PAR'S VOTER'S GUIDE TO THE 1974 PROPOSED CONSTITUTION

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WHAT IS PAR?

The Public Affairs Research Council, a private nonprofit research organization, is devoted to improving Louisiana government and to correcting the state's basic political weaknesses through public enlightenment without political alignment.

Essentially, PAR's research program is dictated by the major political issues that must be decided. It is PAR's objective to see that none of these issues is resolved without adequate information. Actual determination of the research program is made by the organization's Research Committee, composed of PAR members, who sift through the numerous proposals for research projects recommended by staff, public officials and others, and establish priorities.

The research studies as well as all public information activities of PAR are financed by the contributions of more than 5,000 Louisiana citizens, public officials and business firms who are members of PAR. Contributions currently range from the minimum of $35 to $10,000 per year.

Though most PAR studies conclude with specific recommendations for solving state problems, the organization does no lobbying, believing that the soundest way to achieve political progress is through deep-rooted public understanding and support rather than political pressure. Membership in PAR is open to any interested citizen. For further information about PAR and its work, write: Executive Director, Public Affairs Research Council of Louisiana, Inc., P. O. Box 3118, Baton Rouge, Louisiana 70821.

PAR's Voter's Guide to the 1974 Proposed Constitution

On April 20, 1974, Louisiana citizens will vote on a proposed new constitution for the first time in almost a century, since 1879. Louisiana's present constitution dates back to 1921, but voter approval was not required for that document nor for the two previous constitutions of 1913 and 1898.

If approved, the new constitution will become effective at midnight, December 31, 1974, although certain sections such as property tax reevaluation will not become effective until later. It would be Louisiana's eleventh constitution.

A key feature of the proposed constitution is its brevity—just under 35,000 words as compared to the 255,500 in the present constitution. Even so, the proposed document would be longer than the constitutions of 38 other states, and it would not be a great deal shorter than the original 1921 constitution which contained 49,200 words before 536 amendments were added over the years.

While brevity is a desirable characteristic of a document that should be basic law, far more important than the *number* of words is what the words *say*.

Some abhor a longer annual legislative session; others see it as a needed expansion of time.

Some feel granting local government increased powers to decide things locally is proper; others view it as a frightening concept.

Shifting the property tax almost entirely to apartments, business and land, while exempting homeowners almost entirely was seen as proper by the delegates. Others see this as an injustice to renters and a deterrent to the development of new industrial jobs.

Five constitutional boards with the superintendent limited to administrative head of elementary and secondary education or two constitutional boards with the superintendent being the administrative head over all of education are choices voters face.

Seniority and collective bargaining are new constitutional provisions in civil service—favored by some, opposed by others.

New positions on lotteries, public aid to private schools and taxation are also viewed differently by various voters.

PAR cannot recommend that the voters vote YES or NO on the proposed new constitution, though many have expressed the hope that that would be done.

PAR's charter prohibits its recommending how to vote on any constitutional or legislative issue, and such recommendations have not been made in the past. To do so would jeopardize PAR's role of furnishing citizens an impartial analysis. If PAR assumed a position for the proposed new constitution, there might be a tendency to gloss over the weaknesses. If PAR recommended defeat, the reverse might be true. In taking no position, PAR is obligated to report objectively the good and bad, and leave it to voters to decide which outweighs the other.

PAR has attempted to provide the kind of analysis that will enable voters to understand the real issues surrounding each article of the proposed constitution, so they can decide for themselves what is best for Louisiana.

PAR urges voters to study the issues, read, listen, try to strip away the emotion that inevitably rises to great heights in any political campaign, and weigh the importance of the forward steps advanced by the new constitution against the severity of the backward steps—then vote, not just their personal interest but the interest of their state and all its people.

Preamble
and
Article I
Declaration of Rights

Highlights

The proposal would:

• Add a provision in the preamble stating that the intent of the constitution will be to protect individual rights to life, liberty and property, assure equality of rights, and promote the health, safety, education and welfare of the people.

• Add a guarantee of equal protection of the laws for all persons.

