

PAR Guide to the 2012 Constitutional Amendments

An Independent, Non-Partisan Review

Voter Checklist – November 6, 2012

- | YES | NO | |
|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | 1. Medicaid Trust Fund for the Elderly |
| <input type="checkbox"/> | <input type="checkbox"/> | 2. Strict Scrutiny Review for Gun Laws |
| <input type="checkbox"/> | <input type="checkbox"/> | 3. Earlier Notice of Public Retirement Bills |
| <input type="checkbox"/> | <input type="checkbox"/> | 4. Homestead Exemption for Veterans' Spouses |
| <input type="checkbox"/> | <input type="checkbox"/> | 5. Forfeiture of Public Retirement Benefits |
| <input type="checkbox"/> | <input type="checkbox"/> | 6. Property Tax Exemption Authority for New Iberia |
| <input type="checkbox"/> | <input type="checkbox"/> | 7. Membership of Certain Boards and Commissions |
| <input type="checkbox"/> | <input type="checkbox"/> | 8. Non-Manufacturing Tax Exemption Program |
| <input type="checkbox"/> | <input type="checkbox"/> | 9. More Notice for Crime Prevention District Bills |

Voter Checklist – Local Option Vote

- | YES | NO | |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | 1. Term Limits for Local School Board Members |



Introduction

Louisiana voters will be asked to decide nine proposed amendments to the Louisiana Constitution on the Nov. 6 ballot. These proposals were approved by legislators during the 2012 Regular Session. Those receiving a majority vote in the statewide election will be enacted.

As required for passage of constitutional amendments, each bill received at least a two-thirds vote in the House of Representatives and in the Senate. The governor cannot veto proposals for constitutional amendments.

A constitution is supposed to be a state's fundamental law that contains the essential elements of government organization, the basic principles of governmental powers and the enumeration of citizen rights. A constitution is meant to have permanence. Statutory law, on the other hand, provides the details of government operation and is subject to frequent change by the Legislature.



Typically, constitutional amendments are proposed to authorize new programs, ensure that reforms are not easily undone by future legislation or seek protections for special interests. Unfortunately, as more detail is placed in the Constitution, more amendments may be required when conditions change or problems arise with earlier provisions.

Louisiana has a long history of frequent constitutional changes. Too often, amendments are drafted for a specific situation rather than setting a guiding principle and leaving the Legislature to fill in the details by statute. Special interests frequently demand constitutional protection for favored programs to avoid future legislative interference, resulting in numerous revenue dedications and trust fund provisions. The concept of the Constitution as a relatively permanent statement of basic law fades with the adoption of many amendments.

Through the House Committee on Civil Law and Procedure, the Legislature is supposed to make certain that each proposed amendment does, in fact, need to be posed to voters. In other words, committee members look to see if the goal of each proposed amendment can be accomplished simply by passing a law or whether it requires amending the Constitution. The Legislature has tried to make proposed amendments easier to understand by requiring that the ballot language be written in a "clear, concise and unbiased" manner and that it be phrased in the form of a question.

Voters must do their part as well. In order to develop informed opinions about the proposed amendments, they must evaluate each one carefully and

make a decision based on its merits. One important consideration should always be whether the proposed language belongs in the Constitution. Another should be whether they clearly understand what will happen if the proposed amendment is approved or rejected.

Since its implementation in 1974, the Louisiana Constitution has been amended 167 times.

In addition to the proposed constitutional amendments, another question will appear on the Nov. 6 ballot for voters across Louisiana to decide. Under the provisions of Act 386 (House Bill 292) by Rep. Steve Pugh, nearly every public school district in the state must ask voters whether they want to impose term limits on their local school boards.

This vote is not asking voters to change the Constitution and does not require a statewide majority to pass. Term limits will become effective only in those school districts where a majority of the vote is in favor of the proposal. Because this question appears on most ballots statewide, PAR is providing a review of it to further public education about this significant decision.



1. Medicaid Trust Fund for the Elderly

**YOU
DECIDE**



A VOTE FOR WOULD

prohibit the Legislature or governor from taking money from the Medicaid Trust Fund for the Elderly to help balance the state operating budget.

A VOTE AGAINST WOULD

leave the possibility that money could be taken from the fund.

CURRENT SITUATION

Louisiana's Medicaid Trust Fund for the Elderly was established with federal dollars in 2000 to provide a permanent source of support for health care programs for the state's poor and elderly. Investment earnings from the fund are used to offset rising costs of nursing home and home-care services. The fund had a market value of \$519.5 million at the end of the 2012 fiscal year, with earnings of \$22.5 million.

When the state anticipates a deficit in its annual budget, Louisiana's Constitution allows money to be tapped from various government trust funds to cover the shortfall. The Medicaid Trust Fund has never been tapped for this purpose but some lawmakers are concerned cash might be "swept" from the fund sometime in the future to help balance the operating budget. The Constitution provides special protection to a number of trust funds, but the Medicaid Trust Fund is not among them.

PROPOSED CHANGE

The proposed amendment would add the Medicaid Trust Fund for the Elderly to the list of funds protected in the Constitution from being "swept" of cash when the state is looking for additional money to help balance the state budget.

COMMENT

The state acquired the money for the Medicaid Trust Fund by taking advantage of an ambiguity in the rules governing a federal health care funding program. That provision allowed states to borrow from private entities and use the money to obtain federal matching funds.

In Louisiana's case, the state borrowed money on a short-term basis from parish-owned nursing homes to get the federal matching funds. Louisiana was the last of 29 states to utilize the procedure before the federal rules

were tightened and the borrowing practice was stopped. Over the course of two years, the state received about \$960 million in federal matching funds.

The state Medicaid agency worked with federal officials to maintain integrity in the use of federal funds. Whereas many other states had utilized the federal windfall to fund non-health programs or even reduce state taxes in some cases, Louisiana guaranteed the money would be used to fund nursing homes, in-home care for the elderly and persons with disabilities and primary care services. The Legislature established the Medicaid Trust Fund for the Elderly with rules for how the trust fund dollars would be invested and spent. The only money that has been put into the trust fund since has come from investment earnings and a couple of other minor sources.

In 2010, Louisiana agreed to pay the federal Medicaid agency \$122 million to settle claims that the state had violated rules regarding Medicaid payments to public nursing homes. The settlement money was taken from the Medicaid Trust Fund. The dispute raised the prospect that federal authorities could again claim repayments if the state spends the fund's money for purposes unintended by the health care program.

Under the state Constitution, the Legislature and the governor under certain conditions and limitations can withdraw money from government trust funds to eliminate a projected deficit. For example, the governor can make mid-year adjustments by taking 5 percent from each available fund if a revised revenue forecast shows a certain decreased level of state income for that year. The governor and Legislature also can take far more from such funds when crafting a new state budget. In the past few years, in particular, the governor and Legislature have used this approach during the annual appropriations process to help balance the state budget when revenues have fallen short. Some funds have been nearly emptied, repeatedly.

Despite constitutional questions and protests from some legislators and interest groups that pay fees to the various funds or receive benefits from them, the supporters of fund sweeping have contended that this method of appropriation is a necessary step to stabilize Louisiana's finances and to prevent further reductions in spending on higher education, health care, corrections and other vital government functions.

The Constitution provides special protection for an elite group of trust funds, including the Millennium Trust, the Louisiana Education Quality Trust Fund, public pensions, bond security funds and the Patient's Compensation Fund. If Amendment No. 1 passes, the Medicaid Trust Fund would join this list and become invulnerable to appropriations, statutory changes or mid-year budget adjustments that would attempt to sweep its money.

What is the Medicaid Trust Fund for the Elderly?

As the cost of caring for the elderly rises for nursing homes and other services, the Medicaid Trust Fund provides a way to offset the increases by adjusting the payment rates every year. That, in turn, allows the nursing homes to avoid some of the state budget reductions hitting other health care providers. The nursing home industry is an advocate of the Medicaid Trust Fund and supports the proposed amendment.

The state treasurer is required to invest the fund's money. A constitutional amendment in 2007 allows the treasurer to invest up to 35 percent of the fund in the stock market and other equities. Two-thirds of the earnings from the investments is spent on nursing home care and the remaining one-third goes toward home- and community-based services, primary care and other purposes.

