

PAR

PUBLIC AFFAIRS RESEARCH
COUNCIL OF LA., INC.

Guide to the Proposed Constitutional Amendments



VOTER DECISION



October 3, 1992

No. 1 Home Builders' Property Tax Exemption

A vote *for* would exempt from property taxes the value of new residential improvements for two years unless sold or occupied. A vote *against* would continue to make developers and home builders liable for taxes on the full assessed value of residential improvements completed but not sold nor occupied.

No. 2 Homestead Exemption for Mobile Homes

A vote *for* would apply the homestead exemption to mobile homes on rented land. A vote *against* would continue to allow owner-occupied mobile homes on rented land to be taxed on their full assessed value.

No. 3 Regents' Membership

A vote *for* would set Board of Regents' membership at two members from each congressional district, with one member appointed at large. A vote *against* would make it impossible for Regents to meet its constitutional requirement of no more than two members per congressional district.

No. 4 Effective Date of Laws

A vote *for* would fix August 15 as the effective date for laws enacted during a regular legislative session. A vote *against* would continue to have all laws become effective 60 days following adjournment.

No. 5 Title to Certain Terrebonne Parish Land

A vote *for* would allow the ownership of land in Terrebonne Parish to be transferred to those persons who have possessed the property as owners in good faith for 10 years or more, with the mineral rights reserved to the Terrebonne Parish School Board. A vote *against* would allow the Terrebonne Parish School Board to claim ownership.

November 3, 1992

No. 1 Investment of 8 (g) Fund in Stocks

A vote *for* would allow the state treasurer to invest a portion of the permanent Education Quality Trust Fund in stocks. A vote *against* would continue the ban on stock purchases.

No. 2 Use of Public Funds

A vote *for* would specifically authorize the state and local governments to invest, grant or loan public funds for economic development under programs enacted by a two-thirds vote. A vote *against* would continue questions regarding the constitutionality of existing financial assistance programs for business development.

No. 3 Limited Constitutional Convention

A vote *for* would give the Legislature explicit authority to call a constitutional convention limited to a specified constitutional provision, article or articles. A vote *against* would leave unsure the Legislature's authority to call a limited convention.

No. 4 Lottery Dedication for Health Insurance

A vote *for* would constitutionally dedicate \$5 million in lottery funds each year to a health insurance program for uninsurable persons. A vote *against* would require the program to depend on annual state appropriations.

No. 5 BESE Membership

A vote *for* would decrease BESE's membership from 11 to nine by having members elected from seven congressional districts rather than eight single-member districts and eliminating one gubernatorial appointment to the board. A vote *against* would retain BESE's present membership structure.

No. 6 Family Court Jurisdiction

A vote *for* would authorize the Legislature to give family courts jurisdiction in property settlements resulting from divorce or annulment of a marriage. A vote *against* would continue the present situation in which a family court cannot decide such property settlements.

No. 1 Home Builders' Property Tax Exemption

Current Situation: At present, a home builder or developer who cannot sell a newly-built home or developed lot is liable for property taxes based on the full assessed value of the improved property. A homeowner/builder who has not yet taken occupancy is ineligible for the homestead exemption.

Proposed Change: This amendment would provide that property taxes on developed residential property be paid on the assessed value of the property for the year prior to commencement of construction, development or improvement. The assessment freeze would run for two calendar years following completion of work, or until the property was sold or occupied, whichever occurred sooner.

"Developed residential property" is defined as developed or improved land, including subdivided land, and new buildings or other new structures to be used or sold for residential pur-

poses. The exemption would apply to development begun after 1992.

Comment: This amendment is designed to protect builders who cannot sell nor occupy a completed home from having to pay taxes on the full value.

Holding a new home valued at \$100,000 would cost the builder roughly \$7,000 a year in finance costs at present interest rates. In addition, under current law, he would pay \$1,000 a year in taxes based on a statewide average of 100 mills. If sold or occupied as a rental unit, the taxes also would be \$1,000 a year. If bought and occupied by a homeowner, local governments would collect only about \$250 in taxes after the homestead exemption.

Presently, a home completed after January 1 does not go on the tax rolls until the following calendar year, and then the tax is paid at the end of the year--which can be as long as two years after completion. If sold, a homestead exemption may be granted

at mid-year or even later. Thus, a builder now has between six and 18 months to sell a completed home and avoid paying full taxes.

