PAR
PUBLIC AFFAIRS RESEARCH COUNCIL OF LA., INC.

Guide to the Constitutional Convention Proposal

November 3, 1992

HIGHLIGHTS

The August 1992 Louisiana Constitutional Convention, which was limited to fiscal matters, adopted a single proposal to be voted on November 3, 1992. The amendment would make the following changes.

General Obligation Debt

Limit the issuance of new general obligation (G.O.) state debt for five years. The state could sell up to 90% of the amount of G.O. bonds retired in fiscal 1993-94; the percentage would fall 5% a year to 70% in fiscal 1997-98. The Legislature could exceed the limit, by a two-thirds vote, but only to deal with an extraordinary emergency. The Legislature would have to adopt a comprehensive debt management plan by the end of 1993.

Nonrecurring Revenues

Restrict the use of nonrecurring state revenues. Nonrecurring revenues would be designated each year by the Revenue Estimating Conference and could be appropriated only for capital outlay or for expenses determined by the Legislature to be extraordinary and nonrecurring.

Statutory Dedications

Require a two-thirds vote of the Legislature, rather than a simple majority, to dedicate state revenues.

State Expenditure Limit

Define the funds to be included in determining the state spending limit and require a specific legislative vote to change the limit.

Budget Reduction Authority

Allow cuts of up to 10% in mandatory expenditures and the use of up to 10% of dedicated funds to balance the budget for a year in which revenues are forecast to drop, or during the year when a deficit is projected. The Transportation Trust Fund would be exempt.

Constitutional Amendment Procedure

Allow the Legislature to propose a single constitutional amendment that would amend one or more articles but only in regard to state revenue dedications, expenditure mandates for the use of state funds, or the processes for adjusting state revenues or expenditures. The Transportation Trust Fund would be exempt.

Feasibility Study for Capital Outlay Projects

Require each capital improvement project, before inclusion in the state capital budget, to be evaluated through a feasibility study.

Capital Budget Priorities

Require those capital outlay requests, to be implemented in the first year of the five-year capital outlay program, be put in priority order based on an evaluation of the feasibility studies.

Industrial Tax Exemption Job Criteria

Require the Board of Commerce and Industry to consider evidence of job creation or retention, as provided by law, when granting industrial tax exemptions.

Local Sales Tax Exemptions

Require a two-thirds vote of the Legislature, rather than a simple majority, to add or change exemptions from local sales taxes.

Local Occupational License Tax

Clarify the provision on local occupational license taxes by removing reference to a repealed state tax.

Local Government Scholarships

Give local governments authority to use public funds for scholarships to attend postsecondary institutions in Louisiana.

Additional Proposed Amendments Appearing on November 3 Ballot

No. 1 Investment of 8 (g) Fund in Stocks
No. 2 Use of Public Funds
No. 3 Limited Constitutional Convention
No. 4 Lottery Dedication for Health Insurance
No. 5 BESE Membership
No. 6 Family Court Jurisdication

General Obligation Debt

Current Situation: The constitution authorizes the state to incur debt or issue bonds backed by the full faith and credit of the state (i. e., general obligation bonds) by law enacted by a two-thirds vote of each house of the Legislature. General obligation (G.O.) debt can be incurred only if the funds are used to repel invasion, suppress insurrection, provide relief from natural catastrophes, refund outstanding indebtedness at the same or a lower effective interest rate, or make capital improvements in accordance with a comprehensive capital budget adopted by the Legislature. For other purposes, the Legislature can propose, by a two-thirds vote of both houses, a statewide public referendum to authorize the incurrence of debt.

The state also can issue revenue bonds payable from fees, rates, rentals, tolls, charges, grants or other receipts or income connected with an undertaking, facility or project. Unless issued for the purposes and in the manner provided by the constitution for G.O. bonds, revenue bonds are not backed by the full faith and credit of the state.

Proposed Change: The proposal would limit the issuance of state G.O. bonds in fiscal 1993-94 to 90% of such bonds retired during that year. The percentage would be reduced by 5% each year until a maximum of 70% of the amount of G.O. bonds retired could be issued in fiscal 1997-98. The limit could be exceeded upon a two-thirds vote of each house of the Legislature to deal with a natural disaster or other extraordinary emergency. The Legislature would be required to adopt a comprehensive debt management plan to take effect no later than December 31, 1993.

Comment: The constitution does not limit the amount of debt that can be authorized or issued. There are two statutory limits: one limits the Legislature's ability to authorize G.O. debt, and the other limits the State Bond Commission's ability to issue G.O. bonds. The state currently is at 27% of the first limit and 73% of the second.

