2003 Guide to the Constitutional Amendments

INTRODUCTION

Louisiana voters are being asked to make decisions on 15 proposed constitutional amendments at the October 4 election. Heading the list are three proposals dealing with potential funding sources for coastal restoration. Others deal with the state takeover of failing schools, project changes in the TIMED highway program, dedication of the lottery proceeds, administrative law system, use of public funds for economic development (two), workers' compensation corporation board members, undoing drafting problems (two), a limited tax exemption, legislative auditor political activity and judges' retirement age. Voters will have to familiarize themselves with a wide variety of state and local government issues, some of which are quite complex and technical, in order to make informed decisions.

Louisiana has a long history of frequent constitutional changes. The state leads the nation in the number of constitutions adopted at 11 and has been among the most prolific in adopting amendments. The 1921 Louisiana Constitution initially contained 49,200 words but, with 536 amendments, grew to 255,500 words. Voters rebelled in 1970, defeating all 53 amendment proposals on the ballot that year.

The newly revised constitution of 1974 was a brief 35,000 words after much of the old constitutional detail was moved to the statutes. However, by January 2003, the length was estimated to have grown to over 54,000 words. Altogether, the voters have approved 111 of 169 changes proposed since 1974. The record number of proposed amendments to the 1974 constitution in one year was set in 1998 at 20.

Typically, constitutional amendments are proposed to correct errors in existing provisions, authorize new programs or

VOTER CHECKLIST

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policies, ensure that reforms are not easily undone by future legislation, seek exception or protections for special interests, or deal with emerging issues. Unfortunately, as more detail is placed in the state constitution, even more changes are generated as conditions change or problems arise with the earlier provisions.

The concept of the constitution as a relatively permanent statement of basic law for governing the state fades with adoption of new amendments. Too frequently, amendments are drafted for a specific situation rather than setting a guiding principle and leaving the Legislature to fill in the details by statute. In some cases very rigid principles are set, but numerous exceptions are then added by amendment. Occasionally, the Legislature approves amendment proposals hurriedly without considering all of the potential costs or ramifications, requiring subsequent amendments to undo the unintended consequences. In addition, special interests and the general public frequently demand constitutional protection for favored provisions to avoid legislative interference. As a result, much of the constitution is now devoted to highly complex and detailed revenue dedications and trust fund provisions. Each of these situations can be illustrated by examples from the current proposals. For example:

- Three proposals add revenue dedications, which in one case involves changing the dedications and uses of four trust fund arrangements already detailed in the constitution. One dedicates the lottery proceeds to education, the purpose for which it has been appropriated since 1994.
- Two proposals would add exemptions to a list of ten already attached to the general prohibition against the loan, pledge or donation of public funds. One of these is the fourth attempt to enact a similar amendment.
- Three proposals include corrections of drafting errors in earlier amendments and two others make corrections required by changing conditions since earlier, detailed amendments were adopted.
- One essentially deals with limiting the post-employment political activity of a single state officer.

While the idea of seeking voter approval for a wide range of policy issues may appear democratic, the practice is less encouraging. Voter participation is often quite low. But even when there is a high turnout, many of those voting for candidates fail to vote on proposed amendments. Over the last twenty years, the percentage of registered voters who have voted on proposed amendments has ranged from a low of 18.1% to a high of 55.7%. Thus, a proposal has never needed more than the votes of 28% of the registered voters, and as little as 9%, to amend the constitution.

Regardless of the number or length of amendments on the ballot, voters must carefully evaluate each proposal individually and make a decision based on its merits. One important consideration should always be whether or not the proposed language belongs in the constitution.

PAR has suggested in the past that it might be useful to begin looking at ways to improve the process of proposing amendments. Some states make the process more difficult and thoughtful by requiring a three-fourth super-majority vote of the Legislature (Louisiana requires two-thirds), limiting the number of amendments that can be put on one ballot, requiring passage in two sessions or even requiring adoption by a certain percentage of the voters. However, before such limits might be considered in Louisiana, the constitution would have to be pared back to basic law, and that would require a constitutional convention.

A comprehensive review of the constitution may be in order, particularly since the last thorough overhaul occurred 30 years ago. However, unless the state is ready to accept the concept of a constitution as fundamental law and place greater trust and responsibility in the Legislature to deal with the details of government, the proliferation of law by constitutional amendment is likely to continue.

Constitution vs. Statute

A *constitution* is the fundamental law of the state and as such contains the essential elements of government organization and structure, the basic principles concerning governmental powers and the rights of citizens. A constitution is meant to have permanence. *Statutory law*, on the other hand, provides the details of government that are subject to frequent change.

Process

The process of amending the constitution is more difficult than passing or amending a statute. In general, a *proposed statute* requires only a majority vote in each house of the Legislature and the governor's signature to become law. A *constitutional amendment* requires a two-thirds vote of the members in each house (the governor's approval is not required) and approval by a majority of those voting on the issue at a statewide election. An amendment affecting five or fewer parishes or municipalities requires voter approval in each affected area and statewide. A proposed constitutional amendment often has companion statutory legislation that provides more detail but becomes effective only upon adoption of the amendment.

Introduction to Coastal Restoration Amendments

The first three proposed amendments are related to coastal restoration. They all address the issue of how the state will finance its plan for rebuilding portions of Louisiana's protective marshlands and preventing further erosion of the coast. The plan, Coast 2050, was developed in 1998 by an alliance of local, state and federal entities. Louisiana's coastal restoration is still in its infancy as massive federal and state investment will be required to implement the plan comparable in scope to the South Florida Everglades Restoration Project authorized by Congress in 2000.

Created by both geologic and human factors, the state's coastal erosion is a problem with economic and environmental implications that reach beyond state lines, thus the federal government is expected to pay the major share of the estimated $14 billion restoration cost over the next 15 to 20 years. Louisiana and the U.S. Army Corps of Engineers will ask Congress in 2004 for a one-time authorization of the federal share of project costs under the Water Resources Development Act (WRDA). Another potentially significant source of matching funds for the projects is the national energy bill, currently making its way through Congress, which may dedicate up to $200-$300 million per year of oil and gas royalties to Louisiana.

In preparation for the 2004 WRDA request, Louisiana must show its capacity to pay its share of the restoration costs. While the precise federal/state cost share ratios have yet to be determined, the state's share is expected to range from 15% to 30% of project costs, or $150 to $200 million per year for 15 to 20 years. To this end, the following three amendments have been proposed to address state-share funding sources and liability limitation. However, it must be noted that none of the three amendments guarantees any new funding for coastal restoration.

Wetlands Conservation and Restoration Fund

Current Situation: ***Mineral Revenues.*** The Wetlands Conservation and Restoration Fund (WCRF), established in 1989, provides a recurring, dedicated source of revenues for the conservation and restoration of Louisiana's wetlands. The WCRF is currently authorized to receive $5 million annually from mineral revenues (i.e., severance taxes, royalty payments, bonus payments and rentals as a result of the production of or exploration for minerals) after certain other allocations are made. Additionally, if mineral revenues are above $600 million after required initial allocations are made, the WCRF gets $10 million, and if they are above $650 million the WCRF gets another $10 million, bringing the total possible annual mineral revenue deposits to the fund to $25 million. The WCRF retains its unexpended balance each year. The constitution currently places a cap on the fund's balance from mineral revenues at $40 million.

