PAR
PUBLIC AFFAIRS RESEARCH COUNCIL OF LA., INC.

Guide to the Proposed Constitutional Amendments

October 19, 1991 Election

VOTER DECISION

No. 1 State Mandates on Locals
A vote *for* would further limit the state in mandating increased spending by local governments without their consent or unless funding were provided. A vote ***against*** would continue to allow the state to mandate increased local spending for many purposes.

No. 2 Use of Public Funds
A vote *for* would allow public funds to be used for programs to promote education or economic development and thus permit a planned expansion of state financial assistance for business development. A vote ***against*** would retain the prohibition on donating or loaning public funds.

No. 3 Regents' Membership and Authority
A vote *for* would reduce membership of the Board of Regents from 15 to 13, make Regents' authority to coordinate and plan public higher education more specific, and give Regents authority to name campuses and facilities. A vote ***against*** would continue Regents' present membership and authority.

No. 4 New Fund for Higher Education
A vote *for* would create the Higher Education Louisiana Partnership (HELP) Fund to expand state challenge grants for private donations. A vote ***against*** would not create the new fund.

No. 5 Mineral Settlement Money
A vote *for* would require that any payments above $5 million the state received from settlements or court decisions on underpaid mineral revenues would be used to reduce state debt. A vote ***against*** would place such windfalls in the state general fund and/or the Revenue Stabilization/Mineral Trust Fund, depending on the amount of the windfalls and the amount of total state mineral revenues.

No. 6 State Workers' Compensation Fund
A vote *for* would allow the creation of a state-backed, private, nonprofit corporation to assure the availability of workers' compensation insurance. A vote ***against*** would require employers to rely on the present insurance system until an alternative solution is developed.

No. 7 Single Parish Sales Tax Collector
A vote *for* would require a single local sales tax collector in each parish. A vote ***against*** would continue to allow each local taxing body the option of collecting its own sales tax or voluntarily consolidating collection.

No. 8 Notice of Local/Special Bills
A vote *for* would allow an option to prefile rather than advertise local and special bills prior to introduction. A vote ***against*** would continue to require public notice of all local and special bills prior to introduction through advertising.

No. 1 State Mandates on Locals

Current Situation: The constitution provides that a state law requiring increased spending for wages and benefits of local employees is not effective unless approved locally or the state appropriates the needed funding.

This limit does not apply to local firemen, police or school boards.

In other areas, numerous state mandates (constitutional, statutory and agency regulation) require local government expenditures.

For example, parishes are mandated to spend an estimated $70 million annually on the criminal justice system. Other state mandates include those that require parishes to provide office facilities for independently elected parish officials, municipalities to give pay raises to public safety employees, and local governments to prepare budgets.

Proposed Change: This amendment would prevent a state law, executive order, rule or regulation from becoming effective if it required increased local government expenditures unless (1) the affected local governing authority approves, (2) the state appropriates the needed funds, or (3) the state provides for a local source of revenue and the local government authorizes its collection.

The provision would not apply to a law or regulation approved or authorized by a two-thirds vote of the elected members of each house of the Legislature.

The prohibition also would not apply to local school boards nor to laws which:

- are requested by the affected local governing authority,
- define crimes,
- already are in effect,
- are to comply with federal mandates,
- deal with firefighters and municipal police, or
- have insignificant fiscal impact.

Comment: This amendment would cause the state to focus on the cost and source of funding for local programs it might mandate in the future. The proposal would not affect existing mandated local expenditures.

Local officials argue it is unfair for the state to require them to increase spending without providing a means of funding. Municipalities, for example, are particularly concerned about potential costs resulting from state agency rules and regulations regarding sewerage and waste disposal. This amendment would restrain such state regulations to the extent they exceeded federal mandates.

The state currently restricts local taxing ability by prohibiting certain taxes, limiting some rates, and requiring certain tax exemptions. State mandates reduce funds available for existing local services.