The proposed amendment would force the state to issue less G. O. debt than it retires for the next five years. No further reductions would be required after fiscal 1997-98, thus allowing the state to increase the amount being issued.

Based on the difference between the state issuing the maximum that would be allowed under the amendment versus issuing $200 million a year in G.O. bonds, the financial savings in annual debt payments would start at an estimated $1.4 million in fiscal 1994-95 and reach $8.5 million in fiscal 1998-99 and subsequent years. For fiscal 1992-93, the annual debt service payment for G.O. debt is $362.3 million and for state-supported debt, $580.2 million, according to the State Bond Commission.

The amendment would not affect the issuance of non-G.O. debt, which currently accounts for 46% of outstanding debt service on total state-supported debt.

Legal Citation: Amend Article VII by adding Section 6 (F).

Nonrecurring Revenues

Current Situation: The constitution requires the state's Revenue Estimating Conference (composed of the governor, Speaker of the House and President of the Senate or their designees, and a college faculty member) to estimate revenues to be received by the state general fund and dedicated funds. The Legislature is prohibited from appropriating funds in excess of this official forecast.

Proposed Change: The proposal would require the Revenue Estimating Conference to designate in their official forecast that money which is nonrecurring. Any such nonrecurring revenues could be appropriated only for capital outlay or for extraordinary, nonrecurring expenses. The Legislature would determine which expenses were extraordinary and nonrecurring.

Comment: The Legislature frequently appropriates nonrecurring revenues for recurring expenses. Such nonrecurring revenues have included surplus funds, bond proceeds and audit settlements. The constitution does not prohibit this practice. In the following year, however, the Legislature either must reduce expenses, raise taxes, identify other such revenues, or use a combination to replace the one-time funds. To some extent, they may be offset by a growth in state revenues.

While the proposal would require that nonrecurring revenues be identified by the conference, no definition is provided. The conference would make the determination.

The proposal further would require that any nonrecurring revenues be used only for capital outlay or extraordinary, nonrecurring expenses. It does not define capital outlay nor differentiate between recurring capital outlay, such as typewriters and office equipment, versus the state's capital outlay program for construction projects.

Depending on the definitions used, this proposal could reduce or curtail the use of nonrecurring revenues for recurring expenses.

Legal Citation: Amend Article VII, Section 10 (B) and add Section 10 (D) (2).

Statutory Dedications

Current Situation: Most state revenues are deposited first into the Bond Security and Redemption Fund and, after debt obligations are met, then into the general fund, unless dedicated to a special fund by law. Statutory dedications of revenues may be enacted or repealed by a simple majority vote of the Legislature.

Proposed Change: The proposal would require a favorable vote of two thirds of the elected members of each house to enact a law dedicating money to a fund other than the state general fund.

Comment: The proposed change would make it more difficult to enact statutory dedications.

Legal Citation: Amend Article VII, Section 9 (B).

State Expenditure Limit

Current Situation: A 1990 amendment set a constitutional state spending limit, using as a base the actual appropriations from the general fund and dedicated funds (except parish severance tax and royalty allocations) for fiscal 1991-92. For each fiscal year, a new spending limit is determined by applying a growth factor to the existing limit. The growth factor is the average annual change in state personal income for the prior three calendar years. The limit can be changed by a two-thirds vote of each house of the Legislature.

In setting the fiscal 1991-92 base limit, questions arose as to what appropriation items should be included. In the absence of a constitutional definition, the Legislature excluded federal funds, interagency transfers, nonappropriated items (e. g., debt service), and fees and self-generated revenues. The resulting spending limit was $42 million above the fiscal 1992-93 spending plan. Had fees and self-generated revenues been included, the 1992-93 budget would have exceeded the spending limit by $142 million.

Proposed Change: The amendment would define "state general fund and dedicated funds" to be used in computing the state expenditure limit as all money required to be deposited in the state treasury, except money from the federal government, self-generated funds of colleges and universities, and interagency transfers. The new definition would apply to fiscal year 1993-94 and thereafter.

The proposal also would authorize the Legislature to provide for a mechanism to adjust the expenditure limit to account for programs transferred between the state and another public or private entity, federal or judicial mandates imposed after January 1, 1993, natural disasters or emergencies, and other extraordinary, nonrecurring expenditures. Any change in the expenditure limit by the Legislature would require passage of a specific legislative instrument clearly stating the intent to change the limit.

Comment: The proposal would clarify the computation of the state's spending limit by defining the funds to be considered. In each case, the proposed exclusions remove funds over which the Legislature has no control or, in the case of interagency transfers, avoid double counting. The new definition would differ from that used for fiscal 1992-93 only by including self-generated fees other than those of universities. Legislative staff projections indicate spending for fiscal 1993-94, at current program levels, will exceed the spending limit by $250 million or more, using either the current or proposed definitions.

