Guide to the Proposed Constitutional Amendments

October 6, 1990 Election

No. 1 Regular Legislative Sessions
A vote for would start regular legislative sessions three weeks earlier and end them before a new budget year begins. A vote against would continue to allow regular sessions to run into a new fiscal year.

No. 2 State Budget Controls
A vote for would limit state spending growth, mandate procedures for a balanced state budget, prevent cumulative deficits, create a Revenue Stabilization/Mineral Trust Fund, and protect the Revenue Estimating Conference concept. A vote against would continue to give the governor and Legislature discretion in dealing with these budget issues.

No. 3 Education Trust Fund
A vote for would (1) direct the Legislature to regulate and approve education trust fund spending for administrative costs and (2) prevent such funds from replacing other state financing of elementary-secondary programs. A vote against would continue to let the Legislature decide on use of education trust fund money for these purposes.

No. 4 State Lottery
A vote for would authorize the creation and operation of a state lottery. A vote against would continue to prohibit a state or local lottery.

No. 5 Workers’ Compensation
A vote for would assure continued use of administrative hearing officers to resolve disputed workers’ compensation claims. A vote against would return resolution of disputes to the district courts if the hearing officer process is finally ruled unconstitutional.

No. 6 State Police Commission
A vote for would create a separate civil service system for state police. A vote against would retain state police under the existing state civil service for classified employees.

No. 7 Supplemental Pay
A vote for would repeal provisions allowing supplemental pay to state police and enforcement officers in the Department of Wildlife and Fisheries. A vote against would continue authority to supplement pay of these officers.

No. 8 College Stock Acquisition
A vote for would permit public colleges and universities to acquire stock in a company that uses its research. A vote against would continue to prohibit such stock acquisition.

No. 9 Local Inheritance Tax
A vote for would prohibit local governments from levying inheritance taxes. A vote against would continue to permit local inheritance taxes under home rule authority or if authorized by law.

No. 10 Wholesale Inventory Tax Exemption
A vote for would permit local option property tax exemptions on a wholesaler's inventory. A vote against would continue property taxes on all business inventories.

No. 11 Tax Break for Improvements
A vote for would allow a five-year renewal of the property tax freeze for owners who expand or improve buildings in historic, downtown or economic development districts. A vote against would retain the existing five-year tax freeze.

No. 12 Tax Break for Housing Homeless
A vote for would give a property tax exemption to owners who lease buildings to nonprofit agencies to house the homeless. A vote against would require owners to continue paying property taxes on such loaned housing.

No. 13 New Orleans Property Tax
A vote for would allow the New Orleans City Council to levy an additional property tax of up to five mills for fire protection and up to five mills for police service without homestead exemption. A vote against would continue to require any added city millages to be homestead exempt and voter approved.

No. 14 Donations for Industry
A vote for would allow local governments to donate, loan or pledge proceeds from taxes dedicated to economic development to private entities who agree to create jobs in the community. A vote against would continue to prohibit such donations.

No. 15 Lignite Tax Dedication
A vote for would dedicate more severance tax on lignite to the parish government where mined. A vote against would let the state keep more of the tax.
No. 1  Regular Legislative Sessions

Current Situation: The constitution requires that regular legislative sessions start the third Monday in April and last no longer than 60 legislative days within an 85-calendar-day period.

The Legislature usually is still in session after a new fiscal year begins on July 1. This causes problems for agencies in planning the new year and in meeting the state payroll.

Proposed Change: Beginning in 1992, regular sessions would start the last Monday in March, 21 days sooner.

Comment: An earlier starting date would allow fiscal matters to be settled before a new fiscal year began. Sessions would end no later than June 23, whereas they currently may end as late as July 14.

Legal Citation: Act 1095 of the 1990 Regular Session, amending Article III, Section 2 (A).

No. 2  State Budget Controls

Current Situation: The constitution does not limit state spending growth, allows a governor to propose an unbalanced budget and include his proposed tax increases to finance it, requires that the Legislature approve a balanced budget but does not prohibit a year-end deficit.

