are more favorable, even though the long-term rate may be higher than the short-term rate. The interest rate on short-term debt is usually lower than that for long-term debt. The practice is used elsewhere and is often necessary in debt management according to the Government Finance Officers Association and Public Securities Association.

Act 1048 of 1986 provides statutory authority to implement
No. 6: Clarify Authority of Supreme Court to Appoint Temporary Judges

The Amendment Would: Give the Louisiana supreme court sole authority to provide by rule for appointments of attorneys as temporary or ad hoc judges of city, municipal, traffic, parish, juvenile or family courts in order to clarify the constitutionality of temporary judicial appointments and overcome complaints of abuses.

Legal Citation: Act 1081 of 1986 amending Article V, Section 5 (A).

Analysis: The constitution now gives the state supreme court general supervisory jurisdiction over all other state and local courts. It is authorized to establish procedural and administrative rules not in conflict with law and to assign a sitting or retired judge to any court. The Code of Civil Procedure, adopted by the Legislature, authorizes a parish or city judge to appoint temporarily an attorney or other judge in his place. The attorney must possess the qualifications of the judge being replaced.

Temporary judges generally are used to fill in when the sitting judge is ill, taking vacation or attending a seminar. These appointments usually run from one day to a month, seldom longer.

The constitutionality of appointments made under authority of the Code of Civil Procedure was questioned in a recent state supreme court case concerning a temporary appointment by a city court judge. The supreme court upheld the authority of the temporary judge, but concern over the constitutionality of the law and the legal standing of such appointments has developed to the point at which the supreme court feels the matter should be clarified in the constitution.

The proposal would supersede the Code of Civil Procedure, reserving such authority to the supreme court and precluding legislative involvement in this area.

Under the proposed amendment, the supreme court could apply uniform rules regarding temporary judges throughout the state. The court intends to address complaints that these appointments are being abused by attorneys running for judgeships who portray themselves as judges in campaign literature although they served only one day.

No. 7: Shorten the “Lame Duck” Period for Statewide Elected Officials

The Amendment Would: Change the date statewide elected officials and members of the Legislature take office from the second Monday in March to the second Monday in January.

Legal Citation: Act 1082 of 1986 amending Article IV, Section 3 (A), adding Article IV, Section 3 (D) and repealing Article XIV, Section 29.

Analysis: The constitution provides that statewide elected officials and members of the Legislature take office the second Monday in March following their election. The

(Continued from page 6)

the proposed amendment. It removes the present $200 million limit on the amount of refunding bonds that the State Bond Commission can issue and substitutes new provisions: (1) If the effect of refunding the bonds is to lower the effective interest rate and the final maturity remains the same or is earlier, there would be no limit on the amount of bonds refunded, and (2) if the refunding extends the term of the short-term debt, there would be no limit on the effective interest rate, but the State Bond Commission would be authorized to issue up to $500 million dollars of such refunding bonds. The act defines short-term bonds as those bonds issued for a term not to exceed five years. These provisions would become effective only if the proposed amendment is adopted.

(Continued on page 8)
(Continued from page 7) Proposed amendment would shorten the time until these officials take office after election.

The amendment would not affect the present term of those now in office. The change would go into effect in 1992 and affect the terms of officials and legislators elected in 1987 and in the future. The terms of those elected in 1987 would be two months shorter, while the terms of those elected in 1991 and of all future officials would begin two months earlier than under the present constitutional provision.

Passage of the amendment would have several results. By taking office earlier in the year their term begins, state officials and legislators would have more opportunity to influence the proposed state budget. At present, the proposed budget is largely completed by the time officials take office. More time would be available to hold hearings plus draft and hear prefilled bills before the session which convenes in April. The change would lessen the chances of a “lame duck” special session occurring after the election and before the new officials and legislators take office. It also would facilitate changing the beginning of the legislative session to an earlier date than the present third Monday in April should the constitution be so amended.

Proposal 7 Would Affect the Terms of Many State Officials:

Elected State Officials Directly Affected:
- Governor
- Lieutenant Governor
- Secretary of State
- Attorney General
- Treasurer
- Superintendent of Education
- Commissioner of Agriculture
- Commissioner of Insurance
- Commissioner of Industries
- Commissioner of Health

Elected State Officials Indirectly Affected:
- Members of Board of Elementary & Secondary Education
- Members of Board of Higher Education
- Members of Board of Marine & Environmental Affairs

Appointed State Officials Affected:
- Members of Board of Marine & Environmental Affairs
- Officials appointed to provincial, local, and education

Voters' Checklist

<table>
<thead>
<tr>
<th>Ballot</th>
<th>Yes</th>
<th>No</th>
<th>Number</th>
<th>Subject</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Public Affairs Research Council of Louisiana, Inc.
300 Louisiana Avenue • P.O. Box 3118
Baton Rouge, Louisiana 70821 • (504) 343-9204
RETURN POSTAGE GUARANTEED