• Continue and strengthen guarantees of due process of law, freedom of expression, freedom of religion, the right of assembly and petition, the right to keep and bear arms, the right to a fair trial, writ of habeas corpus and the right of access to the courts. Prohibitions against ex post facto laws (generally retroactive criminal statutes), bills of attainder (laws that declare individuals guilty of crimes and set punishment without a trial), and laws impairing the obligation of contracts would also be continued, along with the statement that rights not enumerated in the constitution will not be disparaged nor denied due to their omission.

• Modify present restrictions on illegal searches and seizures to include communications, and provide that any person adversely affected by an illegal search or seizure would have standing to raise the illegality of the search in court.

• Add the right to a preliminary examination for all felony cases, except when the accused is indicted by a grand jury so that a defendant would have the right to force a prosecutor to show that there was probable cause for his being bound over for trial.

• Add a provision recognizing the rights of the accused to include the right to remain silent, to have the assistance of counsel at all stages of the proceedings against him, and the right, if he is indigent and charged with an offense punishable by imprisonment, to have court-appointed counsel. The legis-

lature would be required to provide for a uniform system to secure and compensate qualified counsel for indigents.

• Expand the current requirement for initiation of prosecution through grand jury indictment (in capital cases and cases arising in the militia in time of war) to include all cases involving life imprisonment.

• Add a prohibition against any laws that would subject a person to euthanasia (mercy killing).

• Add a provision that persons released from supervision by either the federal or state governments would automatically recover voting and other citizenship rights. Present provisions require a released person to obtain a full pardon from the governor before regaining citizenship rights.

• Add a section guaranteeing the right to vote to every citizen of the state 18 years or older not under an order of imprisonment for conviction of a felony or interdicted and judicially declared mentally incompetent.

• Change existing requirements concerning trial by jury in criminal cases, except capital cases:

1. In capital cases, the present requirement of a jury of 12, all of whom would have to concur to render a verdict, would be retained.

2. For cases in which punishment is necessarily at hard labor, a jury of 12 would be retained but the number required to concur in order to render a verdict would be increased from nine to ten.

3. The right for trial by jury in less serious cases would be expanded; the present constitution only gives that right if the punishment may be at hard labor; the proposal would also include cases in which punishment may be confinement without hard labor for more than 6 months. However, it would require the jury size to be increased from five to six, with the number of jurors needed to render a verdict to be left at five.

4. An added provision states that the right to trial by jury could be intelligently waived in all but capital cases.

• Change the right to bail except in certain capital cases and give judges increased discretion to grant bail as follows:

1. The proposal would continue to prohibit bail in capital cases where the proof is evident and the presumption great.

2. The present constitution prohibits bail for persons convicted of felonies, except where a minimum sentence of

less than 5 years is actually imposed, in which cases they are bailable pending appeal until final judgment. The proposal states that all persons shall be bailable before and after sentencing in cases in which the maximum sentence is 5 years, and would permit judges to grant bail in cases which involve higher sentences, pending final judgment.

- Add a prohibition against laws which would discriminate against a person because of race or religion, or would arbitrarily, capriciously or unreasonably discriminate against a person because of birth, age, sex, culture, physical condition or political ideas.

- Add a prohibition against discrimination in access to public accommodations, facilities and areas on the basis of race, religion, or national ancestry, and against arbitrary, capricious or unreasonable discrimination based on age, sex or physical condition.

- Continue the present provision that private property shall not be taken or damaged by government except for public purposes but delete the provision that compensation is to be paid before taking.

- Add the following provisions on property rights:

1. Property could not be taken or damaged by any private entity (such as a utility company) which had the right to expropriate property, except for a "public and necessary" purpose; the question of whether the purpose is public and necessary would be subject to court determination.
2. In all takings the owner would be compensated to the full extent of his loss, with the right to a trial by jury to determine the extent of compensation.
3. No business enterprise or any of its assets could be taken for the purpose of operating the enterprise or halting competition with a government enterprise, except that municipalities would be permitted to expropriate utilities within their jurisdictions.
4. The section would not apply to takings of property for levee and levee drainage purposes.

Comments

The proposed new declaration of rights would strengthen the rights of all citizens and protect them from the artibrary use of governmental powers. The ability of the state to maintain order and conduct the business of government would not be impaired;

in dealings with its citizens the state would be required to follow stricter rules and procedures and would have to have a sound legal basis for action. Private property rights would have greater protection than at present.