Mineral Revenue Audit and Settlement Fund (Settlement Fund). After certain mandatory allocations are made, money received by the state from a mineral settlement or judgment of $5 million or more (principal and interest) is dedicated to the Settlement Fund, established in 1992. The Legislature may appropriate the principal and interest earnings of the fund and decide the priority and amount of those appropriations for the following purposes:

1. advanced payments on the unfunded accrued liability of public retirement systems, and
2. early retirement of state debt.

Nonrecurring Revenues. Nonrecurring state revenues are currently authorized for allocation only for the following four purposes:

1. the Budget Stabilization Fund (25%),
2. early retirement of state debt,
3. advanced payments on the unfunded accrued liability of the public retirement systems, and
4. capital outlay projects in the comprehensive state capital budget.

You Decide

☐ A vote ***for*** would authorize $35 million annually of mineral revenue settlement funds to be deposited into the Wetlands Conservation and Restoration Fund; raise the cap on mineral revenues in the fund to no less than $500 million; and, add highway construction and Wetlands Fund deposits to the list of allowable uses of nonrecurring state revenue.

☐ A vote ***against*** would maintain the $40 million cap on mineral revenues in the Wetlands Fund and the existing list of allowable uses of nonrecurring state revenue.

Proposed Change: The amendment would increase deposits into the WCRF by increasing the current cap on mineral revenues in the fund, requiring that the first $35 million of Settlement Fund deposits be transferred to the WCRF annually, and allowing nonrecurring state revenues to be deposited into the WCRF. The amendment would also add funding of new highway construction, for which there are federal matching funds available, to the list of allowable uses for nonrecurring revenues. The amendment would also make these technical changes: correct a reference to the Budget Stabilization Fund and remove a reference to the defunct Louisiana Recovery District.

Mineral Revenues. The amendment would raise the WCRF mineral revenue cap to an amount defined by statute but no less than $500 million. Companion legislation sets the cap at $500 million.

Mineral Revenue Audit and Settlement Fund (Settlement Fund). The amendment would require that the first $35 million of funds deposited into the Settlement Fund be allocated to the WCRF prior to distribution of those funds for the other allowable expenses. Further allocations to the WCRF would be added to the list of allowable appropriations from the Settlement Fund.

Nonrecurring Revenues. The amendment would add two additional purposes to the list of authorized allocations of nonrecurring revenues (with no amount or priority assigned to either):

1. for deposit into the WCRF, and
2. for new highway construction for which federal matching funds are available, without excluding highway projects otherwise eligible as capital projects under other provisions of this constitution.

Comment: Mineral revenues and other nonrecurring funds are logical sources of funding for coastal restoration, since Louisiana's coastal erosion is partially attributed to oil and gas exploration and production activities and other infrastructure development projects. Restoration and maintenance of the state's coast will accommodate the sustained continuation of those activities. However, passage of this amendment does not guarantee that any new money will be dedicated to the WCRF. Additional deposits to the WCRF would only be made if the state received mineral settlements or judgments of $5 million or more, or if the Legislature opted to dedicate other nonrecurring revenues to the fund.

Mineral Revenues. Mineral revenues, which include settlement revenues, often exceed the $600 million and $650 million thresholds after other required appropriations are made, thus resulting in WCRF dedications often exceeding the minimum $5 million per year. However, the fund balance from mineral revenue deposits has never reached its current $40 million cap.

Mineral Revenue Audit and Settlement Fund (Settlement Fund). The deposit history of the Settlement Fund offers an example of how much new money would have been deposited into the WCRF if this amendment had been in effect for the past five years. (See Table 1.)

TABLE 1
Five-year Deposit History of the Mineral Revenue Audit and Settlement Fund

Fiscal Year	Deposits	Amount That *Would Have* Gone to the WCRF
1999	$ 19,456*	$ 19,456
2000	8,701,360	8,701,360
2001	11,411,261	11,411,261
2002	76,875*	76,875
2003	67,343,143	35,000,000

* Interest Only

Proponents of the amendment argue that the changes it would make are necessary to increase the state's capacity to fund its share of the massive $14 billion cost projected to conserve and restore Louisiana's coastal wetland systems. With Louisiana's congressional representatives on the verge of making their request to Congress in 2004 for a one-time funding approval for the federal share of that cost, passage of this amendment, they argue, would demonstrate Louisiana's willingness and ability to pay its share.

However, considering the state's mineral revenue and mineral settlement history, passage of this amendment would not guarantee that any additional money would be deposited into the WCRF. Still, only $5 million would assuredly be deposited into the fund each year–more only

if the state were to win any mineral judgments and settlements over $5 million or if mineral revenues were above their $600 and $650 million thresholds.

Opponents of the amendment argue that further research must be done to prove the feasibility of the Coast 2050 Plan before any additional funding should be dedicated to coastal restoration. Some also argue that the geologic factors affecting Louisiana's coastal erosion make restoration a futile effort. These opponents propose that a more logical solution would be to let nature take its course and dedicate funding instead to moving coastal communities out of harm's way. New Orleans is a coastal community.

Nonrecurring Revenues. Completely independent of coastal restoration but still included in this amendment is the authorization that allows for nonrecurring revenues to be used for new highway construction. This change is redundant to current law because one of the four existing authorizations for nonrecurring revenues is to fund "capital outlay projects in the comprehensive state budget." However, adding this additional use for nonrecurring revenues would provide another route for legislators to use in getting highway projects (like I-49 North) funded. This change is germane to the bill only in the sense that the purpose of this bill is to provide for new ways to spend certain revenue streams, rather than only to provide new ways to fund coastal restoration projects.

Adding WCRF appropriations to the list of uses for nonrecurring revenues would provide a new source for coastal restoration funds, but in no way assures that those appropriations would ever be made.

Legal Citation: Act 1302 (Senator Dupre) of the 2003 Regular Session, amending Article VII, Section 10.2 (B) and (C) and 10.5 (B) and (C), and adding Article VII, Section 10 (D)(2)(e) and (f). Companion legislation is Act 1195 (Senator Dupre) of the 2003 Regular Session.

Louisiana Coastal Restoration Fund

Current Situation: Louisiana sold 60% of its share of the 1998 tobacco Master Settlement Agreement (tobacco settlement) for $1 billion two years ago. The State Bond Commission estimates the remaining 40% to be valued at $600 million (depending on timing of the sale) if sold. Tobacco settlement funds are deposited into the Millennium Trust and distributed among three special funds: the Health Excellence Fund, the Education Excellence Fund and the TOPS Fund.

Proposed Change: The amendment would establish the Louisiana Coastal Restoration Fund (LCRF) in the state treasury and provide for the *possibility* of depositing into that fund up to 20% of revenues generated by the *possible* future sale of the state's tobacco settlement. The LCRF would remain dormant unless the state's tobacco settlement were sold, and several conditions would have to be met before any tobacco settlement-sale money would be deposited into the fund.

