

PAR

PUBLIC AFFAIRS RESEARCH
COUNCIL OF LA., INC.

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Guide to the Proposed Constitutional Amendments



VOTER DECISION



No. 1 Investing the Education Trust Fund

A vote *for* would allow the state treasurer to invest up to 35% of the permanent Education Quality Trust Fund in stocks. A vote *against* would continue the ban on using any state money to purchase stock.

No. 2 Louisiana Recovery District

A vote *for* would prohibit the Louisiana Recovery District (LRD) from incurring new debt, issuing bonds, levying a new tax or increasing an existing tax; ensure that the district terminates by June 30, 1999; and require a two-thirds vote of each house of the Legislature to allow any future statewide special district to levy a tax or incur debt for the state. A vote *against* would continue to allow the Legislature, by majority vote, to authorize the LRD, or similar statewide entities, to issue bonds or raise taxes for state use.

No. 3 Juveniles Tried as Adults

A vote *for* would expand the constitutional list of serious crimes for which the Legislature may require juveniles to be prosecuted and punished as adults. A vote *against* may leave in question the Legislature's authority to expand the list of crimes for which juveniles must be treated as adults.

No. 4 Family Court Jurisdiction

A vote *for* would authorize the Legislature to give family courts jurisdiction in property settlements resulting from divorce or annulment of marriage. A vote *against* would continue to have divorce cases decided in family court and the related property settlements decided in district court.

No. 1 Investing the Education Trust Fund

Current Situation: In 1986, Louisiana 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 (known as the "8 (g)" trust fund) is now valued at \$681 million. This fund is invested by the state treasurer's office, and 75% of the interest earnings is appropriated annually to fund programs in elementary/secondary, vocational/technical and higher education. Since 1986, the fund has provided a total of \$370 million for these programs. The trust fund could grow to a maximum of \$2 billion and only the investment earnings could ever be spent.

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 now to low-risk, interest-bearing securities backed by the U.S. government.

A similar proposed amendment was narrowly rejected by voters in 1992.

Proposed Change: This amendment would authorize the state treasurer to invest up to 35% of the Education Quality Trust Fund in stocks, using procedures provided by law. The treasurer would be allowed to contract, with State Bond

Commission approval, for stock investment managers. Provision would be made to pay investment and management costs of the fund from monies earned.

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-term growth. Historically, equity (stock) investments have produced significantly higher earnings than non-equity (e.g., bonds) investments. Presently, the state is limited to investing in certificates of deposit and treasury certificates which, in recent years, have had low earnings.

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 about

\$1 billion, instead of the current \$681 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.

The constitutional prohibition against state ownership of stock was

meant to avoid direct state participation in private business, speculation and short-run fluctuations. Short-run fluctuations in investment earnings would be a serious problem for typical idle state fund investments but not for a permanent fund. The potential problems of speculation and involvement in private business would be reduced by permitting the treasurer to hire outside, professional money managers.

The recipients of the 8 (g) interest allocations, the Board of Elementary and Secondary Education and the

Board of Regents, support the proposed amendment. This change was also recommended by SECURE, a group created by the Legislature in 1993 to suggest state reforms.

Companion legislation (HB 353, S. Theriot), to implement 8 (g) trust fund stock investment, would go into effect only if this amendment is adopted.

Legal Citation: Act 151 (Senator Nunez) of the 1994 Third Extraordinary Session, amending Article VII, Section 10.1 (A), (B), and (C)(2).

No. 2 Louisiana Recovery District

Current Situation: In 1988 the state faced a fiscal crisis with a three-year accumulated budget deficit of \$512 million and expected cash flow shortfalls. The state could not directly issue bonds itself to pay the deficit because it is prohibited by the constitution from incurring long-term debt to pay operating expenditures. Instead, the Legislature used its constitutional authority to create a statewide special district, the Louisiana Recovery District (LRD), with its own powers to levy a one-cent sales tax and issue bonds.

The LRD bond proceeds were to pay off the accumulated state deficit and create a cash flow reserve. The LRD was to return to the state any sales tax revenues not used for debt service on the bonds. The state Supreme Court ruled that the LRD was not the state; thus LRD bonds could be used to pay state operating expenditures.

The LRD issued \$1 billion in bonds and netted \$783 million in proceeds. The \$512 million deficit was paid off but a cash flow reserve never was set up. Instead, the surplus created by the remaining \$271 million in proceeds was used to balance the state operating budget for fiscal years 1991 and 1992. For fiscal 1993, the state took \$95 million from the LRD reserve fund and refinanced LRD bonds to free another \$77 million for budget balancing.