The proposed tax break would run for two calendar years, but this could be nearly three years if the improvement was completed early in the year. The developer would be taxed only on the prior assessed value of the land which could be based on the use value for farm land.

Supporters argue that the present situation penalizes builders and the proposal would give added incentive to build in slack times by reducing risk. Others suggest this special interest tax break is too small a portion of the cost of holding property to affect builders' decisions and question the wisdom of an incentive to overbuild.

The fiscal impact of the proposal is unknown as the local revenue losses are unpredictable.

Legal Citation: Act 1138 (Senator Crain) of the 1992 Regular Session, adding Article VII, Section 21 (J).

No. 2 Homestead Exemption for Mobile Homes

Current Situation: The constitution presently exempts from most property taxes the first \$7,500 of assessed value on a homestead. A homestead is defined as a tract or tracts of land of up to 160 acres and the buildings and appurtenances thereon which are occupied by the owner.

A landowner now is eligible for a homestead exemption covering a mobile home or manufactured housing located on his own property. However, the exemption does not specifically apply to an owner-occupied mobile home located on rented land.

Proposed Change: This amendment would extend the homestead exemption to cover a mobile home or other similar manufactured housing which serves as an owner-occupied

home, regardless of whether the homeowner owns the land upon which it is located.

Comment: Mobile homes on rented land have been taxed inconsistently. Due to mobility or assessment practice, many apparently have avoided being placed on the tax rolls. Most, but not all, parish assessors reportedly grant homestead exemptions on such mobile homes.

This proposal would assure owners of mobile homes located on rented land a tax break similar to that enjoyed by other homeowners in Louisiana.

The fiscal impact of the amendment cannot be estimated, but it would have an immediate impact only in those parishes where the exemption now is denied.

Few mobile homes would exceed the \$7,500 maximum assessed value covered by the homestead exemption. This proposal would fully exempt most mobile homes in the state from property taxes except those paid indirectly through land rents or to municipalities.

Without the exemption, taxes would run about \$220 a year on an average-priced new mobile home (about \$22,000) and much lower on the typical older mobile home.

A mobile home on rented land, used as a camp or second home, would not be eligible if the owner claimed a homestead exemption on another residence.

Legal Citation: Act 1141 (Senator Crain) of the 1992 Regular Session, amending Article VII, Section 20 (A) (1).

No. 3 Regents' Membership

Current Situation: The constitution mandates the Board of Regents consist of 15 members appointed by the governor with Senate consent, with at least one but not more than two members from each congressional district. These board members serve overlapping, six-year terms. The constitution also authorizes a student board member who serves a one-year term.

Proposed Change: Effective January 1, 1994, the Board of Regents would be composed of two members from each congressional district, and one member from the state at large appointed by the governor with consent of the Senate. Terms of office and limits would remain the same. The student membership would not be affected by this amendment.

Comment: Based on the 1990 population census, Louisiana's number of congressional districts was reduced from eight to seven. With a mandate of 15 members, the Board of Regents no longer can meet the constitutional requirement of having no more than two members appointed from each congressional district.

A 1991 amendment to reduce Regents' membership failed. That proposal contained additional language not included in the current amendment relating to Regents' authority to coordinate public higher education and name campuses and facilities.

The proposed amendment would authorize membership based on the

number of congressional districts rather than mandating a fixed number. The proposal would ensure that each congressional district was represented by two Regents members. As is the case with the state's other higher education boards, the at-large member would represent the state as a whole.

In the event congressional districts are lost or regained in the future, Regents' membership would adjust automatically without the need to amend the constitution.

Changes in the composition of Regents' membership will require U.S. Justice Department approval.

Legal Citation: Act 1140 (Senator Bankston) of the 1992 Regular Session, amending Article VIII, Section 5 (B).

No. 4 Effective Date of Laws

Current Situation: The constitution provides that all laws take effect on the 60th day after final adjournment of the session in which they are enacted, unless an earlier or later effective date is specified. The constitution makes no distinction between laws enacted during regular or extraordinary sessions.

Proposed Change: The amendment would provide that laws enacted

during regular sessions of the Legislature become effective on August 15 of the calendar year in which the session is held, unless otherwise specified. Laws enacted during an extraordinary session would continue to take effect on the 60th day following adjournment.

Comment: Because the latest possible adjournment date of regular

legislative sessions changes each year, the effective date for most legislation also varies--from August 16 to August 22. Setting a specific effective date for laws enacted during regular sessions of the Legislature would eliminate the confusion of a different date each year.