Conclusion

While the U. S. Constitution contains a bill of rights applicable to all persons, a state bill of rights can expand on federal rights and also allow suits to be brought in state courts instead of federal courts. The proposed new declaration of rights is comparable to recent constitutions in other states and to the U. S. Constitution.

Article II
Distribution of Powers

Highlights

The proposal would:

- Continue, but with greater clarity, the separation of powers of state government into three branches—legislative, executive and judicial.

Comments

By substituting the word "branches" for "departments" the proposal would avoid the confusion stemming from the present constitutional definition of "executive department."

This article would prohibit one branch or any person in one branch from exercising the powers of another branch except as otherwise provided in the constitution. Other articles in the proposed constitution contain changes which would tend to strengthen the principle of separation of powers by removing the lieutenant governor as president of the Senate, including the attorney general in the executive rather than the judicial branch, and placing the Louisiana Public Service Commission and other state agencies clearly within the executive branch. On the other hand, the proposed mandate for legislative reorganization of the executive branch would give the legislature a function which should be exercised by the governor, with legislative approval.

An exception to the enforced separation of the branches is included in the proposed revenue and finance article which would create an interim emergency board composed of legislative and executive officers. This exception, however, is a reasonable one. The proposed distribution of powers article would prohibit the present practice of legislators serving on executive boards such as the State Board of Education and the State Bond Commission.

Conclusion

The proposed article on the distribution of powers, together with other related changes in the proposed constitution, would make a positive contribution toward improving and clarifying the separation of the three branches of state government.

Article III
Legislative Branch

Highlights

The proposal would:

- Continue a bicameral legislature consisting of a senate and a house of representatives; give constitutional status to single-member legislative districts and provide that the present number of legislators, 39 senators and 105 representatives, could not be increased but could be reduced.

- Abolish the 30-day fiscal session held in odd-numbered years; provide for annual sessions of 60 legislative days within 85 calendar days, but retain the prohibition against levying or increasing taxes in odd-numbered years. The transitional article would require the legislature to experiment with split sessions in 1975 and 1976.

- Remove the lieutenant governor as president of the Senate; the Senate would elect its presiding officer. The House of Representatives would continue to elect its presiding officer, the speaker.

- Retain the provision requiring the legislature to apportion itself following each decennial census but add a provision re-

quiring the Louisiana Supreme Court, upon petition of any elector, to apportion if the legislature fails to do so.

- Retain 4-year terms for legislators but provide that they would assume office at the same time as the governor, on the second Monday in March, rather than at the convening of the first session of their term as at present. The legislature would convene in April rather than in May.

- Lower the state residency requirement for legislative membership from 5 to 2 years and change the requirement for residency in a legislative district from 2 years to domicile in the district for 1 year. The minimum age for Senate membership would be lowered from 25 to 18 and would continue to be 18 for house membership.

- Add a provision making the legislature a continuous body for the 4-year terms of its members but prohibit the carry-over of bills from one session to the next on which action has not been completed.

- Retain the provision allowing the governor to call a special session, but the legislature could do so by a vote of a majority of the members of each house instead of by a two-thirds vote.

- Retain procedural rules to be followed in the passage of legislation but delete the requirement that a bill be read in full at least once.

- Expand and give constitutional status to legislative rules requiring that action on matters to have the effect of law must be taken in open, public meeting and that a committee must hold a public hearing before a bill can be considered for final passage.

- Add provisions requiring that:

1. Concurrence in amendments and in conference committee reports on all bills (not just tax measures as at present) would require the same vote as is necessary for final passage.
2. Rules of procedure observed in passing a law, except those rules concerning the governor's veto and the 15-day deadline for introduction, would have to be followed in passing a concurrent resolution suspending a law.

- Retain the provision that appropriations could not be made for contingencies and specify that appropriations could not be made for longer than 1 year instead of the present 2 years. Appropriations bills in a special session held in a governor's last

year in office would continue to require a three-fourths vote for passage.

- Remove the requirement that the signing of bills by the presiding officers of the legislature take place in open session and extend the time to deliver signed bills to the governor to within 3 days of signing instead of on the same day.

- Retain the provision allowing the governor 10 days to veto bills if he receives them while the legislature is still in session. If he receives a bill after the legislature adjourns, he would have 20 days, instead of 10, to veto a bill before it would become law automatically.