In practice, governors have proposed budgets which depended on tax increases not enacted to balance them. The Legislature has approved unbalanced budgets and even appropriations contingent on funds becoming available—a "wish list." Louisiana has had numerous economic setbacks—some temporary and others of long duration—but has no funds set aside for temporary declines and no mechanism to prevent one-time mineral windfalls from being used for recurring operations.

The Revenue Estimating Conference is established by law to provide an official revenue forecast, but the law could be changed or repealed by majority vote.

Proposed Change: The amendment would:

1. Limit the annual increase in appropriations to the prior three-year average increase in the state's personal income. The limit would become effective in fiscal 1992-93, based on fiscal 1991-92 appropriations and could be changed by two-thirds legislative vote.

2. Require that a governor's proposed state budget be based on existing revenue sources and be within the spending limit. A governor's recommended increased taxes or other revenue would have to be submitted in separate bills with an explanation of the proposed use.

3. Prohibit legislative appropriations from exceeding the official revenue estimate.

4. Mandate legislative procedures to determine if a deficit were likely and, if so, designate ways to change appropriations to avert it. A governor would have to call a special session within 30 days of determination that a deficit were likely. If a deficit did occur, it would have to be eliminated by the end of the next fiscal year.

5. Establish a Revenue Stabilization/Mining Trust Fund which, after July 1, 1991, would receive severance tax, royalty, rental and bonus revenue above $750 million a year ($740 million is projected for fiscal 1990-91) plus revenue above the amount needed to finance appropriations within the spending limit. Revenue from any tax on transportation of minerals would not be dedicated. The fund would retain interest earnings.

The Legislature, by two-thirds vote, could increase the $750 million base, beginning in the year 2000 and every 10 years thereafter, but the increase could not exceed half the increase in the Consumer Price Index for the prior 10 years.

Comment: Louisiana's budget policies and practices caused the state to issue long-term bonds to eliminate a $512 million three-year operating deficit by the end of fiscal 1987-88.

Federal deregulation of the price of oil created a $2 billion windfall in the early 1980s; all of it was spent, mainly to raise the state's spending level.

The requirement that a governor not include proposed tax or other revenue increases in his proposed budget might alleviate some of the controversy and delayed legislative action.
approval of the budget since the consequences of increasing or not increasing taxes would be apparent.

The amendment would give the Legislature flexibility to raise the spending limit by a two-thirds vote—the same vote now required to increase taxes.

The amendment does not specifically address use of mineral revenue and interest received from settlements or judgments. Classification of such revenue would determine if this dedication applied. Interest earnings of the new fund could not be used to retire debt of the Louisiana Recovery District since legally this is not state debt. Without constitutional protection, the law establishing the Revenue Estimating Conference and its procedures could be scuttled.

Legal Citation: Act 1096 of 1990, amending Article VII, Sections 10 and 11 and adding Section 10.3.

No. 3 Education Trust Fund

Current Situation: The Louisiana Education Quality Trust Fund, created by a 1985 constitutional amendment, received a mineral windfall through a settlement with the federal government provided by Section 8 (g) of a federal law. Three fourths of the interest earnings are split between the State Board of Elementary and Secondary Education (BESE) and the Board of Regents to enhance the quality of education.

Administrative Costs: The 8 (g) funding has been used to finance various types of administrative costs. For fiscal 1990-91, 8 (g) appropriations for administrative costs are $750,000 for Regents [2.7% of its 8 (g) appropriation] and $571,160 for BESE [2% of its 8 (g) appropriation].

Act 675 of 1989 acknowledges that 8 (g) funding is proper for some types of administrative costs and enumerates those authorized and those prohibited. It establishes a cap on administrative costs of 3% or $800,000, whichever is smaller, from BESE or Regents total 8 (g) appropriations. It also requires that proposed 8 (g) appropriations be itemized in both the Executive Budget and general appropriation bill.

Replacing General Funds: The constitution prohibits 8 (g) funds from replacing, displacing or supplanting appropriations from the state general fund but this prohibition currently does not apply to those elementary-secondary programs financed outside the state aid Minimum Foundation Program (MFP).