Other than investment earnings, the only revenue flowing into the Medicaid Trust Fund has been fees from a specialty license plate that honors "Seniors—Our Heritage" and payments from nursing homes that fail to meet the designated expenditure floor for direct care.

Under Louisiana law, all unencumbered and unexpended money remaining in the fund at the end of each fiscal year is required to stay in the fund. The principal of the fund generally is not subject to appropriation except in six specific instances detailed in the statutes. Among those exceptions are the annual re-basing—or resetting—of nursing home rates and the reimbursement of any money deposited into the fund as a result of overpayments by the federal government.

For the first eight years in the life of the fund, the average year-end balance was approximately \$800 million. Investments by the state treasurer yielded sufficient returns to almost offset the entirety of annual expenditures. However, since 2009 the fund has been depleted by about \$300 million. This downturn has been caused primarily by more frequent rate adjustments than originally anticipated. The economic recession and investment market conditions also have played a role.

ARGUMENT FOR

The money in the Medicaid Trust Fund should continue to be used for its intended purpose: providing a permanent source of support for health care programs for the poor and elderly, particularly nursing home care. If the Constitution does not expressly forbid the state from taking money from the fund to use for other purposes, then the Legislature could change the statutory language at any time and divert the money. Also, any use of Medicaid Trust Fund money for purposes other than health care could lead federal authorities to claim that the money was misspent and must be paid back.

Furthermore, the trust fund does not burden state taxpayers because almost all of its money came from the federal government or was earned through investments. Without such a fund, the state would be unable to ensure a higher level of care for its senior citizens.

ARGUMENT AGAINST

Money in the Medicaid Trust Fund has never been taken for any purpose other than what it was originally intended to be used for, so the amendment proposes to address a problem that does not seem to exist. State statutes already detail clearly under what circumstances money from the fund can be used, and helping the state balance its budget is not one of them.

This amendment would add yet another exception to Louisiana's cluttered Constitution. Many other funds established by the state for specific interest groups also would like protection under the Constitution, which could become even more clogged with unnecessary exceptions and minutia. Constitutionally prohibiting the use of money in the Medicaid Trust Fund to help alleviate dire budget circumstances also could limit the Legislature's flexibility to address future crises.

LEGAL CITATION

Act 873 ([Senate Bill 82](#) by Sen. Buffington and Rep. Hunter) of the 2012 Regular Session, adding Article VII, Section 10(F)(4)(g).

2. Strict Scrutiny Standard for Gun Laws

YOU DECIDE



A VOTE FOR WOULD

require that any laws restricting the right to keep and bear arms be subject to the highest level of judicial review, known as strict scrutiny. Also, the amendment would say that the right to keep and bear arms is a fundamental one in Louisiana. It would delete a line in the Constitution that says the right to keep and bear arms shall not prevent the passage of laws to prohibit the carrying of concealed weapons.

A VOTE AGAINST WOULD

retain the existing language in the Constitution, which affirms that the right to keep and bear arms shall not be abridged but does not require strict scrutiny of arms laws and expressly allows the Legislature to regulate concealed weapons.

CURRENT SITUATION

Both the U.S. and Louisiana constitutions address the right to keep and bear arms—a term that encompasses weapons as well as handguns. Statutory restrictions on carrying weapons can be found at both the federal and state levels. Federal and state courts sometimes are called upon to determine if a weapons restriction law conflicts with the constitutional right to keep and bear arms. In weighing these decisions, the courts may consider other constitutional principles, such as private property rights.

There are various ways that a law might come before a court for judicial review. For example, someone accused of violating a gun restriction law could contend the restriction was unconstitutional. When the judicial system reviews laws, judges use one of three levels of review as the framework for determining whether a law is valid or invalid. The three levels of review are rational basis, intermediate scrutiny and strict scrutiny. The most common standard of judicial review and the one used currently to evaluate the validity of gun laws in Louisiana is rational basis. Under this standard, a law is considered valid if it is rationally related to a legitimate government interest.

The most stringent standard of judicial review is strict scrutiny. This level of review is reserved for cases about the validity of laws that may infringe on an individual's fundamental rights. Fundamental rights include such things as the right to vote and the right to freedom of expression.

Only in limited instances does the state Constitution specify a specific judicial standard for reviewing laws. Usually the court decides by what standard a law should be judged.

Louisiana is generally recognized as having among the least restrictive gun laws in the country. Louisiana is an “open carry” state, which means most citizens who are legally allowed to own a gun may carry that gun openly without a permit in most public places. However, to carry a concealed handgun, citizens must adhere to laws that require among other things an application for a permit, a background check, participation in a firearms safety course, fingerprinting and limits on where it may be carried. For instance, current law prohibits carrying a concealed handgun into any school, school campus or school bus or into public structures such as law enforcement buildings, detention facilities, courthouses, polling places, meeting places of governing authorities, the State Capitol, airports or bars. Owners of private properties such as homes or businesses also may prohibit or restrict guns on their property, whether open or concealed.

In recent years the U.S. Supreme Court has ruled on key cases relating to the interpretation of the U.S. Constitution’s Second Amendment, which addresses “the right of the people to keep and bear arms.” Among its impacts, the landmark 2008 decision in [District of Columbia vs. Heller](#) held that individuals had the right to keep loaded handguns for traditionally lawful purposes in the home. The high court reached a similar conclusion two years later in [McDonald vs. City of Chicago](#), declaring it to be a fundamental right. In both cases the court struck down firearm prohibitions, but the decisions were made with a 5-4 vote.

The concern among some gun rights advocates is that a shift of a vote by a single justice or a change in the makeup of the U.S. Supreme Court could tilt that close vote the other way in future federal court cases. If that were to happen, gun rights advocates want to have constitutional language in place at the state level that would unequivocally express the principle in Louisiana that possessing a weapon is a fundamental right and that any attempt to limit that right must meet the most rigorous of judicial tests.

PROPOSED CHANGE

The proposed amendment would add language to the Constitution that says the right to possess a weapon is a fundamental right in Louisiana and any restriction must pass a “strict scrutiny” judicial review. The amendment also would remove language from the Constitution that explicitly gives the Legislature the authority to pass laws restricting the right to carry a concealed weapon.

COMMENT

Under strict scrutiny, a law must pass three tests to be considered valid. The government first must prove it has a compelling interest that justifies the passage of the law. In the case of gun laws, public safety is the state's compelling interest. Courts generally agree that public safety is a compelling interest or a valid reason for states to pass laws that might infringe on an individual's Second Amendment rights.

The law also must be narrowly tailored to achieve the compelling interest. That is, the law may not be overly broad in its reach. For example, a law that bans any individual with a misdemeanor conviction from purchasing a gun for the rest of his life would be considered excessively broad as compared to a similar ban for an individual convicted of a violent crime.

Finally, the law must also be the least restrictive means of achieving the state's compelling interest. If there is any alternative that is less restrictive but would still achieve the compelling interest then the law must be judged invalid and overturned.

CONSTITUTIONAL PROVISIONS

The Second Amendment of the U.S. Constitution

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Article I, Section 11 of the Louisiana Constitution:

The right of each citizen to keep and bear arms shall not be abridged, but this provision shall not prevent the passage of laws to prohibit the carrying of weapons concealed on the person.

How Article I, Section 11 of the Louisiana Constitution would read if the proposed amendment passes:

The right of each citizen to keep and bear arms is fundamental and shall not be infringed. Any restriction on this right shall be subject to strict scrutiny.

ARGUMENT FOR

This change in the Constitution would give Louisiana the strongest protection of arms rights in the nation and protect the rights of law-abiding citizens. The right to keep and bear arms is a fundamental right and there should be no doubt about that in the state's Constitution. Any law that would restrict or infringe on such a fundamental right ought to meet the highest standard of judicial review to ensure that the law truly addresses a compelling public safety threat and is not too broad in its impact or any more restrictive than necessary to meet its goal.

The state could continue to prohibit guns at schools, in government buildings and some other sensitive areas where the state has a compelling government interest in ensuring public safety. Private property owners also would not have to worry about being prevented from prohibiting or restricting weapons on their property because private property rights would take precedence.

Furthermore, if the makeup of the U.S. Supreme Court were to change, then the interpretation of Second Amendment rights could change, allowing states or local jurisdictions to pass greater restrictions on guns, even in the home. The proposed amendment would help prevent such laws that infringe on fundamental gun rights from taking root at the local or state level in Louisiana. Strengthening the Louisiana Constitution would protect the Second Amendment rights of residents in the future.