- Provide for an automatic veto session of no more than 5 days to convene 40 days after the end of a session unless a majority of the legislators in either house indicate in writing that the session is not necessary. At present, veto sessions of no more than 10 days can be convened only if a majority of legislators agree by mail ballot to reconsider at least one of the vetoed measures. A two-thirds vote would still be required to override the governor's veto.

- Contain no provision on compensation of legislators; the amount of compensation would continue to be fixed by the legislature.

- Extend the time for laws to become effective from 20 days to 60 days after the final adjournment of the legislature, but any bill could continue to specify an earlier or later effective date. The provision empowering the governor to certify the necessity of immediate passage of a piece of legislation, which now allows laws to take effect the day he signs them, would be deleted.

- Require the legislature to enact a code of ethics prohibiting conflict of interest and delete present prohibitions against sale and trade of votes and voting where there is a conflict of interest. Legislators are now covered by a statutory code of ethics.

- Continue the office of legislative auditor elected by the legislature but require a two-thirds vote for his removal instead of a majority vote in each house.

Comments

The abolition of the fiscal session limiting action to budgetary matters would free the legislature to consider any issue, except

tax increases in odd-numbered years. In the past, fiscal sessions have proved susceptible to domination by governors, and the procedures permitting introduction of nonbudgetary matters were often abused.

Annual sessions of 60 legislative days (any day on which either or both houses is in session) within an 85 calendar day period would almost double the length of legislative sessions over a 2-year period—both in the duration of sessions as well as in the number of days legislators would actually meet in session. Presently the legislature meets in 60 calendar day sessions in even-numbered years and 30 calendar day fiscal sessions in odd-numbered years. In addition, the proposed transitional article would require the legislature to experiment with split sessions for the first two sessions held after the constitution became effective. It would require the legislature to convene for 15 calendar days, recess for at least 8 days and then reconvene for the remainder of the session. This would give legislators and the public more time to consider bills and to express their sentiments on proposed legislation. If the split session proves unsatisfactory, however, it could be eliminated after 2 years.

The legislature would be strengthened by the provision requiring only a majority vote for it to call itself into special session, and the provision on automatic veto sessions would enhance the legislature's opportunity to override the governor's veto.

By providing that new legislators would assume office in March, at the same time as the governor, the proposed article would give them about 5 weeks to prepare for the legislative session which would begin in the latter part of April. This would be an improvement over the present arrangement where the legislature and the governor assume office in May when the legislative session convenes.

The proposed article would retain most of the present rules of procedure which are designed to assure adequate deliberation and prevent legislative deception in passing laws. In addition, new and important safeguards are contained in the provisions which would require public hearings on bills; prevent action on bills unless it takes place in open, public meeting; and require the same vote on amendments and conference committee reports as is necessary for the bill's final passage. Although the legislature could still use the questionable practice of suspending laws by concurrent resolution, a new protection would be provided in the requirement that the same rules of procedure observed in enacting a law would have to be followed in suspending a law, thus assuring public exposure and adequate time for deliberation.

In addition, no resolution could suspend a law for more than 60 days beyond the final adjournment of the next regular session. At present, resolutions can suspend laws indefinitely.

The provision on apportionment which requires the Louisiana Supreme Court to reapportion the legislature if the legislature fails to do so could encourage the legislature to evade its responsibility and shift it to the judiciary. Moreover, apportionment is a legislative, not a judicial, function. This provision would also deny, in effect, a citizen's recourse to the state courts if he were dissatisfied with the supreme court's apportionment. However, citizens would continue to have recourse to federal courts in reapportionment matters.

Conclusion

The proposed article on the legislative branch would permit the legislature to be stronger and more independent, while preserving and, in some instances, enhancing the citizen's protection against legislative abuse.

Although the proposed constitution would require a vote of more than a simple majority in a greater number of areas of legislative action than at present, some of these, such as the two-thirds vote required to make certain elected offices appointive (Article IV), would actually involve a broadening of legislative authority since, at present, a constitutional amendment would be necessary to accomplish the same objective. Most of the other two-thirds or three-fourths votes would be required on matters which are serious enough to warrant them.