The amendment would authorize up to 20% of any future sale of the state's tobacco settlement for deposit into the LCRF. If the settlement were sold, the treasurer would deposit those revenues into the Millennium Trust's three special funds. Then, if there were federal funds available for coastal restoration that required a state match, one-third of up to 20% of those revenues would be transferred from each of the three special funds to the LCRF. Only the amount necessary to match the maximum amount of federal funds available in a fiscal year could be transferred to the fund, leaving the remaining portion of the 20% in the three special funds to continue accruing investment earnings for those accounts.

You Decide

☐ A vote ***for*** would create the Louisiana Coastal Restoration Fund and authorize the deposit into that fund of up to 20% of any future sale of the state's tobacco settlement.

☐ A vote ***against*** would continue to allow the full amount from any future sale of the state's tobacco settlement to be distributed among the special funds in the Millennium Trust.

Money from the LCRF could be appropriated by the Legislature to the Department of Natural Resources solely for programs to reduce coastal erosion and to restore the areas of the state directly affected by coastal erosion. Money from other sources could also be deposited into the fund, though none is required by this amendment. The state treasurer would be authorized to invest money from the LCRF according to the same restrictions as the Millennium Trust. However, investments would have to be fairly short-term because any portion of the fund could be appropriated for projects in any year.

Companion legislation provides for specifics about the types of investments that the treasurer would be authorized and directed to make with the LCRF.

Comment: Under current market conditions, it is unlikely the state would find a buyer for its remaining share of the tobacco settlement. However, this is more of a permissive piece of legislation, poising the state to invest in the LCRF if and when the window of opportunity to sell the tobacco settlement arises. Passage of this amendment may have no effect on the state's ability to fund its share of the Coast 2050 coastal restoration projects.

The State Bond Commission estimates that 20% of the remaining tobacco settlement is valued at approximately $120 million (depending on timing of the sale). If the tobacco settlement were sold and if there were federal matching funds available to require the full 20% to be transferred from the three special funds, the annual foregone earnings to the special funds would equal approximately $5.6 million, or $1.9 million each.

Proponents of the amendment argue that the additional fund for coastal restoration would further demonstrate Louisiana's willingness to fund its share of coastal restoration projects and programs. Further, the fund would provide the state a way to combat coastal erosion without a tax increase or cuts in vital services.

Opponents argue that diverting funds away from the three special funds further erodes the funding base upon which they rely. The three special funds provide appropriations for public schools, health care and higher education, which are underfunded and often subject to annual budget cuts. Transferring 20% of the tobacco settlement-sale revenues would result in a potential reduction of $1.9 million in funding for programs that rely on appropriations from the special funds. Only earnings, interest and capital gains revenues can be appropriated from the special funds.

Further opposition is based in the principle that dedications should be limited to programs related to the revenue source. Tobacco settlement revenues are directly related to health care and only loosely related to education and coastal restoration.

Legal Citation: Act 1300 (Senator Dardenne) of the 2003 Regular Session, adding Article VII, Section 10.11. Companion legislation is Act 1192 (Senator Dardenne) of the 2003 Regular Session.

Coastal Restoration Liability

Current Situation: Under the constitution, the government may not take private property unless the expropriation is for a public purpose and the owner receives just compensation. However, the constitution also allows the Legislature to limit the liability of the state for past and future claims. Unlike the federal government which uses a lower "fair market value" standard, current state law requires the state to compensate for the value of property expropriated or damaged and future lost earnings.

Over 200 oyster farmers sued the state in federal court claiming that freshwater diversion projects in the early 1990s damaged their leases by raising salt levels, rendering waterbeds unsuitable for cultivation. After the plaintiffs' claims were rejected in federal court, they sued in St. Bernard and Plaquemines Parish state courts and received damage awards totaling $2.2 billion. The state has appealed the judgments and a settlement has not been reached.

You Decide

☐ A vote ***for*** would limit, in the case of coastal restoration projects, the state's liability for past and future damages to private property and the amount paid to purchase property.

☐ A vote ***against*** would not limit the state's liability for property damaged by coastal restoration projects or change the amount paid for private property.

Proposed Change: The amendment would allow the Legislature to limit the state's liability for all damage caused by coastal restoration projects and the compensation owed for buying private property needed for coastal restoration. Companion legislation would adopt the lower federal "fair market value" standard for compensation. The companion legislation also provides for retroactive application of the law thereby limiting the state's liability for past as well as future damages.

Comment: Proponents of the amendment and companion legislation argue that the oyster lease plaintiffs received excessive judgments totaling more than the value of all the oysters harvested in the state in the 100 years since leases were allowed. They believe the amendment, which allows the state to limit liability and companion legislation that lowers compensation to "fair market value," may reduce the state's liability from $2 billion to less than $100 million.

Proponents further argue that the court judgments will jeopardize the state's pursuit of federal funding to restore the state's coast. Approval of this bill, they say, is needed to reassure the federal government that its money would not be used to pay lawsuits and that Louisiana would be better able to pay its share of coastal restoration projects.

Opponents argue that the oyster lease holders lawfully leased property from the state and are entitled to damages for the loss of funds expended on the oyster beds and for future losses. Federal officials estimate that restoration efforts could wipe out as much as three-quarters of the state's privately held oyster beds.

Opponents argue that the amendment unfairly targets people harmed by coastal projects and changes the rules in the middle of the judicial process. The law, they say, should apply equally to all property holders throughout the state and not just to those having property interests along the coast. Further, the amendment may be subject to a due process challenge for stripping away rights after the courts have rendered a decision. They argue the constitution should not be changed when the appellate courts have yet to decide if damages are appropriate.

Proponents counter that legitimate damages will be compensated, and the need to secure federal funds requires protection against excessive judgments. Proponents further argue that the constitution allows the Legislature to limit past claims and that the companion legislation clearly expresses that intent.

Legal Citation: Act 1295 (Representative Pitre) of the 2003 Regular Session, amending Article I, Section 4. Companion legislation is Act 583 (Representative Pitre) of the 2003 Regular Session.

State Takeover of Failing Schools

Current Situation: Under the Louisiana School and District Accountability System, a school district must submit a reconstitution plan for any failing school to the State Board of Elementary and Secondary Education (BESE) for approval. (See box on failing schools.) If BESE does not approve the reconstitution plan or the school continues to fail after the plan is implemented, the only option available to BESE under the current constitution is to remove funding for that school. The state constitution prohibits BESE from controlling the business affairs of local school systems or selecting or removing its officers and employees. Thus the state cannot directly tell a local school district how to run a school or make personnel decisions for that school. But, the state can place a local school in an unapproved status and withhold state and federal funding. In effect this would close the school.

Proposed Change: The amendment would give BESE the option to take temporary control and operate or provide for the operation of schools that are determined to be failing. It would also allow BESE to receive state funds and collect from the local school district any local funds that would have gone to that school to pay for its operation.

Companion legislation defines a "failing school" as a school:

You Decide

☐ A vote ***for*** would allow the State Board of Elementary and Secondary Education (BESE) to take temporary control of failing schools.

☐ A vote ***against*** would continue to prevent BESE from assuming control of local schools.

- For which the school board has not submitted a reconstitution plan, or
- Whose reconstitution plan is rejected by BESE, or
- That fails to comply with the BESE-approved reconstitution plan, or
- That is labeled "Academically Unacceptable" for four consecutive years.