The current wording in the Louisiana Constitution that allows the Legislature to pass laws to restrict the carrying of concealed weapons could result in a wholesale ban on concealed weapons anywhere in the state—including inside one's own home. Deleting that language would help ensure that in the future the Legislature could not enact such a ban. However, the deletion of that language does not mean the Legislature would lose its right to pass concealed carry laws. For example, many other states do not have explicit constitutional provisions about concealed gun laws and their legislators are able to regulate concealed carry weapons. The proposed amendment does not take away the authority of the Legislature to pass gun laws but subjects those laws to greater scrutiny by the courts to ensure the protection of fundamental rights.

ARGUMENT AGAINST

The current wording in the state Constitution is sufficient to protect the rights of law-abiding gun owners.

Passage of the proposed amendment could lead to an increase in challenges to the state's existing gun laws and the possibility that some laws used to help prosecute criminals could be overturned. Any of the statutes in the Criminal Code regarding the possession and carrying of guns could be affected.

These include laws that prohibit convicted felons from possessing firearms, make it illegal to carry a firearm in bars or at parades, or forbid the possession of firearms with serial numbers removed. Other laws that could be challenged are those in which the use or threatened use of a firearm increases the severity of the crime. For instance, use of a firearm in cases of assault and battery, kidnapping, robbery and drug crimes can lead to stronger charges and harsher penalties. Someone caught possessing certain narcotics can get

more years in prison if that person is caught with a gun also. Someone sentenced to a longer prison term because he had a firearm while committing a crime could argue that the firearms possession law was unconstitutional.

Although it is unknown if any of these challenges ultimately would succeed, the proposed constitutional amendment opens the door wider to the possibility. Adding to the concern is the fact that the amendment deletes the language giving the Legislature the specific authority in the Constitution to restrict concealed weapons. A court might conclude that there is some significance to the fact that the voters intentionally removed this line and take that into consideration when evaluating whether a law meets the strict scrutiny test.

LEGAL CITATION

Act 874 (Senate Bill 303 by Sen. Riser) of the 2012 Regular Session, amending Article I, Section 11.

3. Earlier Notice of Public Retirement System Bills

YOU DECIDE



A VOTE FOR WOULD

require that bills affecting the state's public retirement systems be filed a month earlier than other types of legislation submitted prior to a legislative session. A vote for also would double the public notice period for prefiled retirement bills.

A VOTE AGAINST WOULD

mean bills affecting public retirement systems would continue to be subject to the same prefiling period and public notice requirements as they are now.

CURRENT SITUATION

Legislators who file bills before a regular legislative session must do so no later than 10 calendar days before the first day of the session. This is known as prefiling. Usually, prefiled bills are formally introduced on the first day of a session. A legislator may file five bills during a session and the Legislature's rules make certain exceptions to allow more. Also, any proposed amendment to the Constitution must be prefiled at least 10 calendar days before the start of a legislative session.

The Constitution further provides that any proposals to change existing laws or constitutional provisions related to the state's public retirement systems cannot be introduced in the Legislature unless prior public notice has been given. That notice must consist of publication in the official state journal on two separate days, and the last day of publication must be at least 30 days before the bill is introduced.

PROPOSED CHANGE

The amendment would establish separate prefiling and public notice requirements for any proposal to change the state's public retirement systems. Retirement bills or constitutional amendments would have to be prefiled no later than 45 calendar days before the first day of the session.

In addition, notices of intention to introduce a bill affecting the state's public retirement systems would have to be published in the official state journal on two separate days, with the second notice published no later than 60 days before the bill is introduced.

COMMENT

Retirement bills by their nature tend to be complicated. Estimates of their eventual impact must be based on assumptions and estimates about future events and trends. Each bill must be evaluated by an actuary to determine the estimated impact on benefits and state finances.

Louisiana has four “state” retirement systems covering state and public school employees and nine “statewide” retirement systems covering mainly local government workers. In addition, eight local jurisdictions and agencies maintain their own systems. The systems were created at different times, for different employee groups and with different benefits and funding arrangements. Each has its own member-dominated board responsible for administering the system and investing its assets. Collectively, these 21 systems represent more than 347,000 public employees and retirees and about \$26 billion in assets.



Although each of these systems oversees its own operations, the Constitution gives the Legislature the sole authority to make any change in member benefits. As a result, retirement bills tend to make up a significant percentage of the measures legislators consider during each session.

The 2012 Regular Session was no exception as about 120 bills having to do with the state’s public retirement systems were filed. These included unsuccessful measures sought by the governor that would have resulted in significant changes for many state employees, such as raising the age for retirement benefits and increasing the required employee contribution. Critics complained that they were not given enough time to digest the content of the bills or to determine the full impact. The bills’ supporters contended that the proposals were explained well ahead of the session and that delays and changes during the legislative process were due to the administration’s effort to accommodate criticisms and make compromises on the legislation.

ARGUMENT FOR

Given the complexity and the importance of retirement bills, those who will be most affected—the state’s public employees—need as much time as possible to look over the proposals, understand what they do and don’t do, and decide how they want to participate in the discussion. Setting earlier deadlines for pre-filing retirement bills and for publishing the notices of intent would give the public more time to digest the content of the bills and understand their impact. An earlier filing deadline also would give the state’s actuaries more time to analyze the impact of any proposed retirement bills.

In addition, the substance of this amendment comes from a recommendation of the Commission on Streamlining Government, which was given the task of coming up with ways to make state government more efficient and effective. Specifically, the commission recommended that “the Legislature consider adopting a special, earlier prefiling date for legislation related to retirement to allow adequate time for fiscal and actuarial analysis of the effect of the proposed legislation.”

PUBLIC EMPLOYEE RETIREMENT SYSTEMS

Louisiana has 21 public employee retirement systems divided into three categories. Under the proposed constitutional amendment, the public would have to be given earlier notice than is now required under state law if a legislator planned to file a bill affecting any of the systems.

State Retirement Systems

- Louisiana School Employees' Retirement System (LSERS)
- Louisiana State Employees' Retirement System (LASERS)
- Louisiana State Police Retirement System (STPOL)
- Teachers' Retirement System of Louisiana (TRSL)

Statewide Retirement Systems

- Louisiana Assessors' Retirement Fund (ASSR)
- Louisiana Clerks of Court Retirement and Relief Fund (CCRS)
- District Attorneys' Retirement System (DARS)
- Firefighters' Retirement System of Louisiana (FRS)
- Municipal Employees' Retirement System of Louisiana (MERS—Plans A&B)
- Municipal Police Employees' Retirement System (MPERS)
- Parochial Employees' Retirement System (PERS—Plans A&B)
- Registrars of Voters Employees' Retirement System (RVRS)
- Sheriffs Pension and Relief Fund (SPRF)

Local Retirement Systems

- City of Alexandria Employees' Retirement System
- City of Baton Rouge - Parish of East Baton Rouge Employees' Retirement System
- Harbor Police Retirement System
- Employees' Retirement System of Jefferson Parish
- City of New Orleans Employees' Retirement System
- New Orleans Firefighters' Pension and Relief Fund
- Sewerage and Water Board of New Orleans
- Employees Retirement System-The City of Shreveport



ARGUMENT AGAINST

Moving up the deadline for prefiling and publishing the notices of intent may not have the desired effect. For instance, the earlier publication deadline for notices of intent would provide more advance warning of a proposed retirement bill but would not necessarily provide useful details. Furthermore, there is nothing to stop legislators from changing the bills as they move through the legislative process. Bills can be altered substantially as long as the changes are germane to the original version.

Because retirement bills are so complicated, time is needed to analyze new ideas, to negotiate specific proposals and to build consensus for recommendations that bring real change. An earlier date for prefiling actually works against these values.

LEGAL CITATION

Act 872 ([Senate Bill 21](#) by Sen. Guillory) of the 2012 Regular Session, amending Article III, Section 2(A)(2), Article X, Section 29(C) and Article XIII, Section 1(A).

4. Property Tax Exemption for Spouses of Certain Disabled Veterans

YOU DECIDE



A VOTE FOR WOULD

allow the spouse of a deceased veteran who had a 100 percent service-connected disability rating to claim a higher homestead exemption even if the exemption was not in effect at the time the veteran died.