Proposed Change: The amendment would require that:

1. Administrative costs financed with 8 (g) funds be defined and authorized by law, identified specifically in proposals for 8 (g) appropriations, and be approved and appropriated by the Legislature.

Legal Citation: Act 846 of the 1989 Regular Session, amending Article VII, Section 10.1 (C).

No. 4 State Lottery

Current Situation: The constitution prohibits the state and its political subdivisions from conducting a lottery.

Proposed Change: The amendment would:

- Authorize the creation and operation of a state lottery.
- Permit a quasi-public corporation to operate the lottery.
- Exclude lottery corporation employees from state civil service.
- Require lottery proceeds to be deposited into the Lottery Proceeds Fund in the state treasury.
- Prohibit appropriation by the Legislature of net proceeds to the state in the same calendar year as collected.
- Allow the Legislature to appropriate the net proceeds plus interest for any purpose by a majority vote.
- Allow the Legislature to modify the lottery law by two-thirds vote and repeal it by a majority vote. Once repealed, the law could be re-enacted only by a two-thirds vote.
- Prohibit use of state general funds (not lottery corporation funds) to induce lottery participation.

Act 1045 of 1990, a companion act, provides the structure for the Louisiana Lottery Corporation. It would be accountable to the governor, the Legislature and the people through a system of audits, reports, legislative oversight and financial disclosure.

Comment: Proponents of the lottery argue that it would provide a significant non-tax revenue source. Estimates of state revenue for the first full year range from $59 million to
$111 million. Opponents have raised religious and moral objections and argue that it is an inappropriate activity for state government.

The corporation could operate more like a private business than a government agency with regard to hiring, contracting and procurement. Several safeguards should allow the lottery to operate in a fiscally sound manner.

Appropriating actual proceeds would eliminate appropriations based on estimates. By law, a minimum of 35% of gross lottery proceeds would go to the Lottery Proceeds Fund for state expenditure. Administrative expenses of the corporation would not be specifically limited but would be subject to approval by the Joint Legislative Committee on the Budget.

Prizes would constitute approximately 50% of the gross proceeds. All lottery prize winnings in excess of $500 would be subject to state income taxation. If approved, the lottery could be in operation early next year, with funds available for appropriation in 1992.

This amendment does not dedicate lottery proceeds but does not prohibit the Legislature from doing so. Act 131 of 1990 dedicates annually $5 million, or 5%, of net lottery proceeds, whichever is greater, to fund a health and accident insurance program for uninsurable persons ineligible for public programs.

Legal Citation: Act 1097 of the 1990 Regular Session, amending Article XII, Section 6.

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No. 5 Workers’ Compensation

Current Situation: State law provides for the compensation of workers for job-related injuries. In 1983, the Office of Workers' Compensation Administration was created to monitor claims and help resolve disputes. The office could make recommendations, but unresolved disputes were tried in district courts.

A 1988 law created a hearing officer system to decide disputed claims administratively instead of judicially; this process began in January 1990. Its constitutionality was upheld in a 1989 district court decision, but an appeals court reversed the decision. The case is on appeal to the Louisiana Supreme Court and a decision is expected in September 1990. The hearing officer process will continue until a final decision is rendered.

A 1989 law provides that if the hearing officer process is found unconstitutional, unresolved disputes again will go to district courts.

Proposed Change: The amendment would exclude workers' compensation matters from the original jurisdiction of the state district courts when the law provides for administrative agency determination. An appeal of an agency decision would go to the appellate courts which could render judgment or remand the matter to the agency for further proceedings. The provision would be retroactive to validate the prior actions of the hearings officers.

Comment: Supporters of this proposal argue that the earlier system of trying cases in district courts resulted in inflated settlements, unnecessary suits and diversion of settlement money to attorneys and other experts. They also note that 47 states now do not involve district courts in workers' compensation cases.

Those favoring a return to the judicial approach argue that the injured worker would fare better by taking his case to a district court judge instead of an administrative hearing officer.