The amendment does not require BESE to take control of any failing school, leaving that option totally to BESE's discretion on an individual school basis. If BESE does decide to temporarily take over a failing school, it would be transferred to a "Recovery School District." This new district could not levy taxes, but it could make decisions concerning funding, supervision, management and operation of the failed school. The Recovery School District could contract with a university to run the school or turn it into a Type 5 Charter School run by a nonprofit organization. The Recovery School District could not contract with a for-profit group to run the school or provide instructional services.

The companion legislation specifies how and when a school will be returned to the local school district and requires BESE to take certain actions if the school does not improve in four years under its control. The legislation also allows teachers and other personnel to stay with the prior school district (according to that district's contractual obligations or policies regarding the retention and reassignment of employees) or stay with the school as it moves to the Recovery School District. If they stay with the school they retain certain benefits and privileges with the prior school system while in a "leave of absence" status. Finally, the companion legislation gives parents the option to keep their children in the school or transfer them to another public school in the district.

Comment: In the next few years, there is great likelihood that some schools under local school board control will continue to fail after reaching the harshest level of sanctions under the state's school accountability program, reconstitution. Some local school boards may be unable, or possibly unwilling, to take the necessary (and sometimes innovative or controversial) action that is required to enable their school(s) to break the cycle of failure. The constitution limits what the state can do, basically leaving state funding as the only leverage the state has against local school systems that fail to improve their

WHAT IS A FAILING SCHOOL?

In the context of this proposal, a "failing school" is defined as an "Academically Unacceptable" school in "School Improvement Level 4" or higher that is required to have or implement a reconstitution plan. A school that has been "Academically Unacceptable" for four consecutive years is also defined as a "failing school." Schools in this category would be the only schools eligible for state takeover under the proposed amendment and its companion legislation.

The state's School and District Accountability System rates a school based on the performance of the school's students on three factors: test scores, attendance and dropout rate (high schools only). The factors are combined into a single score, called a School Performance Score (SPS). Schools with a SPS below 45 are labeled "Academically Unacceptable" and are placed in "School Improvement Level 2." Beginning in 2005, a school scoring below 60 will be labeled "Academically Unacceptable."

There are six levels of "School Improvement." "Academically Unacceptable" schools start in level 2, and progress to the next level if they fail to achieve their assigned growth target (the amount that their SPS must increase by the next year). School districts are required to submit to the State Board of Elementary and Secondary Education (BESE) for approval a reconstitution plan for any "Academically Unacceptable" school in "School Improvement Level 4" by December 31 of the year a school enters this level. A reconstitution plan specifies the action a school board will take to turn around an "Academically Unacceptable" school, and it may include a complete replacement of the school's staff, among other things.

schools. This sets a condition where the "death penalty" of removing funding from a school is the state's only recourse in dealing with school boards that cannot effect change in their consistently failing schools. In most cases, closing a school is not a viable option because other schools lack space for the displaced students. Thus, the state has little leverage over obstinate school boards. This amendment would provide the additional option of state takeover.

For the 2003-04 school year, 65 out of almost 1,400 schools in Louisiana received an "Academically Unacceptable" rating. Eleven of the 65 "Academically Unacceptable" schools (all in Orleans Parish) failed to make their growth target for three consecutive years and were placed in School Improvement Level 4. In addition, five schools (four in Orleans Parish and one in East Baton Rouge Parish) have been "Academically Unacceptable" for four consecutive years. Therefore, if this amendment passes, one or all of these 16 schools may be subject to takeover for the 2004-05 school year. The maximum number of schools subject to takeover by the 2006-07 school year would be 65 (50 of these in Orleans Parish) if each of these schools fail to make their growth targets for three consecutive years or are "Academically Unacceptable" for four consecutive years.

Other states allow a takeover of entire districts or single schools. As of April 2002,

- 24 states have policies that allow them to take over a school district, 19 states have actually taken control of a total of 48 school districts.
- 15 states have policies that allow them to take over a school, two states have actually taken control of a total of nine schools.
- 19 states have policies that allow them to reconstitute schools, seven have taken actions to reconstitute schools.

For the most part, state takeovers have been at the district instead of school level. Fiscal mismanagement has been the most common reason for states to take over school districts, but there have been examples where a state took control of a school district or individual schools due to poor academic performance.

In general, state takeovers of districts have been very successful in correcting financial problems, but have had mixed results in improving student achievement. However, West Virginia's takeover of the Logan County School District and the Mayor of Chicago's takeover of Chicago Public Schools are cited as examples where a state-mandated takeover resulted in substantial gains in student achievement. There have been too few state takeovers of individual schools for academic reasons to judge its effectiveness.

Proponents argue that a state takeover policy:

- Is warranted for a system that gives local school boards at least four years and extra resources to improve their failing schools.
- Is a necessary extension of a state's constitutional responsibilities for education and is the next logical step in the accountability program.
- Grants the state needed leverage over obstinate school boards and focuses critical attention on failing schools.
- Provides an alternative to school closure as a means of state intervention.
- Allows the state to select a competent executive staff to guide an uninterrupted and effective implementation of school improvement efforts.
- Allows for more radical and necessary changes.
- Is designed to have minimum impact on the resources available for a district to continue managing its other schools.

Opponents argue that a state takeover policy:

- Is a thinly veiled attempt to reduce local control over schools and increase state influence over school districts.
- Assumes that the state can do a better job than the local school district in running a failing school and hiring effective teachers.
- Diverts resources from the district.
- Fosters negative connotations and impressions that hinder the self-esteem of school board members, administrators, teachers, students and parents.
- Promotes showdowns between state and local officials that slow the overhaul of management practices, drain resources from educational reforms and reinforce community resentments.

Legal Citation: Act 1293 (Senator Theunissen and Representative Crane) of the 2003 Regular Session, amending Article VIII, Section 3 (A). Companion legislation Act 9 (Senator Theunissen and Representative Crane) of the 2003 Regular Session.

LWCC Board

Current Situation: The Louisiana Workers' Compensation Corporation (LWCC) is a private, non-profit mutual insurance company created by constitutional amendment in 1991 to help solve a crisis in the workers' compensation system. The LWCC is not a state agency and receives no state funds.

The constitution specifies how each of the 12 members of the LWCC board is selected. The governor appoints five members representing labor, business, insurance agents, the State Office of Risk Management and the insurance industry. LWCC policy holders elect four members to represent different size employers. A state senator and representative and the insurance commissioner (or designee) complete the board.

Proposed Change: The amendment would have the LWCC submit a list of three nominees from which the governor would appoint an insurance agent representative. The representative of the Office of Risk Management and the representative of licensed insurers would be eliminated and replaced by two representatives-at-large also to be appointed by the governor, each from a list of three nominated by the LWCC board.

Comment: The amendment was initiated by the LWCC board to allow it to nominate candidates for three of the board positions. The board argues that it is inappropriate to be required to have a board member who represents competing insurers. It also argues that a representative of the Office of Risk Management is no longer relevant. Initially, the board had little experience and represented a potential risk for the first few years when the state put its full faith and credit behind the LWCC. However, it has been operating successfully for a dozen years now and no longer relies on the state's backing.

You Decide

☐ A vote ***for*** would change the method of selecting three of the twelve members of the Louisiana Workers' Compensation Corporation (LWCC) Board of Directors.