In the 1993 Regular Session, the Legislature (by a less than two-thirds vote in each house) authorized the LRD to suspend the sales tax exemptions on food, utilities and other items, thus increasing state revenues by \$97 million. By using the LRD in this way, the Legislature got around the constitutional prohibition against enacting tax increases in odd-year regular sessions. If the Legislature had waited to enact a tax increase in a special session, it would have had to meet the constitutional requirement for a two-thirds vote to levy or increase a tax.

Two constitutional amendments adopted in 1993 related, in part, to the experience with the LRD. One aimed to prevent the state from again accumulating a multi-year operating deficit. The amendment required a balanced state budget, set procedures to eliminate a projected deficit and required that any actual year-end deficit be eliminated before the end of the next fiscal year.

A second amendment limited somewhat the use of statewide special districts by prohibiting the Legislature from considering measures levying or authorizing new or increased taxes for such districts in odd-year regular sessions.

Proposed Change: The amendment would deny the LRD the power or authority, directly or indirectly, to incur new debt or issue new bonds,

except to obtain a lower interest rate on existing debt. Existing debt or bonds and any refunding bonds would have to be retired no later than June 30, 1999. When all debt is retired, the LRD would cease to exist. The LRD would be prohibited from levying a new tax or increasing any existing tax of the district.

A two-thirds vote of the Legislature would be required to authorize a statewide special district or similar entity to raise taxes, borrow money, or issue bonds to provide revenue for the state.

Comment: Since creating the LRD as a statewide special district in 1988, the Legislature has used it to circumvent three important constitutional provisions intended to keep the state fiscally responsible.

The first of these provisions limits the state's use of bonded debt to capital improvements and specific emergencies--invasion, insurrection and natural catastrophes. The constitution intended that the state spend no more money on operating programs in a given year than it reasonably could expect to receive during the same year. The LRD allowed the state to use borrowed money to pay off a three-year accumulated budget deficit and to balance two subsequent budgets as well.

The second is the constitutional prohibition against enacting or increasing taxes in odd-year regular sessions. The purpose of biennial tax sessions is to encourage revenue planning and provide some respite from continual tax tinkering.

The third constitutional provision requires a two-thirds vote of the members of each house of the legislature to enact or increase a tax. Requiring a super-majority vote ensures substantial legislative agreement to increase taxes.

Not only did the Legislature use the LRD to skirt these constitutional requirements, but manipulated the LRD in various ways to indirectly provide new revenues for the state. The LRD provided a solution to a serious state fiscal problem, but one which should have been avoided in the first place.

The proposed amendment would prevent the continued use of the LRD to circumvent the constitution. The amendment would make it more difficult, although not impossible, to create a replacement for the LRD. A two-thirds vote of the Legislature would be required to create a new district and to authorize it to levy a tax.

The need for a new LRD in the future should have been eliminated by the 1993 balanced-budget amendment requiring a

deficit to be paid off the following year. However, given a large enough deficit, the Legislature might choose to meet the one-year deadline by again creating a special district to issue bonds to pay the operating deficit. The proposal does not entirely remove this possibility.

Legal Citation: Act 48 (Representative Steve Theriot and Senator Foster) of the 1994 Regular Session, adding Article VI, Section 30.1.

No. 3 Juveniles Tried as Adults

Current Situation: The Louisiana constitution requires special criminal procedures to determine the guilt or innocence, the detention, and the custody of juveniles. Juvenile procedures apply to persons alleged to have committed a crime before their seventeenth birthday.

The constitution provides that, by a two-thirds vote, the Legislature may:

- 1) lower the maximum age of persons subject to juvenile procedures; and,
- 2) establish rules allowing courts to waive juvenile procedures in individual cases; and,
- 3) require adult procedures in cases involving first or second degree murder, manslaughter, aggravated rape, armed robbery, aggravated burglary or aggravated kidnapping.

The Legislature has used these powers to reduce the age that juveniles accused of first or second degree murder, aggravated rape or aggravated kidnapping must be treated as adults. In addition, the Legislature has granted district attorneys (DA's) the authority to waive juvenile procedures for the other crimes listed in the constitution.

Proposed Change: The proposed constitutional amendment would expand the constitutional list of serious crimes for which the Legislature may require juveniles to be prosecuted and punished as adults.

The proposed amendment would add first offenses of *attempted* first and second degree murder, forcible rape, simple rape and second degree kidnapping to the list of crimes. The expanded list also would include *second* offenses

of aggravated battery, aggravated burglary, burglary of an inhabited dwelling or felony-grade violations involving the manufacture, distribution or possession with intent to distribute controlled dangerous substances. All other provisions of the constitution concerning juvenile procedures would be unchanged.

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
October 3, 1992	5	2	29.4
November 3, 1992	7	0	53.7
October 16, 1993	6	6	18.1
Total	92	54	

SOURCE: Official Promulgation, Secretary of State.