Article IV
Executive Branch

Highlights

The proposal would:

- Define the executive branch to include the nine statewide elective officials and all other executive offices, agencies and instrumentalities of the state.

- Require all agencies of the executive branch to be allocated, by function, into no more than 20 departments.

• Continue legislative responsibility for reorganizing the non-constitutional offices and agencies.

• Reduce the number of statewide elected officials from 11 to 9 by deleting the offices of comptroller and registrar of state lands, and by replacing the custodian of voting machines with a commissioner of elections.

• Empower the legislature by a two-thirds vote to make the offices of superintendent of education and commissioners of insurance, elections and agriculture appointive after 1976. By the same vote, these offices could subsequently be made elective again. Elective offices made appointive would be subject to reorganization.

• Reduce the age qualifications for governor and lieutenant governor from 30 to 25 years and the residency requirements from 10 to 5 years.

• Raise the age qualification for other statewide elected officers to 25 years.

• Allow state elected officials to assume office on the second Monday in March rather than in May.

• Continue to allow a governor to serve two consecutive terms.

• Give the governor general authority to remove those whom he appoints.

• Provide that compensation of elected officials would be set by law rather than being set in the constitution.

• Require Senate approval of gubernatorial appointment of department heads but would give the Senate "pocket veto" in that failure to act would mean permanent rejection.

• Remove from the lieutenant governor his present legislative role as president of the Senate.

• Divide the administration of the election laws between the secretary of state and the commissioner of elections.

• Eliminate the attorney general's authority to intervene and supersede in criminal cases except by permission of the court of original jurisdiction subject to appeal.

• Remove the attorney general's specific constitutional authority to supervise district attorneys.

• Fix a 12-month limit for the public service commission to render decisions on rate changes. Proposed rate increases could

become effective prior to final determination within the 12-month period with approval of the public service commission or thereafter if permitted by law. Utilities would have to post bond or security to assure full refund to customers if rate increases were ultimately denied.

• Continue election of public service commission members but would increase membership from three to five.

Comments

One of the most significant defects in Louisiana state government is its administrative structure. This structure is weakened by the multiplicity of separate agencies and by the fragmentation of authority among numerous elected officials and commissions which enjoy special constitutional protection. A modern and efficient administrative structure would require a major reorganization consolidating the existing executive agencies into a manageable number of major departments under the direction of the governor. The proposed article approaches this goal by mandating the necessary reorganization and by authorizing the legislature to reduce the number of elected state officials. The proposal would not assure the complete modernization of the executive branch but it would provide the mechanism for its accomplishment.

The initial reorganization of the executive branch by the legislature is mandated in a section of the transitional article. The required allocation would have to be made before 1978, and the governor would be denied the opportunity to veto this reorganization. The effective date of any reorganization could be as much as 4 years away, and the governor's role in this significant effort would be severely limited. The organizing of administrative agencies is properly a function of the executive. The governor, rather than the legislature, should have been given responsibility for both the initial and subsequent reorganization of the executive branch, subject to legislative approval.

The convention should have acted decisively to reduce the number of statewide elected officials. It chose instead to place the burden of responsibility for reshaping the executive branch upon the legislature. In creating the office of commissioner of elections the convention merged purely administrative duties related to registration and voting machines which should have been given to the secretary of state. Thus the proposed article would hamper proper solution of this problem by giving greater apparent substance to an unwarranted, separately elected office. If the legislature were to exercise the proposed authority to

make the four designated offices appointive rather than elective, and if the mandated reorganization were carried out responsibly, an effective cabinet-style administrative structure could be created.

Most of the present constitutional references to state agencies and officers which might hamper reorganization efforts have been removed from the proposed constitution. The only serious exceptions, besides the four statewide elected officers discussed above, are the retention of the Wildlife and Fisheries Commission, Forestry Commission and Office of State Forester in the proposed natural resources article.

The executive article would seriously weaken the authority of the attorney general in his relationship to local district attorneys. While continuing to allow the attorney general to intervene and supersede district attorneys in criminal cases where they are not serving the best interest of the state, the article would require prior approval to be obtained from the court subject to appeal. This procedure could effectively prohibit timely intervention due to appeals and lengthy delays.