☐ A vote ***against*** would retain the current method of appointing the LWCC board members.

Legal Citation: Act 1294 (Representative Dewitt) of the 2003 Regular Session, amending Article XII, Section 8.1 (C)(1)(f) and (g); repealing Article XII, Section 8.1 (C)(1)(h). Companion legislation is Act 315 (Representative Dewitt) of the 2003 Regular Session.

TIMED Projects

Current Situation: In 1989, the voters approved a constitutional amendment creating the Transportation Infrastructure Model for Economic Development (TIMED) program to fund 16 transportation-related projects specified in companion legislation. An additional four-cent-per-gallon gasoline tax was levied to pay for the projects. The TIMED projects included widening to four lanes about 500 miles of two-lane highway. The segments of highway to be widened were described in the statute and, by reference, fixed in the constitution. Thus, the constitution must be amended to change any of the projects listed in the statute.

Proposed Change: The amendment would change the project descriptions to read: "US Highway 61 from Thompson Creek to Mississippi Line," instead of "US 61-Bains to Mississippi Line;" "US Highway 165-I-10-Alexandria-Monroe-Bastrop and thence on US Highway 425 Bastrop-Arkansas Line," instead of "US 165-I-10-Alexandria-Monroe-Bastrop-

You Decide

☐ A vote ***for*** would change the TIMED highway widening program by dropping a segment of LA 15, switching segments to connect to a four-lane Arkansas route and adding eight miles left out of US 61.

☐ A vote ***against*** would continue the existing project descriptions.

Arkansas Line"; and "LA 15-Natchez, Mississippi to Chase," instead of "LA 15-Natchez, Mississippi to Monroe."

Comment: The Department of Transportation and Development (DOTD) initiated the proposed changes to correct flaws in the current program. The agency notes that the 7.7 miles of US 61 on either side of St. Francisville were originally intended to be four-laned but weres erroneously omitted from the project descriptions. This would add an estimated $40.5 million in costs.

Switching the Bastrop-Arkansas border project to Highway 425 from Highway 165 would be shorter and would meet a four-lane Arkansas highway that is a direct route to Little Rock. This would save $34.8 million.

The third change would eliminate the four-laning of LA 15 from Archibald to Monroe. However, a four-lane highway already connects Archibald to I-20 which runs through Monroe. The LA 15 route would be slightly shorter but would parallel the existing route. This would save $68.4 million.

The net fiscal impact of the three changes is a $62.6 million reduction in TIMED project costs. Because the projects are located in rural areas, relatively few residents would be directly affected by the changes.

Legal Citation: Act 1301 (Senator Barham) of the 2003 Regular Session, amending Article VII, Section 27 (B).

State Infrastruture Bank

Current Situation: The constitution prohibits the loan, pledge or donation of public funds, credit or property to any person, association or corporation, public or private, with a number of specified exceptions.

In 1997, the Legislature statutorily created the Louisiana Infrastructure Bank (LIB), which would use a revolving loan fund to provide loans, loan guarantees or other credit aid to help finance transportation construction projects.

The federal government was promoting the use of infrastructure banks to accelerate construction projects. However, in 1998, the voters rejected a proposed amendment to allow such a bank to loan public funds, and the bank was never implemented.

Proposed Change: The amendment would add another exception to the constitutional prohibition against the donation, pledge or loan of public funds. This exception would permit public funds to be loaned or pledged (but not donated) by a state infrastructure bank to fund eligible infrastructure projects.

Companion legislation amends the 1997 LIB statute limiting the bank to assisting *public* entities and defining "eligible infrastructure project" as a plan or proposal approved by the Department of Transportation and Development (DOTD) for a highway, road or street infrastructure project. The new law requires that loans be at or below market interest and run no more than ten years. A local entity could dedicate any of its revenues for up to 15 years to pay an LIB loan.

The statute makes any debt issued by the LIB a legal investment for all public or private entities, including public retirement systems.

Comment: The amendment, initiated by DOTD, is designed to remove any question about the LIB's loan authority and the use of state and federal money to capitalize the bank. Supporters argue that the state needs to be able to take advantage of a full range of innovative financing approaches to spur more highway, road and street construction in an era of declining resources. The main goal would be to provide low-interest loans to local governments for road projects, although DOTD could be a recipient as well. The revolving loan fund could be capitalized using federal, state, local or private funds.

You Decide

☐ A vote ***for*** would allow a state infrastructure bank to use public funds to make low-interest loans to parishes, municipalities or a state agency to build roads and highways.

☐ A vote ***against*** would continue to prohibit such a bank from loaning or pledging public funds to any public or private entity.

Proponents of the amendment cite a number of safeguards in the LIB statute: DOTD must approve any projects for assistance and the State Bond Commission must approve any loans. In addition, federal law would limit the use of federal money. For example, federal highway money could only be loaned for highway projects already eligible for federal aid.

LIB loans or assistance might be used to accelerate priority program projects that can help in paying their own construction costs. By providing low interest loans or credit assistance, the bank could help lower the cost of such projects. The success of the LIB would depend on its ability to leverage investment–that is to encourage regional, local or private entities to put up additional funding (i.e., taxes, tolls and payments) to provide the revenue stream needed to pay off loans.

Successful projects funded by infrastructure banks in other states have typically leveraged funds from local property tax districts, local gasoline taxes or toll arrangements. Some question the extent to which such taxes or tolls would be readily accepted by Louisiana's residents. Local governments in Louisiana have limited taxing capacity to maintain roads which has led to the state assuming control of essentially local roads. Low interest loans would encourage local governments to take care of local roads instead of relying on the state, proponents argue. The 1997 LIB statute originally was intended to use Transportation Trust Fund (TTF) money to help capitalize the revolving fund. Tying up the TTF money in loans would have meant delaying its use to fund state construction. This was a factor in attracting opposition from state contractors.

The current proposal is not being promoted as a vehicle for loaning TTF money. While the use of TTF funds is quite restricted by the constitution and federal law, the current proposal does not specifically limit its use by the LIB. The new version omits language in the earlier proposal ensuring that TTF money used in the revolving fund remains TTF money. The availability of funding to capitalize the bank is uncertain at this point.

The LIB board would include the state treasurer, secretary of DOTD, secretary of DED, six legislators and a private banker. The six legislators, all chairmen of the public works and money committees, would make up a majority on the board.

The current proposed amendment differs from the 1998 version in that it allows loans and donations for "eligible infrastructure projects" instead of "capital improvement projects." The amended LIB statute defines "eligible infrastructure projects" much more narrowly to include only highways, roads and streets.

One new provision would authorize the public retirement funds to invest in LIB loans. The systems may be wary that the invitation to make "social investments" not become a requirement in the future.

While the companion law limits LIB loans to public entities, the constitutional amendment would not prohibit loans to private entities. The details of how the LIB and its revolving fund might operate are largely speculative and could be changed by statute. The proposed constitutional amendment would simply clear the way for the bank to become operable.

Legal Citation: Act 1299 (Senator Heitmeier) of the 2003 Regular Session, amending Article VII, Section 14 (B). Companion legislation is Act 1125 (Representative Diez) of the 2003 Regular Session.