The state is obliged to assure that its political subdivisions meet certain standards and basic requirements, such as budget preparation, recordkeeping and annual audits. This proposal would allow the Legislature to adopt mandates of statewide concern by a two-thirds vote--the same vote required to pass or increase a tax. Some statewide standards now set by agency regulation might require legislative approval by two-thirds vote under this proposal.

The state Department of Environmental Quality has expressed concern that the amendment:

1. would impede implementation of its programs (e. g., inspection fees now set by regulation), and

2. jeopardize programs the federal government has delegated to it to administer, for which there are no federal mandates.

Legal Citation: Act 1066 (Representative Thompson) of the 1991 Regular Session, amending Article VI, Section 14.

No. 2 Use of Public Funds

Current Situation: The constitution prohibits the loan, pledge or donation of public funds, credit or property to any person or corporation, public or private, with certain exceptions. The exceptions include programs of social welfare for the aid and support of the needy. There is no exception for programs to promote education or economic development. Using public funds to purchase private company stock also is prohibited, except by universities.

The constitution allows public entities to engage in cooperative endeavors with each other or with private entities for a "public purpose." This was considered an exception to the donation prohibition until a 1983 court decision held that it was not. Since then, various state attorney general opinions have held that local governments must receive something of equal value from a private entity which receives public aid and that a local entity must be legally obligated to act in order to qualify as a "public purpose" for cooperative endeavors.

Attorney general opinions have cited the constitutional prohibition against public fund donation to stop local governments from undertaking a variety of activities, including some intended to promote economic development.

The existing major state aid and loan programs for business development have not been challenged but might not pass constitutional muster under the current donation prohibition.

Proposed Change: This amendment would authorize use of public funds for programs of financial assistance, grants, loans and investments to promote education or economic development. Such programs would have to be enacted by two-thirds vote of the elected members of each house of the Legislature or by two-thirds vote of a local government governing body.

Comment: The proposal would remove the potential constitutional problem facing state financial assistance programs for business development and widen the range of possible state and local development activities financed with public funds.

The proposal would allow full implementation of a package of 1991 acts to expand the state's financial assistance programs under a new quasi-governmental agency, the Louisiana Development Finance Corporation (LDFC). Proponents argue the new structure would provide a more businesslike setting for making state financial assistance decisions.

The LDFC would assume all development finance programs currently administered in the Department of Economic Development (DED). New programs to be added include the Capital Access Program (a loan insurance program to encourage additional bank lending) and the BIDCO Program (investment in new non-depository financial institutions created to make loans to medium-risk firms). The new programs require the participation of the state's banks which are concerned about the present constitutional problem.

The LDFC would receive state funding over the next four years, more than half of which will come from a portion of the compensation businesses would otherwise receive for collecting sales taxes. The money will provide a revolving fund to be loaned or invested through programs designed to leverage additional private investment.

If this proposed amendment fails, the act creating the LDFC would be void and the state funding would go to the DED to continue existing loan and loan guarantee programs. The new development programs involving banks probably would not be implemented.

The proposed authority to use public funds for programs to promote education was initiated by Plaquemines Parish officials to clarify the legality of its longstanding college scholarship program, now questioned in light of the anti-donation prohibition. This added authority could encompass a much broader range of uses by the state and local governments, such as aid to nonpublic schools. It also would give constitutional backing to state aid currently given to nonpublic schools, colleges and universities.

The amendment would give the state, local governments and quasi-governmental entities considerable latitude in using public funds for essentially nongovernmental functions. The required two-thirds majority vote to approve such programs offers a measure of protection against misuse.

Legal Citation: Act 1067 (Senator Ewing) of the 1991 Regular Session, amending Article VII, Section 14 (B).

No. 3 Regents' Membership and Authority

Current Situation: The constitution created the Board of Regents to coordinate, plan and recommend budgets for public higher education. It mandates the board consist of 15 members appointed by the governor with Senate consent, with at least one but no more than two members from each congressional district, plus a student member. The number of Louisiana congressional districts will be reduced from eight to seven. This makes it impossible to continue with 15 members and no more than two members per congressional district.