A VOTE AGAINST WOULD

mean the spouse could not claim the higher exemption if the veteran died before it took effect.

CURRENT SITUATION

The Constitution lists all eligible exemptions from property taxes. It exempts from most property taxes up to \$75,000 of the value of a homestead. In order to qualify for the homestead exemption, the owner must both own and occupy the property. The exemption does not apply to municipal taxes, except in Orleans Parish.

A 2010 amendment to the Constitution gave local parish governing authorities the ability to ask voters to double the homestead exemption in their parishes for disabled veterans with a 100 percent service-connected disability rating. The exemption is now \$150,000 for those who qualify in the parishes that voted in favor of the amendment. The 2010 change allowed the spouses of these veterans to continue claiming the higher exemption if it was in effect at the time the veteran died. As of September 2012, voters in 48 parishes had approved measures allowing the increased exemption.

PROPOSED CHANGE

The proposed amendment tweaks the language of the 2010 amendment and says that if the surviving spouse of a deceased disabled veteran occupies and remains the owner of the couple's home, he or she can claim the higher homestead exemption whether or not the exemption was in effect at the time the veteran died.

COMMENT

The 2010 amendment made no provision for what should happen if a disabled veteran passed away before the higher homestead exemption could go into effect. At least one spouse of a disabled veteran who would

have qualified for the higher exemption was unable to claim it when her husband died before the exemption actually took effect. The concern that other surviving spouses could be affected in the same way prompted the proposed amendment.

If voters approve the proposed amendment on Nov. 6, it will take effect Jan. 1, 2013, and will apply to exemptions adopted in parishes both before and after that date. In other words, parishes that already have adopted the increased homestead exemption will not be required to put the question before voters again.

As the total value of homestead exemptions in a parish rises, the total value of taxable property falls. All else being equal, higher homestead exemptions for some taxpayers normally would lead to higher millages for all other taxpayers. These higher rates would be triggered by a millage adjustment (roll-up), which effectively transfers any revenue loss from the taxing authority to taxpayers. The 2010 amendment treated the veterans' homestead exemption differently by prohibiting any mandatory roll-up that might be warranted from it. Instead, the taxing body is required to absorb the tax loss.

ARGUMENT FOR

This amendment is a good gesture of support for veterans and their spouses.

The impact on local taxing bodies would be minimal. In 2010, officials estimated there were approximately 2,000 homeowner/occupants in Louisiana who would be eligible for the higher exemption. The estimated statewide impact if all parishes offered the new exemption was \$2 million in lost annual local revenues, less than one-tenth of 1 percent of total property taxes collected statewide.

Including the spouses of veterans who pass away before the increased homestead exemption takes effect would not change the overall estimate of 2,000 homeowner/occupants who would be eligible.

ARGUMENT AGAINST

Approval of this proposed amendment would result in yet another expansion of the homestead exemption and would further erode the local tax base in parishes that opt to extend the benefit.

LEGAL CITATION

Act 875 (Senate Bill 337 by Sen. Amedee and 41 members of the House of Representatives) of the 2012 Regular Session, amending Article VII, Section 21(K)(1).

Homestead Exemption for Certain Disabled Veterans

After voters approved a constitutional amendment in 2010 authorizing parish governing authorities to ask residents whether they wanted to increase the homestead exemption for certain disabled veterans, 48 parishes did so. Voters in all of these parishes, in turn, overwhelmingly said yes to the increase. Four more parishes will ask their residents to vote Nov. 6 on whether to grant the increased homestead exemption. Governing authorities in the remaining 12 parishes have not yet scheduled a vote.

Parishes that have approved the increased homestead exemption

<i>Acadia Parish</i>	<i>Grant Parish</i>	<i>St. Bernard Parish</i>
<i>Ascension Parish</i>	<i>Iberia Parish</i>	<i>St. Charles Parish</i>
<i>Assumption Parish</i>	<i>Iberville Parish</i>	<i>St. Helena Parish</i>
<i>Avoyelles Parish</i>	<i>Jefferson Parish</i>	<i>St. James Parish</i>
<i>Beauregard Parish</i>	<i>Jefferson Davis Parish</i>	<i>St. John the Baptist Parish</i>
<i>Bienville Parish</i>	<i>Lafayette Parish</i>	<i>St. Landry Parish</i>
<i>Bossier Parish</i>	<i>Lafourche Parish</i>	<i>St. Martin Parish</i>
<i>Caddo Parish</i>	<i>LaSalle Parish</i>	<i>St. Mary Parish</i>
<i>Calcasieu Parish</i>	<i>Livingston Parish</i>	<i>St. Tammany Parish</i>
<i>Caldwell Parish</i>	<i>Morehouse Parish</i>	<i>Tangipahoa Parish</i>
<i>Cameron Parish</i>	<i>Natchitoches Parish</i>	<i>Terrebonne Parish</i>
<i>Concordia Parish</i>	<i>Ouachita Parish</i>	<i>Union Parish</i>
<i>De Soto Parish</i>	<i>Plaquemines Parish</i>	<i>Vermillion Parish</i>
<i>East Baton Rouge Parish</i>	<i>Pointe Coupee Parish</i>	<i>Washington Parish</i>
<i>East Feliciana Parish</i>	<i>Rapides Parish</i>	<i>Webster Parish</i>
<i>Franklin Parish</i>	<i>Richland Parish</i>	<i>West Baton Rouge Parish</i>

On the Nov. 6, 2012, ballot

<i>Catahoula Parish</i>	<i>Madison Parish</i>	<i>West Feliciana Parish</i>
<i>East Carroll Parish</i>		

Parishes that have not put the homestead exemption question to voters

<i>Allen Parish</i>	<i>Lincoln Parish</i>	<i>Tensas Parish</i>
<i>Claiborne Parish</i>	<i>Orleans Parish</i>	<i>Vernon Parish</i>
<i>Evangeline Parish</i>	<i>Red River Parish</i>	<i>West Carroll Parish</i>
<i>Jackson Parish</i>	<i>Sabine Parish</i>	<i>Winn Parish</i>

5. Forfeiture of Public Retirement Benefits for Convicted Public Servants

YOU DECIDE



A VOTE FOR WOULD

allow the courts to include forfeiture of a portion of public retirement benefits as part of the sentence for a public servant convicted of a felony related to his or her office.

A VOTE AGAINST WOULD

leave the current system in place, which means a public servant convicted of a felony related to his or her office would be allowed to keep whatever public retirement benefits he or she has earned, except for court-ordered restitution and other specific circumstances already described in law.

CURRENT SITUATION

In general, a public servant's retirement benefits are untouchable. However, the Constitution does permit seizing a portion of public retirement benefits under certain conditions. For instance, current law provides that a public employee or official's retirement benefits may be seized to pay court-ordered child support or garnished to pay court-ordered fines or restitution, or the costs of incarceration, probation or parole if the official is convicted of a felony associated with his or her office.

PROPOSED CHANGE

Any public servant convicted of a felony associated with his office could be required to forfeit some or all of his public retirement benefits. It would be up to the court to decide. Only the publicly funded portion of a person's retirement benefits would be affected. Any amount forfeited could go toward reducing the unfunded accrued liability of the specific retirement system through which the public servant has earned benefits. The provisions would apply only to those hired, rehired or elected on or after Jan. 1, 2013. Public employees hired before Jan. 1, 2013, would be exempt from the provisions. Any current elected official eligible for public retirement benefits would come under the provisions of the law if he or she were re-elected after Jan. 1, 2013.

COMMENT

The convictions of several Louisiana public officials over the past few years have led to a renewed debate about whether such officials should be permitted to keep the retirement benefits they earned while in office. Louisiana

statutes permit the seizure of public retirement benefits only for the purposes of restitution, child support or reimbursement of legal costs associated with a felony conviction. Legislators have the authority to make statutory changes in the state's retirement laws. At the same time, however, the Constitution contains provisions that explicitly protect retirement benefits.

In the past, most lawmakers have objected to an expansion of the seizures. One criticism was that it would be unfair to take away retirement benefits a person has earned, particularly if the crime for which he or she was convicted only occurred during a portion of his or her tenure in office. Others questioned the impact on unsuspecting spouses or children who might be counting on the benefits.