The power of the attorney general to use these functions is a must in cases such as organized crime and labor racketeering in which large financial resources may be used to insure protection from local law enforcement and prosecution officials.

Conclusion

In spite of the convention compromises reflected in it, this article would provide the means whereby a modern and streamlined reorganization of the executive branch might be accomplished if the legislature would choose to do so. This article, however, contains a serious defect in that it would limit the authority of the attorney general to intervene and supersede in criminal cases.

Article V
Judicial Branch

Highlights

The proposal would:

- Retain the present court structure but the legislature could change the geographic districts of the supreme court and the

courts of appeal by a two-thirds vote. The districts of the district courts could be changed by majority vote of the legislature with approval in a referendum in each district and parish affected. Trial courts of limited jurisdiction—family, juvenile, parish, city, magistrate, mayors' and justice of the peace courts—could be abolished, unified or merged by a majority vote of the legislature. In addition, the civil and criminal district courts and city, municipal and traffic courts of New Orleans would be continued subject to change by law. Under the present constitution changes in these courts require a constitutional amendment.

• Strengthen the administrative authority of the supreme court by allowing it to establish procedural and administrative rules not in conflict with law, and making the chief justice the administrative officer over the judicial system. In addition, a chief judge would be selected in both courts of appeal and district courts.

• Reduce the terms of supreme court judges from 14 to 10 years and of court of appeal judges from 12 to 10 years, and would continue the terms of district judges at 6 years. The terms of the New Orleans district judges would also be reduced from 12 years to 6 years.

• Standardize qualifications of judges for the supreme court, courts of appeal and district, family, parish and juvenile courts by requiring a judge to be admitted to the practice of law in Louisiana for 5 years and domiciled in the district or parish for 2 years prior to election. Present constitutional requirements range from 5 years to 10 years of legal practice in Louisiana.

• Change the methods of filling vacancies or new judgeships. They would be filled by special election called by the governor to be held not more than 6 months after a vacancy occurs or a new judgeship is created. Until a vacancy is filled, the supreme court could appoint a person with the same qualifications. The appointee would be ineligible to be a candidate for election. Presently vacancies in district, family, juvenile, parish or city court judgeships are filled by appointment by the governor with Senate approval; other procedures are used for the supreme court and courts of appeal vacancies.

• Increase the membership of the Judiciary Commission from seven to nine. This body is empowered to make recommendations to the supreme court concerning judicial conduct in office, and it presently consists of four judges, two lawyers and one citizen. Under the proposal it would consist of three

judges, three attorneys and three citizens, all appointed by judges' associations.

- Broaden the authority of the Judiciary Commission by allowing it to recommend censure and suspension,with or without pay, of judges for misconduct, in addition to the present recommendations of removal from office and involuntary retirement.

- Retain the provision allowing review of law and facts for civil cases appealed to the supreme court and all cases appealed to the courts of appeal.

- Add the provision that the sheriff would be the chief law enforcement officer of the parish and continue the provision that he be the collector of state and parish ad valorem taxes as well as other licenses and taxes as provided by law.

- Continue the election of the clerk of court, the district attorney and the coroner and also provide that vacancies in these offices be filled by their respective first assistants until filled by election.

- Give constitutional status to the district attorney's present power to be the representative of the state before the grand jury and be its legal advisor; this power is currently contained in the Code of Criminal Procedure.

- Remove the constitutional impediment to jury service by women. The legislature would continue to set the qualifications of grand jurors.

- Require the legislature to provide for the secrecy of grand jury proceedings including the identity of witnesses and also allow the legislature to establish the time and conditions under which a witness may have the advice of counsel while testifying before a grand jury.

Comments

This article would offer no major change in the structure of the court system but would facilitate change. For example, merger or unification of courts of limited jurisdiction and changes in judicial districts would no longer require constitutional amendments.

The extent of the supreme court's supervisory authority over all other courts has been unclear under the present constitution; this article would clearly establish that authority thus allowing it to accomplish a great deal in reforming, modernizing and uni-

fying procedures and operations in all courts in the state. The chief judge in the courts of appeal and district courts could also accomplish much in coordinating and supervising the work of the courts within his district.

The proposed method of filling vacancies would prevent the governor from appointing replacements who might serve for an extended length of time and then be elected as an incumbent. It is argued that use of this procedure in the past has, in fact, given the power of appointment of judges to the governor rather than filling the office by election.