Legal Citation: Amend Article VII, by adding Sections (10) (C) (2), (3) and (4); and (10) (J).

Budget Reduction Authority

Current Situation: The Legislature now is prevented from cutting an estimated 70% of the state budget. The "uncuttables" are protected for a variety of reasons, including state constitutional protection, court orders, federal requirements and contractual obligations.

The governor is given limited statutory authority to reduce (up to 10%) appropriations from budget units that are in the "cuttable" category when revenues fall below estimates. Higher education and health care make up the bulk of the "cuttables."

The largest of the "uncuttables" is the Minimum Foundation Program (MFP) which funds public K-12 education and totals over $1.8 billion. The Legislature is required to fully fund the MFP. However, the governor can reduce it with the written consent of two thirds of the House and Senate using means provided in the appropriating act.

Proposed Change: The proposal would provide *two* different situations under which the governor and Legislature would have additional authority to adjust the state budget. The Transportation Trust Fund would be excluded from these provisions.

Next Year's Budget. *Whenever the official forecast for the next year was less than the forecast of the current year, the governor could recommend and the Legislature appropriate the following:*

- *up to 10% of the amount needed to fund mandatory expenditures for nonmandatory expenses, and*

- *up to 10% of the funds available for appropriation from dedicated funds to the general fund to be used for other purposes.*

Adjustments to the Adopted Budget. *Whenever appropriations were determined to exceed the official revenue forecast, thus resulting in a projected deficit, the same 10% adjustments as above could be made.*

The proposal would require the Legislature to provide by law for implementing these provisions.

Comment: The proposal would give the governor and Legislature more flexibility in reducing state expenses whenever state revenues are expected to decline in the following year or fall below estimates in the current year. The proposal does not mandate cuts in any particular area. Cuts in mandated expenditures would be limited to 10%, and up to 10% of a dedicated revenue could be transferred to the state general fund.

The primary mandated expenditure that could be cut under this proposal would be the MFP. While current constitutional provisions allow cuts with a two-thirds vote of the House and Senate, the proposal would require a majority vote only. However, the current provisions do not set a ceiling on cuts, such as the proposed 10%. Other expenditures considered mandatory include Medicaid programs, Aid to Families with Dependent Children payments, and prison operations.

Dedicated funds that could be reduced would include the investment earnings, but not the principal, of the Education Trust Fund. The State Revenue Sharing Program (which distributes funds to local governments), the Wetlands Conservation Fund, and a variety of other statutory and constitutional dedications also would be subject to reductions.

The proposal would allow budget cuts to be spread out over a larger base, thus reducing the impact on currently cuttable areas.

Legal Citation: Amend Article VII, by adding Section 11.1.

Constitutional Amendment Procedure

Current Situation: A constitutional amendment proposed by the Legislature is limited to one object and to proposing changes to one article, or sections or subdivisions within the article. The Legislature can propose, as one amendment, a revision of an entire article which can contain multiple objects or changes.

Proposed Change: The Legislature also would be authorized to propose a single constitutional amendment that would amend or add one or more articles, but only for the purpose of amending, deleting or adding provisions related to the dedication of state revenues, expenditure mandates for the use of state funds, or the processes for adjusting state revenues or expenditures. Such an amendment could contain multiple objects or changes. It could not amend, alter or eliminate any provision in Article VII, Section 27, of the constitution which concerns the Transportation Trust Fund.

Comment: Article VII of the state constitution covers most aspects of state revenues and finances. However, some constitutional provisions related to state finance are scattered among the other articles. For example, the provisions on state lottery proceeds are in Article XII. Article VIII requires the Legislature to fully fund the state's share of the Minimum Foundation Program, which provides state aid to local schools; it also mandates the Legislature appropriate funds to supply free school books. Article X requires annual appropriations to the State Civil Service Commission and Department of Civil Service, and to the State Police Commission, and exempts such amounts from gubernatorial veto. Provisions requiring actuarially sound funding of public retirement systems by the Legislature are in Article X.

Approval of the proposed amendment would allow the Legislature to propose one constitutional amendment changing numerous provisions in one or several different articles. For example, the Legislature could propose an amendment to delete all or selected provisions mandating the expenditure of state funds, or one to eliminate all or selected dedications of state revenues (except for the Transportation Trust Fund) without regard to whether the provisions appear in several different articles. Such a revision now would require either an amendment revising an entire article or separate amendments addressing each dedication.

Legal Citation: Amend Article XIII, Section 1 (B).