If the hearing officer process is found constitutional, this amendment will have little effect. If it is found unconstitutional, this amendment would make the process constitutional and thus continue the use of administrative hearing officers.

Legal Citation: Act 1098 of the 1990 Regular Session, amending Article V, Sections 10 (A), (B) and 16 (A).

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No. 6 State Police Commission

Current Situation: The approximate 700 state police belong to the state civil service system and account for 1% of state civil service employees.

The state Civil Service Commission is responsible for adopting a uniform pay scale and classification plan and establishing rules to regulate employment, promotion, demotion, suspension, reduction in pay, removal, certification, qualifications, political activities, employment conditions and compensation.

Proposed Change: The amendment would create the State Police Service and remove from the state civil service system all regularly commissioned full-time enforcement officers who are graduates of the state police academy and vested with full state police powers. All other classified employees in the Office of State Police would remain in state civil service.

A state police commission, with powers and rulemaking authority identical to the state Civil Service Commission, would administer and regulate the State Police Service. The state police commission would be selected in the same manner as the state Civil Service Commission.

Comment: State police representatives contend a separate police civil service system is needed to address the needs of state police which differ from civilian employees. Unique needs cited include: better pay, more opportunities for career advancement and development, an improved process to select officers for promotion, more authority to discipline officers, greater willingness to
raise minimum qualifications for entry-level officers, and changes in policies to address difficulties in recruitment and retention. Also, the state police maintain a separate system that would expedite processing various matters related to state police.

The state Civil Service Commission has concerns about separating state police from other state classified employees and contends that: (1) other groups may seek to withdraw from state civil service; (2) classified employees belonging to two different civil service systems could be treated differently; (3) increased pay for state police would pressure the state Civil Service Commission to recommend similar raises for all state employees; (4) the constitution would require the director of the state police system to be an unclassified employee and thus not subject to political activity restrictions; and (5) the position of Superintendent of State Police could be classified, thus restricting the governor’s authority to appoint and remove him.

The Legislative Fiscal Office estimates a separate police commission would cost $161,000 in 1992.

Legal Citation: Act 1106 of the 1990 Regular Session, amending Article X, Sections 1 (A) and 10 (A) (1), and adding Part IV.

No. 7 Supplemental Pay

Current Situation: The constitution permits the Legislature to supplement state civil service pay plans for state police and enforcement officers in the Department of Wildlife and Fisheries. Last year the $260 supplement which these officers received was incorporated into their base salary and the statute authorizing the $260 supplement was repealed. The supplement applied to approximately 700 state troopers and 400 Wildlife and Fisheries enforcement officers.

Proposed Change: The amendment would remove constitutional authority to supplement pay of state police and Wildlife and Fisheries enforcement officers.

No. 8 College Stock Acquisition

Current Situation: The constitution prohibits the state and its political subdivisions from acquiring stock in a corporation, association or in any private enterprise.

Proposed Change: The amendment would provide one exception to the prohibition against stock acquisition by the state or its political subdivisions. Colleges and universities could acquire stock in a company in exchange for intellectual property which consists of patents, copyrights and "know-how."

Comment: Public universities are prohibited from taking an equity position in a company, but may receive royalties and licensing fees for intellectual property sold to a company.

A university could acquire a share of ownership in a company and profit from the earnings of that company. A company could receive a license from a university for an intellectual property and in return a university could acquire a percentage of the company’s stock. This would permit a start-up company or a company with cash-flow problems to develop a product without spending a large amount of money up front.

A university could incur liability if an individual or company to which it has licensed an intellectual property is sued.

Legal Citation: Act 848 of the 1989 Regular Session, amending Article X, Section 10 (A) (1).

No. 9 Local Inheritance Tax

Current Situation: Neither the constitution nor state law authorizes or prohibits local inheritance taxes. However, parishes and municipalities may levy the tax if they have a home rule charter or if local voters approve. New Orleans levied an inheritance tax from 1986 to 1989, but no Louisiana local government now levies one.

Proposed Change: The amendment would add the inheritance tax to the list of taxes local governments may not levy.