Offshore Drilling Rigs Tax Break

Current Situation: Drilling rigs permanently or temporarily located within the boundaries of the state are subject to property taxation. Offshore drilling rigs located in federal waters beyond Louisiana's territorial limits cannot be taxed by state or local governments. However, when these rigs are brought into local government jurisdictions, even temporarily, for storage or renovation, they may be taxed.

The constitution currently provides a "freeport" property tax exemption for certain goods, commodities, raw materials and other property destined for use outside the United States and also exempts property moving through the state in interstate commerce. These exemptions would apply to certain property in transit to or destined for use on drilling rigs located outside the territorial limits.

In the 2002 Regular Session, the Legislature enacted an exemption from state and local sales taxes for repairs and material used therefor, on drilling rigs operated exclusively outside the territorial limits of the state in Outer Continental Shelf (OCS) waters.

Proposed Change: The amendment would exempt from state and local property taxes any drilling rig destined for use outside the territorial limits of the state that is being stored or stacked within the boundaries of the state or being converted, renovated or repaired. The amendment also specifically exempts any property in the state that is scheduled to be installed on or used in the operation of such drilling rigs. The exemption would apply only in a parish in which a majority of voters favor the exemption in an election called for that purpose.

Comment: Proponents argue that this property tax exemption, together with the sales tax exemption enacted in 1998, is needed to give Louisiana tax parity with Texas and Mississippi and allow it to compete for rig repair work. They suggest this would help develop a repair industry and boost employment. Storage of rigs would also generate local revenue.

Louisiana has more drilling rigs operating off its shores than any of its neighbors. As of September 2002, Louisiana had 104 operational rigs, while the next closest state, Texas, had only 17. At the same time, only one rig was being worked on in a Louisiana shipyard, whereas 13 were in Texas shipyards.

Because Texas does not tax OCS rigs, drilling companies currently must decide whether the cost of towing their rigs past Louisiana to Beaumont or Galveston for renovation is cheaper than paying Louisiana property taxes. One of the many drilling companies in the Gulf of Mexico, Diamond Offshore, reported spending $1.2 billion between 1997 and 2002 on rig repairs. The company spent $800 million in Texas, $200 million in Mississippi, $100 million in Alabama and only $12 million in Louisiana. Mississippi, like Texas, exempts rigs undergoing conversion.

You Decide

☐ A vote ***for*** would, with subsequent voter approval in a given parish, exempt from property taxes drilling rigs for use in the Outer Continental Shelf but stored in that parish or being converted, renovated or repaired.

☐ A vote ***against*** would continue to allow such property to be taxed.

The proposal would probably have little impact on current local government revenues. Exempting items scheduled to be installed on or used in the operation of OCS drilling would have little impact as these are now covered by the "freeport" exemption. Also, there is little repair work currently being done in the state. While data show that 29 offshore rigs were stored in Louisiana last year, it is not known whether these were OCS rigs or whether they are currently on the tax roles somewhere.

In 2002, voters narrowly rejected a nearly identical amendment. The current proposal differs in that it requires local voter approval for the exemption to be effective in a given parish.

Critics of expanding property tax exemptions might argue the uncertainty of the effectiveness of tax incentives for economic development. They would note that other factors such as the experience with and capacity of existing repair facilities might continue to affect the decisions of companies even after the tax situation was changed.

Legal Citation: Act 1297 (Representative Pitre) of the 2003 Regular Session, adding Article VII, Section 21 (J).

Dedication of Lottery Proceeds to Education

Current Situation: In 1990, voters approved a constitutional amendment that established a state lottery. Revenues from the lottery given to the state are deposited in a Lottery Proceeds Fund in the state treasury. The Legislature can appropriate the net proceeds plus interest from the fund for any purpose by a majority vote.

Virtually all of the state lottery proceeds have been appropriated for the Minimum Foundation Program (MFP) that funds elementary and secondary education since 1994, except for $500,000 of lottery proceeds statutorily dedicated to the Compulsive and Problem Gaming Fund since 2000.

Proposed Change: The proposed amendment would dedicate all revenues received by the state from the state lottery and deposited in the Lottery Proceeds Fund to support the MFP. The amendment also allows up to $500,000 of this funding to be used to support compulsive and problem gambling services.

Comment: Since lottery funding is already going to education, adoption of this amendment would not result in a funding increase, but would constitutionally continue the current practice.

According to proponents, the public was sold on the state lottery in 1990 when they were led to believe that lottery proceeds would go to education. But, the amendment the public approved did not dedicate the revenue to education. Therefore, proponents say this amendment corrects that error and ensures that the Legislature cannot use this funding for any other purpose.

Critics argue the amendment does not really accomplish anything. They note it dedicates a state revenue to an unrelated expenditure, thus reducing the flexibility of the Legislature in making decisions concerning funding the state's total budget. They also argue that the impact of this change would be negligible, because lottery revenues only make up around 4% of state funding for education and 2% of the total cost of education.

You Decide

☐ A vote ***for*** would dedicate the state lottery proceeds to elementary and secondary education, and allow up to $500,000 to be spent on problem gambling services.

☐ A vote ***against*** would continue to allow lottery proceeds to be used for any purpose.

Legal Citation: Act 1305 (Representative Farrar) of the 2003 Regular Session, amending Article XII, Section 6 (A).

Administrative Law System

Current Situation: The Legislature created the Division of Administrative Law (DAL) in 1996 to conduct adjudications, hearings for citizens and businesses when state agencies take action against them—such as denying, suspending or revoking a license, or assessing fines and penalties for various civil administrative violations. Authority for these adjudications was transferred from certain agencies to DAL administrative law judges (ALJs) who are selected from a central pool not tied to a particular agency. Prior to this, those state agencies hired their own hearing officers to handle administrative matters. Many state agencies, boards and commissions still have their own ALJs under various statutory authority and reserve final decision-making authority to agency heads. The DAL annually hears more

You Decide

☐ A vote ***for*** would provide specific constitutional authority for the existing administrative law system and would provide that the Legislature may deny state agencies the right to appeal administrative law judge decisions.

☐ A vote ***against*** would continue the existing administrative law system and leave in question state agencies' right to appeal.

than 10,000 cases involving numerous state agencies. In addition, thousands of cases are heard by hearing officers in other state agencies.

All states have a system of administrative law in order to provide more independence from agency control or to expedite hearings on very specialized matters thereby reducing the caseload of state courts and providing citizens with a less costly and speedier result. Some state constitutions provide for an administrative law system, whereas Louisiana's system is statutory. Louisiana's is one of the few systems that denies state agencies the right to judicial review of ALJ decisions. (However, state agencies may appeal non-DAL decisions.)

The Department of Insurance filed a suit in December 2002 challenging the constitutionality of the DAL based on violations of the separation of powers and the right to judicial review. The 19th Judicial District Court has found that certain aspects of the statutory system creating the DAL are constitutionally infirm; however, no formal written decision had been released at the time of publication. It is not clear what impact this decision may have on thousands of completed and pending cases.

The Department of Insurance argued that by barring review of administrative law judge decisions, the Legislature violated the constitution by authorizing the DAL, an appointed, quasi-judicial agency to decide questions of law and policy instead of the courts and by denying state agencies the right to appeal ALJ decisions.

The DAL argued that it does not hear "civil matters," therefore there is no infringement on judicial authority. Further, the DAL argued that public agencies are not entitled to judicial review because those rights may only be asserted by people and not government entities.