Feasibility Study for Capital Outlay Projects

Current Situation: The constitution requires the governor to propose and the Legislature to adopt a capital budget. The state's capital budget law details the procedures to be followed, including requiring feasibility studies for projects submitted by legislators. However, the law allows projects to be added to the budget as long as the bill specifically states the project is excluded from the requirements for a feasibility study.

Proposed Change: The proposed amendment would require that each capital improvement project, before inclusion in the state capital budget, be evaluated through a feasibility study as defined by the Legislature, but include an analysis of need and estimates of construction and operating costs. The Legislature would be required to provide by law for procedures, standards and criteria for evaluating the feasibility studies and to set a schedule for submission.

Comment: The exception allowing legislators to add projects to the capital outlay budget was designed for emergencies, but has been used instead to add nonemergency projects.

Legal Citation: Amend Article VII, Section 6 (B).

Capital Budget Priorities

Current Situation: The governor is required by the constitution to submit to the Legislature, at each regular legislative session, a proposed five-year capital outlay program and request implementation of the first year of the program. The capital budget law requires proposed projects to be prioritized and listed by agency.

Proposed Change: The amendment would require that a list of the projects requested to be implemented during the first year of the five-year program be in priority order based on the evaluation of the feasibility studies submitted. Projects eligible for funding from the Transportation Trust Fund would be excluded from this requirement.

Comment: The proposed capital budget currently ranks requests by agency and department. The proposed change is designed to require that capital outlay requests be ranked across departments for the state as a whole for the first year of the five-year program. The state already has priority systems for highway and flood control construction.

Legal Citation: Amend Article VII, Section 11 (C).

Industrial Tax Exemption Job Criteria

Current Situation: The constitution allows the State Board of Commerce and Industry (C&I), with the governor's approval, to grant property tax exemptions for new manufacturing plants or additions for five years, and renewable for five years, under terms and conditions the board and governor deem in the state's best interest.

Proposed Change: The proposal would require the board to consider evidence of the creation or retention of jobs in the state, as provided by law, prior to granting exemptions under initial contracts after January 1, 1993.

Comment: The C&I board has established, by rule, some criteria for granting the industrial tax exemption. While the board considers the employment impact of applications, it has no specific rule in this regard. The Legislature has no authority for setting such criteria.

Under the proposal, the Legislature could suggest job creation criteria but could not mandate a rule to be applied by the C&I board (for example, that a minimum of 10 direct permanent jobs be created). The C&I board still would have discretion in that it only would have to "consider" evidence of job creation or retention.

Legal Citation: Amend Article VII, by adding Section 21 (F) (1) (b).

Local Sales Tax Exemption

Current Situation: The constitution presently authorizes the Legislature by law to uniformly exempt any goods, tangible personal property, or services from sales or use taxes levied by parishes, municipalities, school boards and the state.

Proposed Change: The amendment would require a two-thirds vote of the elected members of each house of the Legislature to enact, reduce or repeal an exemption or exclusion from the sales tax levied by a parish, municipality or school board.

Comment: The Legislature presently may reduce the local sales tax base through exemptions enacted by a simple majority vote. The proposal would make it more difficult for the state to mandate such reductions by requiring a supermajority vote.

Legal Citation: Amend Article VI, Section 29 (D).

Local Occupational License Tax

Current Situation: The constitution presently allows parishes and municipalities to impose an occupational license tax not greater than that imposed by the state. The state occupational license tax was repealed in 1981; however, local governments continue to collect the tax within maximum rates set by state law.

Proposed Change: The amendment would allow parishes and municipalities to impose an occupational license tax not to exceed the rates enacted by two thirds of the elected members of each house of the Legislature.

Comment: The proposal would clarify the constitutional language by removing reference to the repealed state tax, but would make no substantive change in the local tax authority or rates.

Legal Citation: Amend Article VI, Section 28.

Local Government Scholarships

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. No specific exception is provided for scholarships. One parish government has long funded a college scholarship program.

Proposed Change: The proposal would add an exception to the current prohibition against the donation of public funds. It specifically would allow any political subdivision, with approval of two-thirds vote of its governing body, to use its funds to provide financial aid, grants or loans to students at Louisiana postsecondary institutions.

Comment: The proposal would protect an existing local scholarship program from possibly being ruled a prohibited use of public funds and allow such programs by other political subdivisions. The exception does not cover state-funded scholarship programs.

Legal Citation: Amend Article VII, Section 14 (B).

This proposal will appear on the November 3 ballot as "Revision Submitted by the Louisiana Constitutional Convention of 1992." It will precede the six separate proposed amendments approved during the 1992 legislative session. To order copies of PAR's analysis of the six amendments, call (504) 926-8414.

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