Regents has constitutional authority to formulate and revise a master plan for higher education, to include a funding formula. It also has authority to revise or eliminate existing degree programs, approve or reject new degree programs, and restructure campuses. The last master plan formulated by Regents was in April 1984. No master plan has provided detail on the role, scope and mission of each public campus nor grouped similar institutions into categories.

State law and an October 1986 Louisiana Supreme Court decision give the Legislature sole authority to name and rename public institutions of higher education. The Legislature and the management boards (LSU, Southern and Trustees) name campus buildings and other facilities.

Proposed Change: There would be 13 rather than 15 members of the Board of Regents appointed by the governor with Senate consent, with at least one and not more than two from each congressional district.

Regents' authority to coordinate and plan would be made more specific. The amendment would:

- Require that Regents develop and implement a "strategic" plan which *must* assign a "role, scope and mission" to each public institution of higher education. The plan "may" place institutions in categories based on a nationally recognized plan.

The Baton Rouge campuses of LSU and Southern would have constitutional recognition--LSU-Baton Rouge as a state land grant and a sea grant college and as Louisiana's "premier research university," and Southern-Baton Rouge as a state land grant college.

Regents would be authorized to name institutions, centers, buildings and other public higher education facilities.

The amendment would become effective January 1, 1993.

Comment: This amendment would resolve a constitutional problem with Regents' membership, created by loss of a congressional district, by reducing the number of members to allow no more than two from a congressional district.

The proposal would make more specific Regents' present authority to coordinate and plan public higher education, but would not change it significantly. Regents is currently formulating a new master plan and has the latitude to structure it as a "strategic" plan with goals and objectives, and the methods and timetable to reach them. It can place institutions into categories based on a national definition. However, since this amendment would not become effective until January 1, 1993, it would not impact current planning activities.

The amendment states that Regents would have authority to "implement" its strategic plan. Regents now has authority to change the role, scope and mission of public colleges/universities by eliminating degree programs, allowing some to expand by approving new degree programs, and reorganizing and restructuring institutions. However, any plan could be meaningless without the cooperation of a governor, the Legislature, the management boards and individual institutions.

Giving Regents authority to rename institutions would not eliminate controversy. Rather, it would transfer this issue from the Legislature to Regents.

Legal Citation: Act 1068 (Representative John Smith) of the 1991 Regular Session, amending Article VIII, Section 5 (B) and adding Section 5 (D) (6) and (7).

No. 4 New Fund for Higher Education

Current Situation: Louisiana's only program of state challenge grants for higher education--state funds to match private donations--is through the Louisiana Quality Education Support Fund. These challenge grants are $1 million endowed chairs for eminent scholars and $100,000 endowments for professorships--both financed on a 40% state, 60% private basis. State matching funds for the current 1991-92 fiscal year total $4.8 million for 12 endowed chairs for eminent scholars and $2.2 million for 54 endowed professorships.

Proposed Change: This amendment would create a fund for higher education, the Higher Education Louisiana Partnership (HELP) Fund, to receive state appropriations, grants, gifts, donations and other revenues provided by law. Interest earnings would remain in the fund.

The Legislature could appropriate both principal and interest in the HELP Fund to the Board of Regents which would administer challenge grant programs--40% state, 60% private funding. Only private funds contributed after July 1, 1991 could be used to match state funds. Both public and private institutions of higher education could participate, with funds allocated to each institution according to its proportionate share of full-time equivalent students. If funds remained unallocated on March 1 of a fiscal year, an institution could receive up to 50% of available funds, provided it had raised private matching funds. "Independent" institutions could receive no more than 15% of total state matching funds available.

Each institution would have responsibility to solicit private donations, administer its program and invest its funds.

The HELP Fund programs would be restricted to:

- endowed professorships of $100,000 or more;
- endowed undergraduate scholarships of $50,000 or more;
- library acquisitions, laboratory enhancement or research and instructional equipment of $50,000 or more, and
- construction or renovation of facilities of $100,000 or more.