Comment: Two bills enacted during the 1994 Third Extraordinary Session (HB 64, S. Windhorst and SB 43, J. Dardenne) amended the laws pertaining to juvenile criminal procedures.

The new laws reduced to 15 the age that juveniles accused of the four most serious crimes (first or second degree murder, aggravated rape and aggravated kidnapping) must be treated as adults.

Also, the list of crimes allowing DA's to treat juveniles as adults was amended and applied to persons 15 years of age or older. The list was expanded to include

attempted first or second degree murder, forcible rape, simple rape and second degree kidnapping. Second or subsequent offenses of aggravated battery, aggravated burglary, burglary of an inhabited dwelling and felony-grade violations involving the manufacture, distribution, or possession with the intent to distribute controlled dangerous substances also were added.

While the newly enacted laws were approved by a two-thirds vote, some questioned the constitutional authority of the Legislature to disallow juvenile procedures for crimes not specifically listed in the constitution.

Those believing the Legislature was acting within its authority cited a Supreme Court ruling that the Legislature's constitutional authority to lower the maximum age of persons covered by juvenile procedures also grants it the power to lower the maximum age for specific crimes.

The constitutional amendment was proposed to ensure that any possible constitutional conflicts would be avoided.

Legal Citation: Act 152 (Representative Windhorst and Senator Barro) of the 1994 Third Extraordinary Session, amending Article V, Section 19.

No. 4 Family Court Jurisdiction

Current Situation: The constitution gives the state district courts exclusive original jurisdiction over certain types of cases, including those involving title to immovable property. It also authorizes the Legislature to determine the jurisdiction of family courts 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, the divorce is granted and child custody is decided in family court while the property settlement is decided in district court. This requires two separate cases to be filed and increases both the time involved and the costs to the litigants.

A similar proposed amendment failed to get voter approval in 1992.

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 allows family court jurisdiction to be set by law, but it gives district courts specific jurisdiction over cases involving title to property. 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). In areas of the state without family courts, such is-

sues are already decided together in one court--the district court.

Companion legislation, Act 485 of 1993, would implement the proposed changes regarding disposition of property, effective January 1, 1997, 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.

Because it would presently affect only one parish, this proposal must be ratified by the voters both statewide and in East Baton Rouge Parish in order to be approved.

Legal Citation: Act 1040 (Senator Bankston) of the 1993 Regular Session, amending Article V, Section 16(A).

VOTER CHECKLIST

1994 Proposed Constitutional Amendments

(Mark your choices on this checklist and carry with you to the polls)

<u>Ballot Number</u>	<u>Yes</u>	<u>No</u>	<u>Subject</u>
1	<input type="checkbox"/>	<input type="checkbox"/>	Allow the state treasurer to invest up to 35% of the permanent Education Quality Trust Fund in stocks.
2	<input type="checkbox"/>	<input type="checkbox"/>	Prohibit the Louisiana Recovery District from incurring new debt or levying additional taxes; ensure the district terminates by June 30, 1999; and require a two-thirds vote in each house of the Legislature to allow any future statewide special district to levy a tax or incur debt for the state.
3	<input type="checkbox"/>	<input type="checkbox"/>	Expand the constitutional list of serious crimes for which the Legislature may require juveniles to be prosecuted and punished as adults.
4	<input type="checkbox"/>	<input type="checkbox"/>	Authorize the Legislature to give family courts jurisdiction to decide property settlements related to divorce cases.

PAR Publications Available

PAR's Guide to the Proposed Constitutional Amendments (1994) analyzes four amendments that will appear on the October 1 ballot. PAR presents the amendments in a format that is easy to understand, succinct, accurate and objective. Please use the order form below for additional copies.

The completely revised Citizen's Guide to the Louisiana Legislature: 1994 Update details the legislative process and includes a biographical sketch and picture of each legislator. Recent changes in the membership of the Legislature, session schedules and restrictions as well as changes in lobbying laws makes this publication a must.

A revised edition of the Louisiana Tax Handbook, with changes through the 1994 legislative sessions, will be issued in November. This handbook is a ready-reference on all state and local taxes.

Order Form

(PAR members will receive one copy free)

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_____ Guide to Louisiana Legislature, 1994 Update	No. Ordered _____	Amount _____
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Price List

(All prices include applicable sales tax and postage)

<i>Guide to Amendments</i>	<i>Guide to La. Legislature</i>	<i>Tax Handbook</i>
1 copy \$3.00 each	1 copy \$6.00 each	1 copy \$15.00 each
2 to 100 copies \$1.90 each	2 to 50 copies \$5.00 each	2 to 10 copies \$12.00 each
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	201 or more \$3.00 each	21 or more copies \$ 6.00 each

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