In 2008, when Rep. Tony Ligi—the bill's primary author—made his first attempt to pass a similar constitutional amendment, 16 states had some type of law on the books requiring public servants convicted of a crime to forfeit their public retirement benefits. That number since has risen to 23 states, with the latest being Maine. The proposed amendment on the Nov. 6 ballot marks Ligi's third attempt to change the Constitution to allow the Legislature to enact a retirement forfeiture penalty. His success in steering the measure through the Legislature was due in large part to significant revisions of the original proposal following numerous discussions with the groups that would have to implement the change. In particular, Ligi changed the original legislation to remove a provision that forfeiture of retirement benefits be mandatory when a public official is convicted of a crime.

While the amendment itself is fairly simple, the details in the companion legislation—Act 479—are what give it teeth. The companion legislation specifies that the retirement benefit forfeiture provision would apply if a public servant has been convicted of a crime associated with his office that resulted in financial gain or the potential for financial gain, or if a public servant has been convicted of a criminal sexual act involving a minor and there was a direct association between the two related to the public servant's job.

Act 479's details also explain how the forfeiture process would work and what safeguards would be in place to protect any innocent parties. In particular, the court could award some portion of the amount that would otherwise be forfeited to a spouse, former spouse or dependent of the public servant, subject to a set of conditions. Community property rights are not directly addressed in the law; presumably a judge would have to take into consideration the legal and appropriate distribution of community property with regard to retirement benefits for a spouse or someone with a rightful claim to the retirement assets.

During employment, both the public servant and the government employer make payments toward a person's retirement benefits. If a court ordered

forfeiture of benefits, only the publicly funded portion of a person's retirement benefits would be affected. However, the public employee's personal contributions would not necessarily remain untouched. Any restitution ordered by the court would come from the convicted public servant's personal contributions. Act 479 was approved by the Legislature, but it will not take effect unless voters approve the constitutional amendment.

ARGUMENT FOR

When someone takes a position of public trust, he or she is expected to honor that trust, not abuse the position for personal gain. When such abuse does occur, the person should suffer the consequences, including the loss of any retirement benefits earned.

Right now, the Constitution ties legislators' hands when it comes to reducing public retirement benefits. In fact, Article X, Section 29 of the Constitution states that "The accrued benefits of members of any state or statewide public retirement system shall not be diminished or impaired." That means the Constitution must be amended to give legislators the ability to take away convicted officials' or public employees' retirement benefits.

The amendment would send a strong message both to public servants and to members of the public that corruption in office and violations of the public trust will not be tolerated and that if they occur, they will be punished.

The companion bill that accompanies the proposed amendment requires anyone affected by the amendment—those hired, rehired or elected on or after Jan. 1, 2013—to sign an acknowledgement form that explains the law. The hope is that prior knowledge of the law's provisions might increase the deterrent effect.

ARGUMENT AGAINST

There really is no reason to take away retirement benefits because current state law already provides other penalties such as garnishment for crimes associated with public office. Besides, many public corruption cases are handled by federal prosecutors using federal courts and laws, which mandate restitution to the fullest extent possible for the losses of a victim, such as the state or other government entity.

Approval of the constitutional amendment would expand legislative authority to change public retirement benefits. For instance, the companion statute – Act 479 – could be replaced in the future by a simple majority vote of both houses of the Legislature with measures that either spell out tougher penalties or lessen the penalties.

The proposed amendment isn't strong enough because the forfeiture provisions would apply only to public employees hired on or after Jan. 1, 2013. Current public employees would be exempt.

In addition, allowing the forfeiture of retirement benefits may create a problem with convicted officials who end up with no means of support. In that case, the state likely would have to step in and provide public assistance, which would cost taxpayers money.

LEGAL CITATION

Act 868 (House Bill 9 by Reps. Ligi and Champagne) of the 2012 Regular Session, adding Article X, Section 29(G). Companion legislation is Act 479 (House Bill 10 by Rep. Ligi and 46 co-sponsors).

PUBLIC CORRUPTION CASES AT THE FEDERAL COURT LEVEL

If Amendment 5 is approved by voters, state courts will have another sentencing tool available for public corruption cases—forfeiture of public retirement benefits.

However, the forfeiture penalty would not be available to federal prosecutors, who have handled several of the state's most high-profile public corruption cases in the past few years. Rather, federal prosecutors would continue to rely on the Federal Debt Collection Procedures Act and the Mandatory Victims Restitution Act, both of which allow the federal government to garnish a defendant's state retirement account for the purposes of restitution.

The federal penalties are harsher than the state penalties, and that would not change even with voter approval of Amendment 5.

For instance, in federal public corruption cases, the federal court must order the defendant to pay full restitution as part of his or her sentence. In contrast, Amendment 5 would give the state court the option of imposing forfeiture as part of the sentence in a public corruption case.

Further, the federal government is not limited to garnishing just the public—or state—contributions to a defendant's retirement plan. It can garnish the public official's individual contributions as well. Amendment 5, on the other hand, would limit the forfeiture that could be imposed by a state court to the public portion of an official's retirement benefits, not the official's own contributions. However, in state cases where a defendant also was required to pay restitution, that money would come from the defendant's individual contributions.

Finally, the federal courts are not permitted to take any mitigating circumstances into account in determining how much restitution must be paid. Under Amendment 5, the sentencing judge would have to consider a number of factors before determining how much of a convicted official's public retirement benefits could be forfeited.

6. Property Tax Exemption Authority for New Iberia

**YOU
DECIDE**



A VOTE FOR WOULD

allow New Iberia to grant city property tax exemptions to any property owner annexed into the city after Jan. 1, 2013.

A VOTE AGAINST WOULD

mean the city would be unable to grant such exemptions to property owners annexed into the city.

CURRENT SITUATION

The Constitution lists which types of entities may receive an exemption from paying ad valorem (property) taxes and specifies under what conditions an exemption may be granted and how long it may remain in effect. For example, the state Board of Commerce and Industry is assigned to grant approval of property tax abatement contracts for qualified new and expanding industries, and many manufacturing plants across the state have taken advantage of the program. Municipalities and parishes do not have their own authority to grant an exemption. In order to exercise sole authority to use this type of property tax abatement program, local officials must ask for an amendment to the Constitution.

The city of New Iberia, which is located along the planned Interstate 49 corridor in Iberia Parish, is looking for ways to create incentives for economic development. One way to do that is to encourage property owners—particularly those with vacant land next to or near the city—to agree to be annexed into the city. However, this goal has been complicated by the fact that New Iberia lacks some unique public services to offer property owners in exchange for additional city taxes. Under a previous local administration, the city police department was disbanded and law enforcement was taken over by the Iberia Parish Sheriff's Office. Further, although the city owns its wastewater treatment plant, the parish also has use of it.



In the past, property owners approached about being annexed into the city generally rebuffed the effort, citing the fact that they would have to pay a city property tax in addition to the parish property tax but would not receive added services. In 2011, the property tax rate was 21.57 mills for the city of New Iberia and 64.36 mills for Iberia Parish.

PROPOSED CHANGE

The city of New Iberia would be allowed to offer ad valorem tax abatement contracts to those property owners that agree to be annexed into the city. The contracts could be for up to five years and would require two-thirds approval of the city council. The contracts could be extended for an additional period of up to five years provided the extension was approved by two-thirds of the council members.

COMMENT

The proposed tax exemption program is patterned after the existing state industrial tax exemption program. Under the state program, the contracts run for five years and may be extended once for another five years. The state program is limited to eligible manufacturing businesses.

In contrast, the proposed amendment for New Iberia simply refers to “property”—a broad term that can include anything from vacant land to blighted property with abandoned buildings to developed property with existing businesses. However, city officials have indicated their primary focus will be on vacant land adjacent to New Iberia.

The amendment’s language was intentionally crafted to be broad so that city officials would have the greatest flexibility in making use of the exemption program. At the same time, that flexibility would put more pressure on the city council to be judicious in its use of the tax exemption. The success of the program would be dependent on how selective city officials are in offering the property tax exemption contracts, how carefully the terms of the contracts are drawn and how diligent they are in monitoring compliance with the contracts.