HELP Fund money could not displace, replace or supplant appropriations for higher education from the general fund or from bond proceeds.

Comment: Creation of the HELP Fund is one way to address underfunding of public higher education in Louisiana. Louisiana ranks last or next to last among 15 southern states in most measures such as faculty salaries and per student appropriations.

Purposes of the HELP Fund differ from those of the Louisiana Quality Support Fund with one exception--the $100,000 endowments for professorships. This program might be moved to the HELP Fund.

No state money has been provided to initiate or continue financing the HELP Fund. If state financing is provided, the HELP Fund could encourage and coordinate state challenge grants with private donors. Constitutional status would assure that if money is provided for the HELP Fund, such money could not be used to replace other state funding.

Since this amendment does not "lock up" specific state financing of the proposed new fund, the fund could be created by law rather than by constitutional provision. Funding options include dedicating a revenue source or shifting funds from other existing state programs.

Legal Citation: Act 1069 (Representative Reilly) of the 1991 Regular Session, amending Article VII by adding Section 10.4.

No. 5 Mineral Settlement Money

Current Situation: The state claims it is due payment from underpaid mineral revenue. If the state receives any payment through a settlement or court judgment involving alleged underpayment of mineral revenue (severance tax, royalties, bonuses or rentals), it is uncertain how such money would be spent.

It might be dedicated to the Revenue Stabilization/Mineral Trust Fund, created by a 1990 constitutional amendment and effective July 1, 1991, or go to the state general fund to finance the state operating budget.

That decision depends on two factors:

1. Interest and any penalties, not the principal, on mineral settlement money might not be classified as mineral revenue and hence would not be considered as dedicated to the mineral trust fund.

2. The Revenue Stabilization/Mineral Trust Fund is to receive state mineral revenue above $750 million a year. There are differences of opinion whether the $750 million

base is after providing for dedications of portions of the severance tax and royalties to parishes (about $50 million a year). For fiscal 1991-92, state mineral revenue collections are estimated at $682 million--$68 million below the $750 million base. Hence, a windfall from a mineral settlement would have to be large enough to fill the gap and exceed the $750 million base in order for some or all of it to go into the mineral trust fund.

Money in the mineral trust fund is dedicated as follows:

- Up to one third of the fund balance may be appropriated to offset a pending state deficit.
- Interest earnings are to be appropriated according to the following priorities:

1. annually scheduled or advanced payment on the unfunded accrued liability of public retirement systems;
2. early retirement of state debt, and
3. after satisfying the above requirements, other purposes provided by law.

The unfunded accrued liability of the four state-funded retirement systems approximates $6 billion, and the state's outstanding general obligation debt plus that of the Louisiana Recovery District (LRD), principal only, approximates $3 billion. The LRD debt technically is not state debt. Louisiana's per capita state debt at the end of fiscal 1988-89 was $2,775, fifth highest among all states and $1,581 higher than the national average.

Proposed Change: This amendment, effective January 1, 1992, would dedicate money the state might receive from a mineral settlement or judgment of $5 million or more (principal and interest) to a new Mineral Revenue Audit and Settlement Fund, not to the Revenue Stabilization/Mineral Trust Fund or to the general fund. The Legislature could appropriate both principal and interest earnings of the fund, and decide the priority and amount for the following purposes:

1. annually scheduled or advanced payments on the unfunded accrued liability of public retirement systems, and
2. early retirement of state debt or debt of the Louisiana Recovery District, based on a plan of the State Bond Commission to maximize savings.

Comment: The 1990 constitutional amendment creating the Revenue Stabilization/Mineral Trust Fund might not dedicate interest and any penalties on mineral settlement money to that fund, nor assure that such windfalls would go into that fund since the $750 million base would have to be exceeded. If all or a portion of such windfalls went to the state general fund, they could be used to finance the state's recurring operating costs.