Legal Citation: Act 1139 (Senator Kelly) of the 1992 Regular Session, amending Article III, Section 19.

No. 5 Title to Certain Terrebonne Parish Land

Current Situation: Certain lands near Bayou Dularge in Terrebonne Parish which have been possessed by several families, in some cases for several generations, have been found by court decision to actually belong to that parish's school board. Many families built homes, paid taxes and resided on these lands which they believed to be theirs. Following a land

survey, it was discovered the families were living on "Section 16 land," which is land that was set aside by the federal government for education uses. Due to an error in the original government survey of 1838, their titles describe lands in Section 9 although their homes actually rest on Section 16 land. This dispute has been ongoing for years without resolution

between the residents and the school board.

Proposed Change: The constitution states that the lands and mineral interests of the state, a school board or levee district cannot be lost by prescription, that is, by adverse possession.

The proposed amendment would create an exception to this provision for the Terrebonne Parish lands under dispute. It would allow the Legislature by law to direct the transfer of

title and ownership to those persons who have possessed the property under good faith and title for a minimum of 10 years or to those who have acquired the lands from them. Past and future mineral rights would be reserved to the Terrebonne Parish School Board as compensation.

Comment: The amendment would resolve this dispute caused by a land survey error to the benefit of those who were adversely affected by it, but also provide compensation to the school board by reserving the mineral rights to the board.

Companion legislation, Act 816 of 1992, would implement the amendment if approved by the voters. The act would require the school board to take all actions necessary to transfer title and ownership of the affected property, reserving the mineral rights to the board. The act would become effective concurrent with the approved amendment.

Legal Citation: Act 1142 (Senator Foster) of the 1992 Regular Session, amending Article IX, Section 4.

Voting on Louisiana Proposed Constitutional Amendments

	Number of Amendments		Average Percent of Registrants Voting
	Proposed	Approved	
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
October 19, 1991	8	5	47.1
Total	74	46	

SOURCE: Official Promulgation, Secretary of State.

November 3, 1992 Election

No. 1 Investment of 8 (g) Fund in Stocks

Current Situation: In 1986, the voters constitutionally dedicated money from a settlement with the federal government over offshore mineral revenues to a permanent Education Quality Trust Fund. The permanent fund, now valued at \$699 million, is invested by the state treasurer's office, and 75% of the interest earnings are appropriated annually to fund programs in elementary/secondary, vocational/technical and higher education. The so-called "8 (g)" trust fund could grow to a maximum of \$2 billion and only the investment earnings could ever be used.

The constitution presently prohibits the state from subscribing to or purchasing the stock of a corporation. This bars the treasurer's office

from investing any funds under its control in stocks. Investment of the 8 (g) trust fund is limited to low risk interest-bearing securities backed by the U.S. government.

Proposed Change: This amendment would authorize the state treasurer to invest a portion of the Education Quality Trust Fund in stocks, as provided by law.

Comment: The treasurer has requested authority to invest a portion of the 8 (g) fund in stocks, arguing that a permanent trust fund should take advantage of the potential long-run growth. Historically, equity investments have produced significantly higher earnings than nonequity investments. According to the

treasurer, had the 8 (g) fund been diversified with 25% in stocks, it could have grown from \$540 million in 1986 to \$1 billion, instead of the current \$699 million.

The treasurer argues that failing to diversify with equities is imprudent, because relying on traditional investments alone poses a greater risk to earnings in the long run.

The 8 (g) trust fund reportedly is the only major trust fund of its kind in the nation not allowed to purchase stock. Similar trust funds from mineral settlements in Alaska and Texas operate under the "prudent person" investment rule and have diversified portfolios.

Two companion acts are tied to passage of this amendment. Act 836 of 1992 would limit stock investments of the 8 (g) trust fund to 25%

of the market value of the fund and limit stock purchases to those of corporations listed on the American Stock Exchange, New York Stock Exchange, or the National Association of Securities Dealers Automated Quotations System. Act 837 of 1992 would expand statutorily the possible 8 (g) fund investments to include investment grade commercial paper, investment grade corporate bonds,

and money market funds consisting of securities eligible for investment.

The constitutional prohibition against state ownership of stock was meant to prevent direct state participation in private business, speculation and short-run fluctuations. These concerns are less relevant in investing a permanent fund than typical idle state funds.