Comment: This proposal was prompted by the levy of an unpopular inheritance tax in New Orleans. The city collected $14 million before repealing the tax. The state has levied an inheritance tax since 1828 and collected $38 million last year. While all states collect some type of death tax, only Michigan allows local governments to levy an inheritance tax.

Some argue that inheritance is already taxed by the federal and state governments and local taxes could cause older residents to relocate. Others argue that this proposal would only further restrict local governments' limited tax options.

Legal Citation: Act 1099 of the 1990 Regular Session, amending Article VII, Section 4 (C).
No. 10 Wholesale Inventory Tax Exemption

**Current Situation:** All business inventories are subject to local property taxes and are assessed at 15% of fair market value.

**Proposed Change:** The amendment would authorize the parish economic development authority or district (or in their absence, the parish governing authority) to enter into contracts to exempt from local property taxes all, or a portion of, the goods held in inventory by distribution centers. The contract terms would be determined by the contracting authority. A contract would have to be approved by a majority vote of the governing authority of each affected tax recipient body in the parish.

The exemption could not apply to raw materials, such as natural gas or timber, nor to retail goods or products.

**Comment:** Inventory taxes are considered a significant factor in decisions to locate warehouses and wholesale distribution centers. Currently, 34 other states do not tax any business inventories, placing Louisiana at a competitive disadvantage. This proposal is designed to allow parish development groups to offer an incentive to attract such facilities and the related new jobs.

The exemption would be available to existing and new wholesale firms. However, a potential inequity exists if some firms receive the exemption and their competitors do not.

The fiscal impact of the exemption would depend on the extent to which it is granted locally. Wholesale inventories are roughly 1% of the tax base and, if fully exempt, would reduce local property tax collections by about $14 million statewide.

Any affected tax recipient (e.g., parish, municipality, sheriff, assessor) could veto an exemption contract.

**Legal Citation:** Act 1101 of the Regular Session of 1990, amending Article VII by adding Section 21 (I).

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No. 11 Tax Break for Improvements

**Current Situation:** The state has authorized several types of special districts to help preserve or redevelop downtown, historic or economic development areas. A 1982 constitutional amendment permits the State Board of Commerce and Industry to contract with owners to freeze assessments on structures in those specified areas for five years after improvements have been made. The contracts must be approved by the governor and the affected local governments and must meet conditions set by state law. State law has limited the exemption to commercial property; however, a 1990 act extends it to owner-occupied residences.

Since 1982, the five-year tax break was granted for 128 projects involving $292 million in investments. Most are in New Orleans and Shreveport, and over half of the investments were made in the first two years.

**Proposed Change:** The amendment would allow five-year exemption contracts to be extended for another five years in the same manner as they were granted initially. The governing authority of the affected parish and municipality would have to approve the extension.

**Comment:** Expansion or restoration in downtown, historic and economic development districts can be speculative investments. Such improvements may spur further development in an area. A tax assessment freeze can help a developer in the start-up period.

Renewal of existing exemptions would result in an estimated local tax loss of nearly $2 million over the first three years alone. These tax savings would go to owners for improvements already made and thus provide no added incentive.

The number of projects using the five-year freeze has leveled off in recent years. An added five-year tax break may encourage more investment in the future. To the extent this happens, the local governments would not lose revenues; however, they might have to wait longer to benefit from the increased tax base.

**Legal Citation:** Act 1104 of the 1990 Regular Session, amending Article VII, Section 21 (H).

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No. 12 Tax Break for Housing Homeless

**Current Situation:** The constitution provides a tax exemption for property owned by a nonprofit agency and used for charitable purposes. There is no exemption for property leased to such an agency.

**Proposed Change:** The amendment would exempt from property taxes property leased to a nonprofit corporation or association for use solely as housing for homeless persons, as defined by the Louisiana Tax Commission. The lease would have to be for at least five years and for no more than $1 per year. The property would have to meet local health and sanitation codes.

**Comment:** Nonprofit agencies operate about 60 shelters in the state. Vacant property, often deteriorating, could be used or renovated and used by these agencies. This proposal would allow owners of such property to reduce their taxes by donating its use. Local tax losses would be minimal.
Presently, an owner must pay taxes on loaned property. If the property is renovated by the leasing agency, a five-year tax freeze is now available in some areas; otherwise, the owner also must pay taxes on the added value.