Currently no other municipalities have the authority to grant ad valorem tax exemptions to property owners who wish to have their land annexed into corporate limits. However, the Constitution does allow certain special districts to grant property tax exemptions. Those include the New Orleans Regional Business Park, business and industrial districts in certain municipalities, and downtown historic and economic development districts.

The proposed amendment must be approved by voters within the city of New Iberia and by voters statewide before it can take effect.

ARGUMENT FOR

Passage of the amendment would give New Iberia officials another tool to promote economic development. While the city would sacrifice municipal property tax revenue in the short term, it could gain in the long term if

the annexed property were improved. Furthermore, the city is not taking in any property tax revenue from these properties now because they are outside the city limits.

City officials would be able to decide on a case-by-case basis whether to grant the tax abatement contracts. Since the language in the proposed amendment is permissive, the city would not be required to offer an interested property owner any tax exemption. The amendment simply would give local leaders the option.

The contracts also could be tailored to specific property owners. For example, if the owner of a vacant piece of property wanted the land to be annexed and had plans to build a residential subdivision on it, the city could structure the contract so that the exemption ended as soon as the subdivision was built or the contract period expired, whichever came first.

While Iberia Parish would lose the annexed property, the property owner still would be responsible for paying the parish property tax, and the parish overall could benefit indirectly from revenue generated by development of the land.



ARGUMENT AGAINST

The language of the proposed amendment is so broadly drawn that the exemption program could apply to existing businesses that just want to be annexed and avoid city property taxes, in addition to newly recruited businesses and undeveloped properties. Other than a desire to be annexed, there are no specific eligibility requirements for interested property owners.

The proposed amendment would result in the creation of a new type of property tax exemption in which businesses that would not qualify for the current state program could meet the eligibility requirements of the city program. That is a much broader pool of businesses, and the potential impact on local revenues is unknown.

The authority to manage the program would reside solely with New Iberia officials and city council members. While the current city administration has clearly stated its intention to focus on vacant property, there is no guarantee that the same would hold true for future city leaders and council members.

If this amendment is approved and is successful for New Iberia, other municipalities could seek similar amendments. That could set up some contentious divisions between cities and parishes, as well as between cities.

The proposed amendment might provide an economic development tool for New Iberia, but the development could come at the expense of Iberia Parish, which would lose the land annexed into the city and possibly some revenue from certain rural property taxes, such as the fire tax.

Tax exemption programs in general can cause tension between existing property owners who currently pay taxes and newly recruited ones who get the break, giving rise to questions of fairness.

Finally, the city probably could accomplish the same economic development goal by setting up a tax rebate program, which would not require a constitutional amendment. The city could offset a property tax by awarding the property owners a cash rebate payment.

LEGAL CITATION

Act 869 ([House Bill 497](#) by Rep. Barras and Sen. Mills) of the 2012 Regular Session, adding Article VII, Section 21(L).

7. Membership of Certain State Boards and Commissions

**YOU
DECIDE**



A VOTE FOR WOULD

adjust the membership selection process for constitutionally created boards and commissions that have members selected based on the state's congressional districts.

A VOTE AGAINST WOULD

leave the membership selection process for constitutionally created boards and commissions as it is now—based on a soon-to-be outdated number of congressional districts.

CURRENT SITUATION

The membership of six constitutionally created boards and commissions is based in large part on Louisiana's congressional districts. After the 2010 Census, Louisiana lost one of its congressional districts, decreasing the number from seven to six. As a result, the membership selection process for these boards and commissions no longer is valid.

PROPOSED CHANGE

The proposed amendment would reconfigure how the members of these six boards are selected to align with the reduced number of congressional districts and to ensure that each congressional district is represented equally.

COMMENT

The proposed amendment focuses on the Board of Regents, the boards of supervisors for the University of Louisiana System, the Louisiana State University System and the Southern University System, as well as on the State Civil Service Commission and the State Police Commission.

Under the amendment, each board would retain the number of members it has now for the immediate future. After Jan. 3, 2013, as board members finish their terms, vacancies would be filled first from a congressional district that either is under-represented or has no representation. After each congressional district has equal representation, at-large members could be appointed to fill out the total membership required under the Constitution.

A companion bill—Act 803—filed along with the proposed amendment provides more detail about how the makeup of these boards would change. Eventually, the size of the boards for the university systems would be cut from 17 members to 15 each, with two members from each congressional

district and three members appointed from the state at large. The Board of Regents would remain at its current 15 members. The boards for both the State Civil Service Commission and the State Police Commission, which have seven members apiece, also would stay at their current membership levels. One member would be appointed from each congressional district and the remaining member would come from the state at large.

In addition to the six boards listed above, there are 11 other boards and commissions whose membership has been affected by the loss of the congressional district. The companion bill also addresses the membership selection for these boards. Under the legislation, most of these boards and commissions would include one member from each congressional district.

The portion of the companion bill dealing with the six constitutionally created boards and commission would not take effect unless voters approve the proposed amendment. The portion of the companion bill that focuses on the other 11 boards and commissions went into effect on Aug. 1, 2012.

ARGUMENT FOR

Since the membership of these boards and commissions is based primarily on Louisiana's congressional districts, any change in the number of congressional districts—whether a loss or a gain—means the process for selecting board and commission members must be revised.

The amendment is needed to avoid a nonsensical situation resulting from a direct conflict between the Constitution and the new reality of reduced congressional seats for Louisiana.

ARGUMENT AGAINST

In a broader sense, the constant need for constitutional amendments to keep various governmental and administrative functions on track continues to be a concern. The more amendments that appear on a ballot, the wearier voters seem to grow of trying to figure them out.

Logic would indicate that a housekeeping measure like the proposed amendment could be more easily accomplished by simply changing the statutes. When these six boards were created, however, the decision was made to put the membership details into the Constitution. That means the Constitution must be amended every time the membership selection process has to be changed.

A vote against might send a signal of growing voter impatience with the large number of constitutional amendments that continue to show up on

the ballot and prod officials to begin a discussion about working harder to use the Constitution as it was intended—as a framework—and to use the statutes to fill in the details.

LEGAL CITATION

Act 870 ([House Bill 524](#) by Rep. Tim Burns) of the 2012 Regular Session, amending Article VII, Sections 5(B)(1), 6(B)(1) and Article X, Sections 3(A) and 43(A), and adding Article VII, Section 8(D). Companion legislation is that part of Act 803 ([House Bill 768](#) by Rep. Tim Burns) that focuses on the six constitutionally created boards and commissions outlined previously.

8. Property Tax Exemption for Non-Manufacturing Businesses

**YOU
DECIDE**



A VOTE FOR WOULD

allow the state Board of Commerce and Industry to grant local property tax exemption contracts to a targeted group of non-manufacturing businesses in parishes that choose to participate in the program.

A VOTE AGAINST WOULD

mean these targeted non-manufacturing businesses would continue to be ineligible for property tax exemptions.

CURRENT SITUATION

Property owners in Louisiana are obligated to pay ad valorem taxes, which are taxes paid to local government entities based on the value of the property. Ad valorem taxes typically support schools, law enforcement, local government operations and other parish or municipal services. Under state law, certain property can be exempted from the tax.

The Constitution lists which entities may receive an exemption from paying ad valorem taxes and specifies under what conditions an exemption may be granted and how long it may remain in effect. New or expanding manufacturing plants are eligible for an exemption, which has been a significant industrial recruitment tool for the state. Non-manufacturing companies are not part of this list.

In recent years, as the nation's economy has evolved with more service and technology industries, states have created incentives to attract data service and distribution centers, corporate headquarters and other non-manufacturing operations. Some of these projects can be significant by providing a new business sector to a state economy and by providing employment and investments on the scale of large manufacturing plants. A recent Tax Foundation report indicated that while Louisiana's business taxes provide a very favorable tax climate for new businesses, the state is at a disadvantage competing for distribution centers compared to other states.

Projects that bring new employment and business activity to a parish or municipality also place more demands on government services, such as schools, police and fire protection and transportation infrastructure. Local governments experiencing job growth in their regions typically expect increases in their revenue streams to compensate for the anticipated new demand

for services. Business growth can lead to increased collections of local sales taxes and residential and business property taxes, except where exemptions offer a tax break.