Proposed Change: The amendment would constitutionally authorize the Legislature to create an administrative law system to hear adjudications as specified by the Administrative Procedure Act. The amendment would specifically allow the Legislature to determine the qualifications, employment and authority of administrative law judges and determine if government agencies or public officials may appeal ALJ decisions.

Comment: Proponents wish to eliminate any future debate and costly litigation over the legitimacy of Louisiana's administrative law system and believe the amendment will ensure that the present administrative law system will remain intact. They argue that without ALJs the state's courts would become burdened with additional cases.

Proponents further argue that the DAL, in particular, deserves protection because their ALJs are drawn from an independent pool and not connected to any state agency, making them more independent and impartial in their decision-making. They point out that the DAL requires ALJs to be licensed attorneys who have practiced for at least five years. Some proponents argue that the final decision-making authority of ALJs levels the playing field between citizens and state agencies that have far more resources to appeal ALJ decisions.

Opponents argue that the administrative law system is constitutionally secure under statutory authority, but that the amount of power given to ALJs in the current system violates the constitution. They believe that the DAL has exceeded the traditional role of ALJs by its authority to issue final decisions that may not be appealed to the courts by state agencies. Opponents also point out that most decision makers, including judges and elected department heads, are accountable to citizens through the election process, whereas ALJs are appointed.

Opponents also argue that the amendment is not needed to provide authority for having an administrative law system. The amendment, they argue, is designed to ensure that state agencies are prevented from appealing ALJ decisions. They do not believe the amendment would fix the violation of executive and judicial authority. Rather, they suggest, amending the system to provide for judicial review of all ALJ decisions would cure the constitutional defects and avoid any adverse impact on the courts.

Legal Citation: Act 1298 (Representative Bowler) of the 2003 Regular Session, adding Article XII, Section 15.

Budget Stabilization Fund

Current Situation: The constitution establishes the Budget Stabilization Fund, commonly known as the state's "Rainy Day" Fund. The fund receives: any available money that exceeds the expenditure limit, mineral revenues exceeding $750 million a year, 25% of any monies recognized by the Revenue Estimating Conference as nonrecurring, and other money appropriated to the fund including the balance of any monies declared to be nonrecurring.

Technically, if a portion of the annual mineral revenue above $750 million is declared nonrecurring, it must be counted twice for the purpose of determining the amount to be deposited in the "Rainy Day" Fund.

This section of the constitution also refers to a "Revenue Stabilization Mineral Trust Fund" where "Budget Stabilization Fund" was intended.

Proposed Change: This amendment would exclude nonrecurring revenue from the amount of mineral revenues, above the $750 million base, that would be deposited in the Budget Stabilization Fund ("Rain Day" Fund). It would also change an incorrect reference to the Budget Stabilization Fund.

Comment: The purpose of this amendment is to correct a conflict between two provisions and correct a drafting error.

In fiscal year 2001-02, $4.5 million in severance taxes were collected in the tax amnesty program. Because they were designated as nonrecurring, 25% went to the "Rainy Day" Fund. The same $4.5 million was counted again as mineral revenues in excess of $750 million that year, and this generated another $3.7 allocation to the "Rainy Day" Fund. Under this amendment, only the first 25% allocation would have been made in this case.

You Decide

☐ A vote ***for*** would prevent the double-counting of certain mineral revenues for deposit in the state's "Rainy Day" Fund and correct a drafting error.

☐ A vote ***against*** would continue to require certain mineral revenues to be deposited in the "Rainy Day" Fund under two procedures and continue to call the fund by the wrong name.

Legal Citation: Act 1307 (Representative LeBlanc) of the 2003 Regular Session, amending Article VII, Section 10.3 (A)(2)(a) (introductory paragraph) and 10.5 (B).

Contraband

Current Situation: The 1974 constitution guaranteed that personal effects (private, movable property), other than contraband, shall never be taken by the government. A 1989 constitutional amendment specified that contraband connected to drug crimes may be seized and forfeited. However, this amendment also deleted the phrase "other than contraband."

Contraband is property that the government may seize either because the item is illegal (i.e., proscribed drugs) or the object is connected to a crime (i.e., a car used to transport drugs). Although the constitution currently refers only to drug-related contraband, the statutory law provides for the seizure and forfeiture of various types of contraband that are non-drug related, but that are used in non-drug related crimes, such as firearms, fishing nets and vehicles.

Because the 1989 amendment omitted the phrase "other than contraband," it casts some doubt as to the government's ability to seize and forfeit contraband in non-drug related cases. A 2001 state supreme court decision found a statute authorizing the seizure of a vehicle in a non-drug crime case constitu-

You Decide

☐ A vote ***for*** would clarify that the Legislature may authorize the seizure of property related to illegal activities.

☐ A vote ***against*** could potentially limit the seizure of property to only drug-related crimes and not to other illegal activity.

tional. However, a dissenting opinion argued that a strict reading of the current constitutional language does not allow the government to seize contraband that is not related to drug crimes.

Proposed Change: The amendment would clarify that the Legislature may authorize the seizure of contraband in non-drug-related offenses.

Comment: Proponents argue that the amendment is needed to make clear that the Legislature may define contraband outside of drug crimes. They point out that the contraband reference, as originally adopted in the 1974 constitution, was not limited to drug crimes and that the Legislature did not intend such a limit when it passed the 1989 amendment. The proposed amendment, proponents believe, will remove any doubt as to what property may be seized and avoid any adverse court ruling in the future.

Opponents argue that the amendment would make it easier for the government to seize property by allowing the Legislature to define contraband more broadly. They point out that the state supreme court has interpreted contraband to include non-drug crimes, therefore the amendment is unnecessary. For example, the court approved the seizure and disposal of a defendant's vehicle following a DWI conviction.

Proponents counter that the court has been forced to make a strained interpretation of the constitution to permit the seizure of contraband for non-drug-related offenses. They believe the Legislature will identify property as contraband only where it is appropriate and the amendment will make clear that the current contraband statutes, in existence for years, are constitutional. Furthermore, the courts would strike down unsupported provisions as unconstitutional.

Legal Citation: Act 1304 (Representative Devillier) of the 2003 Regular Session, amending Article I, Section 4.

Leasing Local Property

Current Situation: The state's constitution and laws permit local governments and economic development corporations created by them to purchase and develop industrial facilities. While the lease or sale of such property to a firm may be arranged to benefit the firm, the constitution prohibits an outright donation of the property or rental at less than market value.

The constitution prohibits the loan, pledge, or donation of public funds, credit, property, or things of value. However, it allows public entities to engage in cooperative endeavors with each other or with other private entities for a public purpose. By meeting certain criteria set out in Attorney General Opinions, a local government currently can use a cooperative endeavor agreement to provide private firms with the use of publicly owned land or buildings at no cost. One criterion is that the public benefit (i.e., taxes generated by the firm) derived from the arrangement must be commensurate with the value of the subsidy provided.

Proposed Change: The amendment would authorize parishes and municipalities to purchase and maintain land and buildings using taxes dedicated to industrial or economic development or proceeds from bonds secured by such taxes. It would allow the local government to grant the use of such property or any immovable property it owns to a person, association, or corporation under a cooperative endeavor agreement. The entity would have to agree to locate or expand an industrial enterprise within the city or parish.