This amendment would specifically dedicate possible mineral settlement money to a new fund, with use limited to reducing state debt.

There are other differences between the proposed new fund and the fund created recently. The proposed fund would allow principal and interest to be used to reduce state debt and also debt of the LRD, whereas only interest of the mineral trust fund can be used to pay off state debt. Mineral trust fund money cannot be used to pay off the LRD debt--unless provided by law. It would have to be determined if such a law met constitutional requirements to first make payments on retirement and state debt.

Legal Citation: Act 1070 (Representative Stine) of the 1991 Regular Session, amending Article VII by adding Section 10.4.

No. 6 State Workers' Compensation Fund

Current Situation: Louisiana employers must either self-insure or carry insurance to compensate employees injured or killed on the job. Large firms often self-insure, and industrywide self-insurance funds serve other employers. Most small businesses, however, must buy insurance from commercial insurers. High-risk employers and those who cannot obtain commercial policies are insured through an assigned risk pool. Insurers are assessed a percentage of their voluntary policy premiums to pay the losses incurred by the pool. These assessments, initially less than 10% of premiums, have grown to 121%. As fewer insurers are willing to write policies in Louisiana, more employers are forced into the pool. By one estimate, 90% or more of the in-state firms which do not self-insure now are in the assigned risk pool. The contract administrators of the pool have little incentive to control losses or manage claims.

Most states rely on the voluntary market (commercial insurance companies) to provide workers' compensation insurance; however, state workers' compensation funds are found in some form in 22 states. Six have state monopolies and 16 have funds which compete with the voluntary market.

Proposed Change: This amendment would authorize creation of a private, nonprofit corporation to provide workers' compensation insurance to Louisiana employers. The corporation would have the full faith and credit of the state pledged for five years, or until the U.S. Department of Labor waived this as a requirement for certain longshore and harbor workers' coverage, which affects 30% of the state's employers. State funds could be loaned but not donated to the corporation.

A 12-member board of directors would consist of nine appointed by the governor (representing labor, business, various types of employers, and the insurance field), the state insurance commissioner, and one member each from the House and the Senate. The corporation would not be a state agency and would not be covered by the insurance guarantee fund. It would be required to adopt rates sufficient to assure it remains self-funded and solvent.

If this amendment is approved, companion Act 814 of the 1991 Regular Session would create the Louisiana Workers' Compensation Corporation (LWCC) as a nonprofit, self-funding mutual insurance company, beginning October 1, 1992. The LWCC would provide two types of insurance and set different rate structures for each:

1. "Accepted risks" or employers who cannot obtain insurance in the voluntary market would be insured under a rate structure designed to cover their actual losses. This would replace the current assigned risk pool but without the present subsidy from assessments on insurers.

2. "Preferred risks" or companies with good safety records would be insured at rates lower than those for "accepted risks."

Policies would be sold by licensed insurance agents. The LWCC would be required to implement safety programs and manage claims with an emphasis on rehabilitation and re-employment of injured employees. The law would require annual reports on the corporation's solvency and oversight by the insurance commissioner who could implement a solvency plan for the LWCC if needed.

Insurance companies would be given a small credit against their premium taxes, and their risk-pool assessment would be removed to encourage them to assume policies now in the assigned risk pool. This pool would be phased out and could not issue policies after October 1, 1992.

Comment: Proponents of the amendment argue the workers' compensation market could collapse any time, causing many firms to close for lack of insurance. The proposal is supported by major business, farm, labor and insurance industry groups.

The proposed corporation would not eliminate market competition for insurance. Rather, it would compete for good risks and serve as a residual insurer for firms unable to get insurance in the voluntary market. Proponents argue it is designed to operate as a business rather than a state agency and would be more efficient and hence, less costly, than the present assigned risk pool. Thus, it would encourage a return of the voluntary market by removing the assessments which are driving insurers away. Money in the fund could not be used by the state for other purposes--a problem in some other states.