Legal Citation: Act 845 of the 1989 Regular Session, amending Article VII, Section 21 (B) (1).

No. 13 New Orleans Property Tax

Current Situation: New Orleans now levies a 14.01-mill general purpose property tax under constitutional authority. Any additional millages require voter approval. Unlike other Louisiana municipalities, New Orleans' city taxes are covered by the homestead exemption.

Currently, all taxing bodies in Orleans Parish levy a combined 146.28 mills, of which 6.01 mills yields $8 million for fire and police services. The 1990 appropriation for fire and police is $114 million. Fire and police staff have been cut back in recent years to avoid budget deficits.

Proposed Change: The amendment would authorize the New Orleans City Council to levy up to 5 mills each for fire and police services beginning in 1991. The homestead exemption would not apply to these added millages and they would not require further voter approval. Once levied, the additional millage rates could not be increased. The added taxes would be void if used to replace or reduce existing fire and police funding.

Comment: The full 10 mills allowed by this amendment would raise about $16 million for New Orleans (by city estimates), with $3 million coming from property now homestead exempt. The 10 mills would add $100 in taxes on a home worth $100,000 and $150 on business property worth $100,000. This would raise the total tax in New Orleans to over 156 mills.

This proposal would put New Orleans on a more equal footing with other cities by allowing it to tax homeowners on the first $75,000 of their home value. The proposal guarantees the added taxes will be used for increased fire and police spending. The millages could not be rolled up due to reassessment.

The amendment must be approved by voters in New Orleans and statewide to be ratified. If approved, the city can be expected to levy the full 10 mills authorized to at least partially restore earlier staffing cuts and upgrade equipment and facilities.

Legal Citation: Act 1103 of the 1990 Regular Session, amending Article VI, by adding Section 26 (E).

No. 14 Donations for Industry

Current Situation: The state constitution prohibits the loan, pledge or donation of the funds, credit, property or things of value of the state or local governments to persons public or private.

Proposed Change: The amendment would permit any parish or municipality to donate, loan or pledge certain public funds to private entities to encourage industries to locate or expand. Only revenues from taxes dedicated to industrial and economic development or proceeds from bonds backed by such taxes could be used. The benefiting firm would have to sign a contract, approved by the State Bond Commission, agreeing to create a stated number of jobs for residents of the locality.

Comment: This amendment would apply statewide but originated to allow St. John the Baptist Parish to offer prospects rental breaks on property financed by a sales tax voters had dedicated to economic development. This proposal goes beyond that initial purpose as it would apply to sales, property or other taxes and would permit any type of donation including an outright gift of money.

Allowing public gifts to private firms creates a potential for abuse or loss if the firm fails. On the other hand, aggressive local efforts may provide the catalyst for development. The amendment would have limited use as voters first would have to pass a dedicated tax.

Legal Citation: Act 1102 of the 1990 Regular Session, amending Article VII by adding Section 14 (E).

No. 15 Lignite Tax Dedication

Current Situation: The constitution dedicates to the parish of severance one third of the severance tax on sulphur, up to $100,000; three fourths of the timber tax; and one fifth of the severance tax on all other natural resources up to $500,000 a year. The state severance tax on lignite (brown coal), now mined in DeSoto and Red River parishes, is estimated to produce $300,000 a year.

Proposed Change: The proposal would increase a parish government’s portion of the severance tax on its lignite production from one fifth to one third and set a separate ceiling per parish of $100,000 a year.

Comment: The amendment would only affect the way lignite severance tax revenues are split between the state and parish. The proposed increase in the parish share, effective January 1, 1990, would cost the state about $40,000 a year, with most going to DeSoto Parish.

Legal Citation: Act 1105 of 1990, amending Article VII, Section 4 (D).
Voting on Louisiana Proposed Constitutional Amendments

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Total

SOURCE: Official Promulgation, Secretary of State.

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