You Decide

☐ A vote ***for*** would allow a parish or municipality to lease property to a new or expanding industry at below-market rates.

☐ A vote ***against*** would continue to prohibit local governments from donating the use of their property.

The amendment would require that the cooperative endeavor agreement specify the consideration to be paid and the number of residents to be employed. The State Bond Commission would have to approve the agreement.

Comment: Since 1989, exemptions to the prohibition against donating public funds to assist state and local economic development efforts have been proposed and rejected by the voters three times. The first was for St. James Parish, which had passed a sales tax dedicated for economic development but could not use it to purchase equipment to assist an industry. The later proposals involved state and local programs.

Proponents of this proposal include those involved in local industrial development efforts who wish to be able to more easily offer prospective firms free or reduced-cost use of land or facilities owned by local governments. The anti-donation provision thwarts giving outright subsidies. Proponents stress that a vote of the local taxpayers would be required to approve the dedicated tax referred to in this amendment.

Opposition to this proposal, as with earlier efforts, is based on the potential for abuse, the possibility that the recipients will not live up to their promise and a general disapproval of donating public funds to private entities. There is also some concern with the potential breadth of the proposal. It would allow the donation of *any* immovable property owned by the local government regardless of how it was obtained or its intended purpose. Such property apparently could be donated even if it was not obtained using a tax dedicated to economic development.

Legal Citation: Act 1303 (Representative Faucheux) of the 2003 Regular Session, amending Article VII, Section 14 (B).

Legislative Auditor s Political Activity

Current Situation: The Office of Legislative Auditor is created in the constitution, which specifies that the position is elected by the Legislature. The legislative auditor's function is to audit the fiscal records of state and local agencies and serve as a fiscal advisor to the Legislature.

The constitution does not limit the political activities of the legislative auditor and his staff; however, internal office policy prohibits a broad range of activity. The policy prohibits all legislative audit employees from being a candidate for public office; soliciting, making contributions or attending fund-raisers for any political party or candidate; or taking active part in managing the affairs of any political party, faction, candidate or political campaign. The policy also prohibits employees from serving in any capacity in an election, such as a poll watcher, and it clarifies the manner in which employees may express their political views in private.

Proposed Change: The amendment would limit the political activity of the legislative auditor and his employees. The legislative auditor and his staff, while in office, would be prohibited from running for public office, making or soliciting contributions to any political campaign, or being members of any political party or faction. They would, however, be able to exercise their rights as citizens to vote, serve as commissioners at the polls (but not poll watchers), and express their opinions privately.

The amendment would prohibit a legislative auditor from running for public office for two years after leaving office.

You Decide

☐ A vote ***for*** would constitutionally prohibit certain political activities by the legislative auditor and his staff and prohibit future legislative auditors from running for public office within two years of leaving office.

☐ A vote ***against*** would continue to limit the political activity of the legislative auditor and his employees through internal office policy only and continue to allow legislative auditors to run for public office within two years of leaving office.

Comment: This proposal was drafted in reaction to the current situation wherein the former legislative auditor collected more than $30,000 in campaign contributions prior to his resigning from office in order to run for governor. It should be noted that, while this proposal would have no effect on the candidacy for public office of the former legislative auditor, it would require a two-year waiting period for a legislative auditor to declare candidacy in the future.

Proponents believe the amendment is needed to maintain the credibility of the legislative auditor's office. They argue that audits and investigations conducted in the months prior to the resignation of the last legislative auditor may have been politically motivated and lack objectivity or at least suffer that appearance. Restricting the political activity of the legislative auditor and employees of the office would reduce claims of political interference and strengthen the office's integrity.

Opponents argue there is no need for a constitutional amendment when the internal policy of the office, in place for over a decade, far exceeds the limits on political activity placed on most other state employees. They argue further that the amendment simply adds unnecessary detail to the constitution that would be better placed in statutory law. Also, they say the amendment may potentially weaken prohibitions currently restricting the political activity of employees.

Proponents counter that the internal policy, though restrictive on political activity, does not bar the legislative auditor from running for public office after leaving the office.

Legal Citation: Act 1306 (Representative LeBlanc) of the 2003 Regular Session, amending Article III, Section 11.

Judges Retirement Age

Current Situation: The state's 1921 constitution established the mandatory retirement age for judges at 80 and in 1960 it was lowered to age 75. The 1974 constitution lowered it again to age 70. All Louisiana judges elected after 1974 are required to retire by their seventieth birthday, whether or not they have completed their term of office. If a judge turns 70 in the middle of his or her term, a special election is held to replace the officeholder. Those judges elected prior to the 1974 constitution may remain in office until age 75.

Proposed Change: The amendment would allow a judge who reaches the age of 70 while in office to complete his or her term.

Comment: As the mandatory retirement age has decreased, life expectancy has increased. Proponents argue that judges often begin serving later in their careers; that age alone should not be an impediment to serving; and mechanisms exist to remove incompetent judges. The Louisiana Supreme Court can remove incompetent judges of any age upon recommendation of the Judiciary Commission. The amendment was also designed to save the state money by eliminating the need for special elections to replace judges who turn 70 during their terms.

Opponents point out that supreme court and court of appeal judges, who serve ten-year terms, could potentially remain in office until they are almost 80 years old. Opponents see the amendment simply as an attempt to bypass the mandatory retirement age of 70. A proposed amendment to raise the mandatory retirement age to 75 was rejected by the voters in 1995.

You Decide

☐ A vote **for** would allow a judge who reaches the age of 70 while in office to complete his or her term.

☐ A vote **against** would continue to require mandatory retirement for all judges upon reaching 70 years of age.

Legal Citation: Act 1296 (Representative Frith) of the 2003 Regular Session, amending Article V, Section 23 (B).

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Voting on Louisiana Proposed Constitutional Amendments (1921 - 2002)

	Number of Amendments Proposed	Number of Amendments Approved	Average Percent of Registrants Voting
1921 Constitution	**802**	**536**	--
1974 Constitution (Total)	**169**	**111**	--
November 7, 1978	1	1	29.9
October 27, 1979	3	3	37.5
November 4, 1980	4	4	55.7
September 11, 1982	8	4	24.9
October 22, 1983	3	3	44.2
November 6, 1984	5	0	53.7
September 27, 1986	7	2	39.3
November 21, 1987	5	5	32.3
October 1, 1988	1	0	27.5
April 29, 1989	1	0	46.8
October 7, 1989	13	5	28.3
October 6, 1990	15	14	46.9
October 19, 1991	8	5	47.1
October 3, 1992	5	2	29.4
November 3, 1992	7	0	53.7
October 16, 1993	6	6	18.1
October 1, 1994	4	4	30.9
October 21, 1995	15	13	46.9
November 18, 1995	1	1	53.2
September 21 1996	2	2	36.1
November 5, 1996	3	3	54.4
October 3, 1998	18	15	19.6
November 3, 1998	2	2	26.4
October 23, 1999	10	5	31.9
November 20, 1999	6	6	23.1
November 7, 2000	4	0	51.0
November 5, 2002	12	6	35.7

SOURCE: Official Promulgation, Secretary of State.

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