The proposal will not affect workers' benefits nor will it necessarily lower employers' insurance rates. However, proponents suggest that the new system might permit lower rates for preferred risks over time because:

- all premiums and investment income on reserves would be used to benefit policyholders;
- strong safety programs would reduce losses, and
- strong claims followup and rehabilitation services would be mandated.

Higher-risk companies might face increased premiums since their rates no longer would be subsidized. Proponents argue this would encourage these firms to improve their safety records.

Some reservations have been expressed concerning the one-year period allowed to implement this massive new program which would handle up to 30,000 policyholders. Failure to implement on time could leave a gap in coverage. However, the LWCC could contract for temporary administrative services. Another concern is the state's full faith and credit pledge which the federal agency could require indefinitely.

Legal Citation: Act 1073 (Senator Foster) of the 1991 Regular Session, amending Article XII by adding Section 8.1.

No. 7 Single Parish Sales Tax Collector

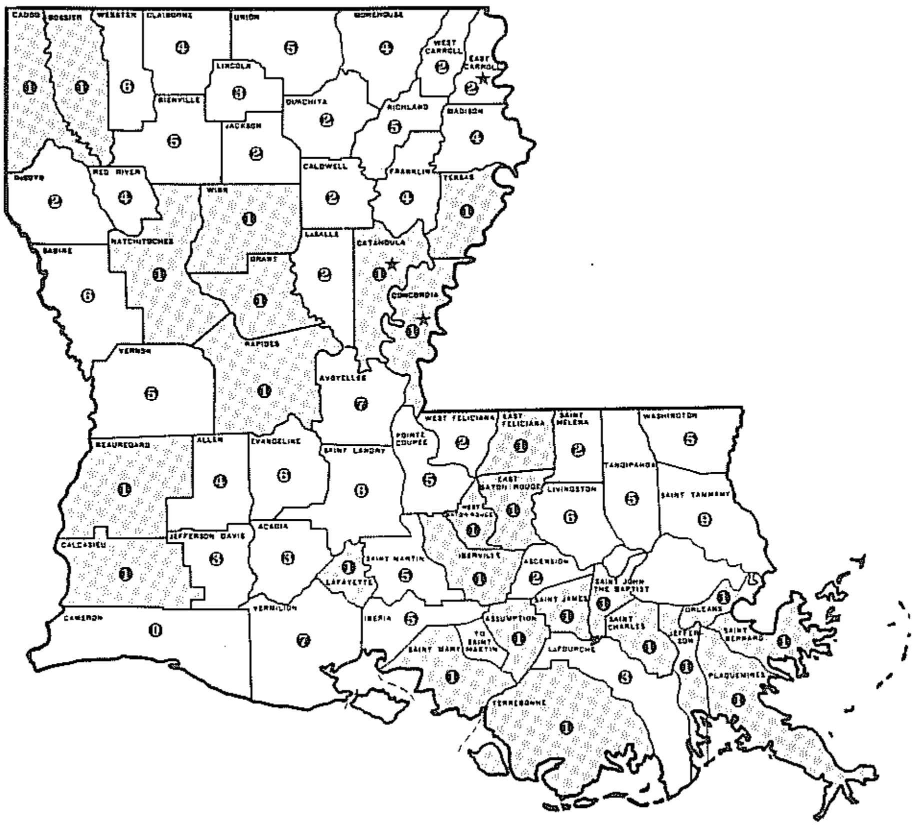
Current Situation: The constitution authorizes parishes, municipalities and local school boards to "levy and collect" sales and use taxes. Certain special districts, such as sheriffs' law enforcement districts, also are authorized by law to levy sales taxes. Statewide, more than 325 local taxing bodies levy sales taxes which are collected by nearly 180 separate agencies. In addition, local sales taxes on motor vehicles are collected by the state and remitted to local governments.

Currently, local sales tax collection has been centralized in only 26 of the 64 parishes. Most of the remaining parishes have at least some consolidation, with the number of collectors in a parish ranging from two to as many as nine. Typically, the school board and parish government have one collector, but many municipalities collect their own. In some parishes, each taxing body collects its own sales tax.