The recipients of the 8 (g) interest allocations, the Board of Elementary and Secondary Education and the Board of Regents, support the proposed amendment.

Legal Citation: Act 1146 (Representative Reilly) of the 1992 Regular Session, amending Article VII, Section 10.1 (B).

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 economic development. Using public funds to purchase private company stock also is prohibited, except by universities.

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.

For many years, the state has funded a variety of grant, loan and loan guarantee programs to spur private business development. Major programs in the Department of Economic Development (DED) include the Small Business Equity Program, Minority and Women Business Development Program, Venture Capital Incentive Program, and Small Business Innovative Research

Matching Grant Program. The Department of Agriculture and Forestry has the Agricultural Products Processing Development Program. Also, several student loan programs relate to economic development.

The existing state aid and loan programs for business development have not been challenged in the courts, but their constitutionality under the current donation prohibition is in question.

Proposed Change: This amendment would authorize the use of public funds for programs of financial assistance, grants, loans or investments to promote economic development in the state. Such programs would require enactment by a two-thirds vote of the elected members of each house of the Legislature, or by two-thirds vote of the governing body of a political subdivision.

Comment: In 1991, the Legislature expanded the state's financial assistance programs for economic development and made a four-year commitment to fund the Louisiana Economic Development Corporation

which manages those programs under DED. These programs require extensive participation by the state's banks; however, some bank officers have voiced concern regarding the possible constitutional problem related to the use of public money. As a result, DED sought specific constitutional authority for the programs.

In 1991, a proposed constitutional amendment similar to this proposal failed to receive voter approval, in part due to the inclusion of broad language authorizing the use of public funds for "education" programs as well as economic development.

The current proposal would expand substantially the authority of state and local governments to use tax money to aid businesses. State and, to a lesser extent, local financial assistance programs have operated in the absence of specific authority and under a constitutional cloud. The proposed requirement for a two-thirds vote for approving eligible programs offers some protection from possible misuse.

Legal Citation: Act 1145 (Representative Reilly) of the 1992 Regular Session, amending Article VII, Section 14 (B).

No. 3 Limited Constitutional Convention

Current Situation: Louisiana's constitution authorizes the Legislature to call a constitutional convention to revise the existing constitution or to propose a new one (Article XIII, Section 2). It further states that any revision or alternative propositions agreed upon by the convention must

be submitted to the voters for approval.

Questions have been raised as to whether the state constitution permits the Legislature to call a limited convention. The state attorney general in a March 23, 1992 opinion found that

such a limited convention could be called, stating that it would be consistent with the state constitution and Louisiana jurisprudence "for the Louisiana Legislature to issue a call for a constitutional convention, which may limit the convention to specific parts of the constitution in revising the constitution." The opinion further

stated that the convention could do no more than authorized in the convention call.

Proposed Change: This amendment would give the Legislature specific authority to call a convention limited to proposing substantive changes in one article or articles, or sections or provisions of the article(s), as specified in the call. The Legislature also could authorize the convention to propose changes in other

constitutional provisions solely for the purposes of orderly arrangement and conformity with the proposed substantive changes.

Comment: While the state constitution does not address the calling of a limited convention, it clearly gives the Legislature sole authority to call a convention and does not specifically prohibit a limited convention nor limited revision of the constitution. In the future, a call for a limited

convention would be specifically allowed if the amendment passes.

The disposition of the amendment will have no effect on the limited convention convened in August, if the call for that convention is challenged legally and found unconstitutional.

Legal Citation: Act 1148 (Senator Kelly) of the 1992 Regular Session, amending Article XIII, Section 2.1.

No. 4 Lottery Dedication for Health Insurance

Current Situation: The state lottery, approved by voters in 1990, began operation in 1991. By law, a minimum of 35% of the gross proceeds go to a special fund from which the Legislature may make annual appropriations. The constitution does not dedicate lottery proceeds but does not prohibit the Legislature from doing so.

Act 131 of 1990 created the Louisiana Health Insurance Association (LHIA) and dedicated to it \$5 million, or 5%, of net lottery proceeds annually, whichever is greater, to help fund a health and accident insurance program for uninsurable persons ineligible for public programs. A 1992 act repealed the dedication; however, an appropriation of \$5 million was made to the program for fiscal 1992-93.

For 1992, the first full calendar year of lottery operation, net proceeds are estimated at \$140 million.