PROPOSED CHANGE

The proposed amendment would create a limited exemption from local property taxes for certain targeted non-manufacturing businesses in parishes and towns that decide to take part in the program. The first \$10 million of assessed value or 10 percent of the fair market value (whichever is greater) would be taxed. Any value above that would be exempt. In addition, at least 50 percent of the business's sales would have to be to out-of-state customers, or to in-state customers who resell the product out of state, or to the federal government, or some combination thereof.

COMMENT

The proposed amendment sets the general parameters of the program. Companion statutory legislation was passed to provide the specific rules under which the property tax exemption could be granted.

Under the provisions of the companion bill (Act 499), an eligible non-manufacturing business would have to build or expand a facility whose primary activities involved serving as a corporate headquarters, a distribution center, a data services center, a research and development operation or a digital media or software development center. In addition, the business would have to create and maintain at least 50 new direct jobs and make at least \$25 million in capital expenditures. The secretary of economic development also would have to make a determination that the property tax exemption would give the state and parish an advantage in a site selection competition versus other states.

In exchange for a targeted non-manufacturing business meeting these criteria, the state could grant the company a 10-year exemption from all local property taxes. The exemption would apply only to newly acquired property or newly built facilities. Further, the first \$10 million of assessed value or 10 percent of fair market value of the new property, whichever amount is larger, would be taxed normally during the 10-year period.

Many non-manufacturing businesses would be ineligible for the property tax exemption. In addition to establishing the previously described eligibility requirements, the companion legislation specifically prohibits the exemption for businesses involved in retail sales, real estate, professional services, natural resource extraction or exploration, financial services, venture capital funds, gaming and gambling.

The property tax exemption program would be available only in those parishes that have agreed to participate. The companion bill gives both the secretary of economic development and any of the local entities in the parishes that have agreed to participate the power to invite a potentially eligible business to apply for the exemption. However, the secretary of economic development makes the final recommendation to the state Board of Commerce and Industry about which companies should receive the exemption.

As part of that recommendation, the secretary must furnish the board with a copy of the contract negotiated with the company. Included in the contract must be provisions for monitoring by economic development staff and consequences for the company if it fails to meet its performance obligations, including required capital expenditures and new direct jobs, and the time for performance of such obligations. The board then would make the final determination about whether the property tax exemption would be granted.



The role of local governments in the program proved to be the most contentious part of the debate over the proposed constitutional amendment. Legislators finally agreed that before a parish can participate in the program, the parish governing authority, all municipalities within it that levy a property tax, school boards that levy a property tax, the parish law enforcement district and the assessor must agree to take part. If any one of these entities does not agree, the parish cannot be included on the list of potential sites for eligible companies that want to take advantage of the program.

The proposed amendment could set up a dynamic in which parishes seek to be eligible for the exemption so that they will not be at a competitive disadvantage with other parishes, particularly their neighbors. Local officials are likely to be under pressure to sign up for the program in order to avoid the appearance that they were keeping their parish out of the hunt for economic development projects.

Further, the companion legislation also states that even if a parish initially agrees to take part in the property tax exemption program, any one of the designated authorities may withdraw their support, and the parish no longer would be able to participate. If that were to happen, the law provides for a 90-day window between the time the parish notifies state officials that it is withdrawing and the time the withdrawal actually takes effect. That cushion of time would help the state's business recruiters complete imminent deals that are under negotiation. Any property tax exemption contracts already in place at the time a parish withdraws still would be honored. The companion bill would not take effect unless the proposed constitutional amendment is approved by voters.

Based on past experience, Louisiana Economic Development officials believe potentially five to 10 non-manufacturing businesses per year would fit the category of those that would consider locating to or expanding in the state if the tax exemption program were in place.

ARGUMENT FOR

A property tax exemption program for specific non-manufacturing businesses would help make Louisiana more attractive to those types of companies looking to locate or expand operations. The state would be in a better position to attract new business sectors to its economy. The program would build upon a well-established practice already in place for manufacturing establishments in Louisiana.

The business projects fitting the requirements of the proposed exemption have not been coming to Louisiana in any great numbers. Over the past five years, only one or two companies that might have been eligible for the property tax exemption have located here. The proposed incentive could correct Louisiana's disadvantage in recruiting these types of business.

The exemption is designed to be granted only where it is necessary to give Louisiana a competitive advantage. It would be contingent on the targeted businesses meeting certain requirements, such as creating and maintaining at least 50 new direct jobs, spending at least \$25 million in capital expenditures and having 50 percent of their sales to out-of-state customers.

Local parishes could benefit from the jobs created by such companies, as well as from the sales tax revenue and indirect spending generated by a new business. Further, the first \$10 million of assessed value or 10 percent of fair market value (whichever is greater) of the new property still would be taxed. The exemption would apply only to any value above that. All of this would be new revenue that the parish would not otherwise have realized.

In addition, no parish would be compelled to participate in the program. And a participating parish would be able to withdraw from the program at any time if it decided its continued participation was not of benefit.

ELIGIBLE AND INELIGIBLE NON-MANUFACTURING BUSINESSES

Only certain types of non-manufacturing businesses would be able to apply for the property tax exemption.

ELIGIBLE

- Corporate headquarters
- Distribution center
- Data services center
- Research and development operation
- Digital media or software development center

INELIGIBLE

- Retail sales
- Real estate
- Professional services
- Natural resource extraction or exploration
- Financial services
- Venture capital funds
- Gaming and gambling

Placing the final determination for granting the property tax exemptions with the secretary of economic development and the Board of Commerce and Industry removes the decisions from potentially contentious local politics.

ARGUMENT AGAINST

Passage of the amendment would result in the possibility of yet another exemption to local property taxes, which ultimately hinders the ability of local governments to raise their own revenues and meet their needs.

If approved, the proposed amendment would place certain non-manufacturing businesses on the list of entities eligible for property tax exemptions. Because the specifics guiding implementation of the amendment are detailed in the companion legislation, the Legislature could expand the types of non-manufacturing businesses eligible for the tax exemption in the future with a simple majority vote.

Although parish authorities would be able to decide whether to take part in the program, they would have little control other than zoning laws over the types of projects that might be located in their area. The final decision about whether to grant the property tax exemption would be made at the state level by the secretary of economic development and the Board of Commerce and Industry, not by the local governments that have the most at stake with regard to property taxes.

In addition, some of the targeted businesses might have located in Louisiana without the property tax exemption incentive. Granting the exemption means the loss of new revenue the parish might have taken in were it not for the incentive.

Some assessors are concerned that this exemption would make it difficult for them to meet their constitutional mandate to establish uniformity in taxing properties across their districts. They fear they could be open to lawsuits from property owners who do not get the break.

LEGAL CITATION

Act 871 ([House Bill by 674](#) by Rep. Robideaux) of the 2012 Regular Session, adding Article VII, Section 21(L). Companion legislation is Act 499 ([House Bill by 694](#) by Rep. Robideaux).

9. Crime Prevention and Security Districts

YOU DECIDE



A VOTE FOR WOULD

increase the number of times that bills to create crime prevention and security districts must be advertised and require that the notices of intent state whether a parcel fee would be imposed and collected, whether the fee could be imposed or increased without an election, and what the maximum amount of the fee would be.

A VOTE AGAINST WOULD

mean crime prevention and security district bills would continue to be subject to the same public notice requirements as they are now.

CURRENT SITUATION

Crime prevention districts—also called security districts—have become increasingly popular in Louisiana. Through them neighborhood groups can collect a parcel fee—or tax—from every homeowner or property owner within a specific area and use the money to enhance crime prevention and security efforts.

A review of the section of the Constitution dealing with these districts showed that the first one was created in 1997 in New Orleans and was called the Lakeview Crime Prevention District. Since then, 29 more such districts have been established—17 in Orleans Parish and 12 in East Baton Rouge Parish. Voters will decide on another eight proposed districts on Nov. 6.

As the number of districts has risen, so has the number of complaints from people who say they did not know a crime prevention district was proposed for their area until they saw the question on their local ballot.

The Constitution requires that a notice of intent to introduce local or special laws must be published prior to the introduction of such bills during a legislative session. That notice must consist of an advertisement published on two separate days in the official journal of the area where the proposed measure will take effect. In addition, the last day to publish the second notice of intent must be at least 30 days before the proposed bill is introduced.