In most other states, local sales taxes are collected by the state and returned to local governments. Of the 31 states with local sales taxes, 24 have state collection. Five states collect most sales taxes at the state level but allow some local governments to collect their own. Louisiana and Alaska are the only states where all local sales taxes (except on motor vehicles in Louisiana) are collected locally. However, Alaska has no state sales tax, thus no state sales tax collector.

Proposed Change: The amendment would require local sales taxing bodies in each parish to agree to a single collector or a collection commission by July 1, 1992. The Legislature would be required to provide for the creation of central collection commissions for those parishes which did not comply and could provide, by two-thirds vote of each house, an alternate method of centralized collec-

Number of Local Sales Tax Collectors, By Parish



★ Concordia School Board collects for Catahoula, Concordia and East Carroll (except one town).

tion for a particular parish. The Legislature would have to provide for prompt remittance of sales tax collections to each taxing body.

The proposal would not affect those parishes which currently have centralized collection.

Comment: The proposal would give local governments a year to decide on a centralized collection approach for their parish. Legislation is expected in the 1992 legislative session to provide a method for those who fail to act. The result would be a reduction in the number of local sales tax collectors from nearly 180 to a maximum of 64.

Proponents argue that businesses which sell statewide or in parishes with multiple collectors could file tax reports more easily and thoroughly, thus cutting their costs and improving their rate of compliance. They also contend that consolidation should reduce the cost of collection and the number of local collection employees required. Collection costs, which should run between 1% and 2% of sales tax receipts, often are much higher for small scale collectors. The amendment would not affect existing sales tax rates but could improve collections, thus making better use of taxpayer money.

Opponents argue the proposal is another state mandate which reduces local control. Spokesmen for Louisiana municipalities contend that collection costs would increase under centralization for small municipalities which would have to retain the city clerk, who now collects sales taxes among other duties, and pay the central collector's cost as well. Local taxing bodies fear there might be delays in receiving revenue from a central collector in spite of the proposal's requirement for prompt remittance.

Legal Citation: Act 1072 (Representative Reilly) of the 1991 Regular Session, amending Article VII, Section 3.

No. 8 Notice of Local/Special Bills

Current Situation: The constitution allows local and special acts if they do not involve subjects the constitution prohibits. A local or special act applies only to certain localities or persons, not to others with the same characteristics of the class.

A "general" law applies equally and uniformly to all those with the same characteristics within a reasonable and proper classification.

Before a local or special bill can be introduced, the constitution requires that it be advertised on two separate days in the official journal (selected newspaper) of the affected locality--the last day at least 30 days before introduction. The advertisement must state the substance of the bill, and the bill must include a statement of compliance.

The constitution prohibits state payment of these advertising costs. In practice, such costs are paid by the affected local government or person, or by interested individual legislators.

Proposed Change: This amendment would authorize prefiling local and special bills as an alternative to advertising them. Prefiling would have to be at least 15 days before a regular session. For a special session in which the subject could be considered, local and special bills would have to be introduced in the first five days of the session.

Comment: The constitution requires that bills be introduced during the first 15 days of a regular session, and allows later introduction if two thirds of legislators consent. Most bills introduced after the deadline are local and special bills not advertised early enough for timely introduction.

If local and special bills were not prefiled, as would be authorized by this amendment, there still would be the option to advertise them. Also, the amendment should reduce advertising costs which can double if a local bill is changed prior to introduction and has to be readvertised.

This amendment does not affect another constitutional requirement to advertise retirement bills 30 days before introduction.

Legal Citation: Act 1071 (Representative Morrell) of the 1991 Regular Session, amending Article III, Section 13.

Voting on Louisiana Proposed Constitutional Amendments

	Number of Amendments Proposed	Number of Amendments Approved	Average Percent of Registrants Voting
1921 Constitution	802	536	-
1974 Constitution			
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
Total	66	41	

SOURCE: Official Promulgation, Secretary of State.

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