Proposed Change: This amendment would constitutionally dedicate the first \$5 million in net lottery proceeds each year to the Louisiana Health Insurance Association Fund. The Legislature would have to appropriate all money in this fund to the association each year. Money in the fund in excess of that needed to maintain the actuarial soundness of the health insurance program, as provided by law, would revert to the Lottery Proceeds Fund.

Comment: The new insurance program would provide major medical policies for state residents not covered by nor eligible for other health insurance. Those insured under the program would pay premiums of 150% to 200% of the standard rates in the state.

The program is designed to be funded by an annual \$5 million appropriation of lottery proceeds, by

premiums, and by service charges of \$2 per inpatient day and \$1 a day for outpatient surgery at hospitals and ambulatory surgery centers. A federal court has ruled that self-insured plans (about 65% of all health coverage in the state) do not have to pay service charges. However, some employers voluntarily have paid the charges to support the program.

The LHIA expects to issue up to 120 policies beginning September 1992, assuming that its \$5 million state appropriation for 1992-93 is a one-time funding source. Passage of this amendment would, according to the LHIA, assure continued funding, allowing an expansion to 1,200 policies the first year and up to 2,400 by the fourth year of operation. The LHIA would issue only as many policies as its available capital surplus would permit.

Legal Citation: Act 1147 (Representative Sittig) of the 1992 Regular Session, amending Article XII, Section 6 (A).

No. 5 BESE Membership

Current Situation: The State Board of Elementary and Secondary Education (BESE) consists of 11 members--eight elected from single-member districts established by law, and three appointed by the governor at large with Senate consent. Members serve four-year terms, concurrent with the governor. Following the 1990 census, a redistricting plan for BESE was required. Because the plan was not approved by the U. S. Justice Department in time for 1991 elec-

tions, voting for BESE members will take place on October 3, 1992.

Proposed Change: This amendment would set BESE's membership at nine. A member would be elected from each of the state's congressional districts, with the remaining members appointed by the governor with Senate consent. Of the appointed members, no more than one could be from a single congressional district.

The proposal would become effective for members beginning their four-year term of office the second Monday in January 1996.

Comment: This amendment proposes tying the number of elected BESE members to congressional districts rather than to single-member districts established by statute. Since BESE decisions can be determined by a simple majority vote, an odd-number board was considered necessary. Rather than increase the number of gubernatorial appointments to

retain an 11-member board, this proposal would fix the number of members at nine and eliminate one appointment. Under this proposal, the number of BESE districts with two members each would be reduced from

three to two. This amendment would eliminate the necessity in the future to separately reapportion districts from which BESE members are elected.

Changes in election districts proposed by this amendment will

require approval by the U. S. Justice Department.

Legal Citation: Act 1143 (Representative Deville) of the 1992 Regular Session, amending Article VIII, Section 3 (B).

No. 6 Family Court Jurisdiction

Current Situation: The constitution provides that a state district court has exclusive original jurisdiction over certain types of cases, including those involving title to immovable property. It further provides that a family court is to have jurisdiction as provided by law.

The only family courts in the state are in East Baton Rouge Parish, and they do not have jurisdiction regarding the disposition of property. Thus, in a divorce case, custody is decided in family court while the property settlement is decided in district court. This results in increased time and costs to the litigants.

Proposed Change: The amendment would provide an exception to

district court jurisdiction. The exception would allow the Legislature by law to give a family court jurisdiction of cases involving title to both movable and immovable property when the case relates to the partition of community property and the settlement of claims arising from divorce or annulment.

Comment: The constitution already allows family court jurisdiction to be set by law, but because title to property is involved, it was considered necessary to have a specific constitutional provision authorizing family courts to decide property issues.

The proposed change would allow custody as well as matters related to

the disposition of property in divorce actions to be decided in one court (in this case, family court). Areas of the state without family courts decide such issues in this manner.

Companion legislation, Act 694 of 1992, would implement the proposed changes regarding disposition of property if the amendment is approved by the voters. It also would transfer jurisdiction of claims for contributions made by one spouse to the education or training of the other spouse from the 19th Judicial District Court to the East Baton Rouge Parish family court.

Legal Citation: Act 1144 (Representative McMains) of the 1992 Regular Session, amending Article V, Section 16 (A).

NEW PUBLICATIONS

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1992 Constitutional Convention

Proposals resulting from the constitutional convention will be analyzed in a separate PAR publication.

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