PROPOSED CHANGE

The amendment would increase the amount of public notice required for crime prevention and security district bills by requiring that the notice of intent to introduce such a bill be published on three separate days (rather than two) in the official journal for the area where the special district is to be located.

The amendment also would add some new language to the Constitution that would require the notice of intent to state whether the crime prevention district's governing authority could impose and collect a parcel fee, whether the fee could be imposed or increased without an election, and what the maximum amount of the fee would be.

COMMENT

Part of the reason for the popularity of the districts is their ability to collect a parcel fee, or tax, regardless of whether a homeowner wants to pay it. That is in contrast to neighborhood or civic associations that may seek dues from homeowners to help with crime prevention or security efforts, but generally only receive money from a small percentage of owners.

Louisiana law provides two ways to establish a crime prevention district. Under one method, which is detailed in state statutes, the appropriate local governing authority must authorize the collection of signatures for a petition calling for an election to approve the district and the parcel fee. The petition then must be signed by 30 percent of the qualified voters living within the boundaries of the proposed district, and a majority of voters in the proposed district must approve its creation in an election.

The second—and more prevalent—way is through a provision in the Constitution that allows constituents to ask a legislator to sponsor a bill setting up the district and calling for an election in the affected area.

No matter which method is used, voters living in the area where the district would be established must vote on the question. In those instances where a petition is used, public awareness of the effort to set up the crime prevention district is likely to be higher than it is when the legislative method is used. It is that potential lack of awareness—and the fact that these districts can impose a tax—that upsets many residents.

While the proposed amendment is fairly simple, other lawmakers brought up such issues as whether the Legislature should get out of the business of approving crime prevention districts altogether and whether the same level of public notice should be required for other special districts. In each case, Sen. Dan Claitor, the author of the proposed amendment, conceded the

question was a good one, but indicated he preferred to keep the amendment focused on the issue at hand.

ARGUMENT FOR

The amendment supports greater participation and awareness of significant local ballot questions.

Given the proliferation of bills to create crime prevention and security districts, members of the public need as much notice as possible so they can participate in the discussion or contact their legislator before the matter gets to the ballot.

Further, the notice of intent ads generally are so small that they are hard to find in the newspaper. Requiring another day of publication could give more people an opportunity to see the ads.

ARGUMENT AGAINST

It is debatable whether the increased notice will have the desired effect. For instance, people who may want to comment on legislation might not be able to spend the long hours necessary during a work day to provide input at the state Capitol. In addition, the ads that are placed in local publications generally are small in size and easy to miss, meaning it may not make any difference whether the notice is published two or three times.

Neighborhood associations would have to pay the additional cost required by the third day of publication, and the change could create a hardship for rural areas that have no daily newspaper.

This level of micromanagement of the election process does not belong in the state Constitution.

LEGAL CITATION

Act 876 (Senate Bill by 410 by Sen. Claitor) of the 2012 Regular Session, amending Article III, Section 13.

– Statewide Vote on Local Option School Board Question –
Term Limits for School Board Members

YOU DECIDE



A VOTE FOR WOULD
limit the time local school board members could serve to three consecutive four-year terms—beginning with elections after Jan. 1, 2014—but only in school districts where voters approve the measure. Statewide voter approval is not required for this to pass, and the Constitution will not be affected.

A VOTE AGAINST WOULD
leave the situation as it is now, which would mean proponents of term limits could continue efforts to persuade the Legislature to impose term limits on a district-by-district basis or bring the question to a vote within their own individual school districts.

CURRENT SITUATION

Right now, residents unhappy with the members of their school boards can encourage members of the community to run against the incumbents and hope the challengers win. This is difficult to do because incumbent officials historically have the advantage in running for re-election.

Dissatisfied residents can work to persuade the Legislature to pass legislation putting the question of term limits to a vote in their specific parish. Or residents can try to persuade a legislator to introduce legislation that would simply set term limits for the school board in question. Jefferson Parish established school board term limits in this way.

There has been a concerted effort over the past three years to reform various aspects of public education in Louisiana, including the imposition of term limits on local school board members. That effort resulted in the passage of House Bill 292 (Act 386) during the 2012 legislative session. The bill requires voters in every school district to vote Nov. 6 on whether they want to impose term limits on their school board members.

The only districts that would not be required to hold an election are the Recovery School District (RSD), the governing authority of any charter school, and any school district that already has term limits for its board members. The RSD would be excluded because it is governed by the State Board of Elementary and Secondary Education, whose members already are limited to three consecutive four-year terms. Charter schools also would be excluded from the provisions of the bill because their board members are not elected, and this measure deals only with elected officials.

House Bill 292 is not a constitutional amendment, but the measure was designed to have voters in every eligible school district vote at the same time on whether to impose term limits on their board members.

The effect of the vote will be specific to each school district. For example, if voters in Red River Parish reject term limits for school board members, their board will not be subject to them. If voters in Cameron Parish, on the other hand, approve term limits, their school board members will be limited in the length of time they can serve.

PROPOSED CHANGE

In parishes where voters approve term limits for their school boards, members would only be able to serve three consecutive four-year terms. The clock would start ticking on the time limit Jan. 1, 2014.

COMMENT

The term-limit proposal is not without precedent. Two Louisiana school districts already have them —Jefferson Parish and Lafayette Parish. Nationally, a 2006 survey by the National School Boards Association showed that two states—Colorado and Maryland—impose term limits on local school board members. In a few other states, local jurisdictions are allowed to decide whether their specific school board should have term limits.

BALLOT LANGUAGE

The language on the Nov. 6 ballot will ask voters this question:

LOCAL OPTION ELECTION

Within _____ (name of school district):
Shall the number of terms of office that any member of the school board may serve be limited to three consecutive four-year terms?

In Jefferson Parish, supporters of term limits found a sympathetic legislator who introduced a measure in the 2009 session that called for limiting school board members' service to three consecutive four-year terms. The bill passed both houses of the Legislature (63-26 in the House and 22-13 in the Senate) and was signed by the governor. In effect, the Legislature bypassed local voters and imposed term limits on the Jefferson Parish School Board.

In 2005, supporters of term limits for the Lafayette Parish school board persuaded a legislator to sponsor legislation that allowed a local vote on the question with the approval of the local board. After the Legislature passed the bill, the school board agreed to put the question on the July 15, 2006, ballot, and Lafayette Parish voters overwhelmingly approved term limits—88 percent voted in favor.

ARGUMENT FOR

School board members in Louisiana tend to serve multiple terms, particularly in rural areas or small communities where it is hard to find people willing to run. The problem is that this kind of lengthy service can lead to

a mindset of “we’ve always done things this way” that discourages new ideas. Setting up term limits would build change into the governing systems of local school districts.

Furthermore, the members of the state education board—the Board of Elementary and Secondary Education—are limited constitutionally to three consecutive four-year terms. The policy for local school boards should be consistent with the state board restriction.

In 2009, PAR released a Commentary supporting term limits for school board members, arguing that they were a way to bring in much-needed fresh ideas. At the same time, the decision to impose term limits should be a local matter, and the legislation appropriately gives local voters a chance to decide for themselves.

ARGUMENT AGAINST

Term limits undermine the rights and responsibility of voters to decide whether a school board member is effective and should be re-elected. Such limits are contrary to a true democratic process. Further, there is no mechanism provided in the bill for a district to undo term limits if voters should change their minds later.

These limits can have the effect of pushing out effective and experienced school leaders. In addition, while term limits would bring in new members, the turnover would result in the loss of institutional knowledge. Further, it usually takes most elected officials at least one term to become knowledgeable and experienced enough to work most effectively.

Citizens of school districts have plenty of other options for establishing terms limits, including state legislation and local referenda. They can also use the existing democratic process and mount a campaign to unseat an incumbent.

LEGAL CITATION

Act 386 (House Bill 292 by Reps. Pugh, Champagne, Henry, Lorusso and Talbot) of the 2012 Regular Session, adding R.S. 17:60.4 to the Louisiana Revised Statutes.

The Public Affairs Research Council of Louisiana is a non-partisan, non-profit organization founded in 1950. PAR’s mission is to be an independent voice, offering solutions to critical public issues in Louisiana through accurate, objective research and focusing public attention on these solutions. If you would like to support PAR’s work, please contact us at staff@la-par.org or 225-926-8414. This report is available on PAR’s web site: www.parlouisiana.org.