Since the function of the Judiciary Commission is to watchdog the official behavior of judges and make recommendations to the supreme court concerning disciplinary measures for misconduct, it is not appropriate for judges' associations to be able to appoint all members of the commission as is proposed.

The sheriff's function as tax collector should not be frozen in the constitution since this is not related to his primary function of law enforcement.

Assigning the district attorneys power to be the legal advisors of grand juries could prevent the grand juries from seeking outside counsel. Outside counsel for grand juries could be particularly helpful in instances where the district attorney is not performing his duties or where misconduct on his part is suspected by the grand jury.

Conclusion

The major tenor of the proposal is revision,not reform. While the article would not mandate changes in the court structure, it would allow the legislature to reform and unify the present court structure without the necessity of constitutional amendments.

Article VI
Local Government

Highlights

The proposal would:

• Ratify existing home rule charters; however, parish home rule charters could not prohibit further municipal incorporation.

• Change home rule charter provisions as follows:

1. The home rule section would apply generally to both parishes and municipalities.

2. The membership of a home rule charter commission could be either elected or appointed, whereas presently only appointment is allowed.

3. Municipal home rule powers would be strengthened.

4. Procedures for joint home rule charters for two or more local governments within one parish would be authorized.

• Continue to exclude offices of parish school board, sheriff, assessor, district attorney, clerk of court and coroner from being affected by a home rule charter.

• Allow parishes and municipalities without home rule charters to exercise powers in addition to those granted by the constitution or law if local voters approve.

• Authorize the governing authority of parishes and school districts, rather than the governor, to fill vacancies in local elective offices and continue the authority of municipal governing bodies to do so. Certain parish officers would be succeeded by their appointed first assistants as provided elsewhere in the constitution.

• Expand the power of parishes or municipalities, with approval of the affected voters, to assume any special district within their boundaries other than a school district.

• Add a provision prohibiting the legislature from increasing local government expenditures for employees unless approved by ordinance or extra funds are provided. Policemen, firemen and school employees would be excluded.

• Extend to all parishes the power to zone now granted to all municipalities and certain parishes.

• Retain constitutional authority for existing historic preservation commissions (the New Orleans Vieux Carre Commission).

• Retain limits on millages local governments may levy without voter approval.

• Allow millages to be increased beyond the constitutional limits for parishes, municipalities or special districts with local voter approval.

• Give general authorization for parishes, municipalities or school boards to levy sales taxes with voter approval, but the proposal would set a 3 percent limit on the total local sales tax

which could be collected in any given jurisdiction. The legislature could authorize increases above the 3 percent limit, subject to local voter approval.

- Require the legislature to set limits on general obligation debt of local governments.

- Remove interest rate ceilings presently placed on certain bonds.

- Replace many special authorizations for creation of special districts with general authority for the legislature to create such districts or authorize their creation.

- Retain existing levee districts but add authority for the legislature to reorganize, divide or consolidate them.

- Set levee district property tax millage limits but allow voter-approved increases.

- Ratify existing deep-water ports. The legislature could increase port functions by law; however, a two-thirds vote would be needed to diminish their powers or alter their structure.

- Allow deep-water port commission membership to be altered by majority vote of the legislature once, after which a two-thirds vote would be required for further changes.

Comments

The proposed home rule charter sections would replace and improve upon the present separate authorizations. The provisions would be self-operative; thus, no further action of the legislature would be required except to set procedures for joint charter efforts. Home rule charter governments would be empowered to do anything of a local nature not prohibited by the constitution or by law. This would strengthen the powers of home rule municipalities.

The provision for local governments to write joint home rule charters could facilitate solutions to special urban problems.

Two provisions could hamper the home rule authorization and hinder solutions to urban problems. Exemption of various parish officers from being affected by a home rule charter would limit parish reorganization. More significant would be the section denying authority for parish home rule charters to prohibit further municipal incorporation. Irresponsible incorporations for special interests could seriously damage efforts to provide for effective parishwide government under a home rule charter.

This provision was designed to allow further municipal incorporation in East Baton Rouge Parish whose charter presently carries such a prohibition. The same effect could have been achieved locally by amendment of the city-parish charter.

The proposed article would reverse, in part, the present interpretation of the powers of local governments that do not operate under a home rule charter. At present, non-home rule charter parishes and municipalities may exercise only those powers expressly granted by law. Under the proposal, such local governments could exercise a new function, unless denied by law, upon approval of the local electorate. In practice, most of the powers and functions of the non-home rule governments would probably continue to be established by law.

Several other sections would increase local self-determination. The authority to zone would be extended to all parishes, whereas only certain parishes are presently so authorized by law.

The prohibition against legislated increases in local government costs for employees would be seriously marred by the exclusion of policemen and firemen, the two groups which have benefited most from such abuses by the legislature.

The proposed tax and debt provisions in this article would increase the flexibility of local governments although the revenue and finance article would place some important restrictions upon them including a prohibition against a local income tax. The 3 percent limit for local sales taxes would effectively increase the taxing potential for a number of local governments in areas where the full 3 percent is currently not levied. The most significant change would be the granting of sales tax authority to the 38 parishes now without it. The 3 percent limit could be surpassed with legislative authorization and local voter approval.

Conclusion

The article tends to shift greater responsibility for governing local affairs from the legislature to the parishes and municipalities. In many cases where the burden of local self-determination would be increased, the local voter is made responsible for the final decision. The article would be a significant improvement over the present constitutional treatment of local government.

Article VII
Revenue and Finance

Part I. General Provisions

Highlights

The proposal would:

- Retain the requirement that increases in taxes require a two-thirds vote of the legislature and expand this rule to include repeal of tax exemptions.

- Continue in the constitution income tax rates on individuals but remove constitutional tax rates on corporate income.

- Place in the constitution a requirement that federal income taxes are deductible when paying state income taxes.

- Continue to prohibit local governments from levying severance, vehicle license and gasoline taxes and add a prohibition on local governments levying income taxes.

- Retain the $3 auto license.

- Eliminate certain constitutional tax rates such as the severance tax rate on sulphur and timber and inheritance tax rates and exemptions.

- Retain dedication of 10 percent of royalties to parishes, but payment would be made directly to parish governing authorities rather than to the highway department and spent at the direction of the parishes, as is the present practice.

- Increase the dedication of a portion of the severance tax to parishes.

- Delete most other constitutional dedications, such as the gasoline tax and $15 million a year in royalties and bonuses to highways. Dedication of the severance and state ad valorem taxes to public schools would be removed from the education article. However, this article would require that at least $90 million a year be allocated to the Revenue Sharing Fund, and the transitional article would continue to dedicate tidelands

revenue in dispute with the federal government to retirement of state debt and capital improvements. There would be no constitutional prohibition on the legislature continuing to dedicate taxes and other revenues to favored agencies and programs.

- Constitutionally mandate the governor to submit annually a proposed 5-year capital budget, with a request for implementing the first year, and stipulate that all capital projects approved by the legislature, including those financed by bonds but not necessarily revenue bonds, must be part of the comprehensive capital budget.

- Retain Louisiana's bond-issuing procedures and make certain improvements:

1. Purposes for which the legislature could authorize debt by a two-thirds vote would continue to include capital improvements, repelling invasion and suppressing insurrection. Additional bonding purposes would be relief from natural catastrophes and refunding bonds at the same or better interest rates.
2. A provision would allow the legislature to call a statewide referendum to approve incurrence of debt for purposes not constitutionally authorized, such as for veterans' bonuses, thus obviating the need for constitutional amendments.
3. Most state debt would continue to carry the state's full faith and credit pledge.
4. State revenue bonds could be backed by the state's full faith and credit but only if specifically approved by a two-thirds vote of the legislature and included in the state's capital budget. If the full faith and credit were not pledged to revenue bonds, then legislative approval of specific bond issues and their inclusion in the capital budget would not be required. Revenue bonds are a type of bond financed by revenue from income-producing facilities such as dormitories, toll roads and bridges, and ports.
5. The State Bond Commission, the state's sole agency to issue and sell all state bonds, would be given constitutional status, although its membership and authority would not. Its present statutory power to approve all state as well as local bonds, including revenue bonds, before they can be sold would also be in the new constitution.

- Create an Interim Emergency Board to replace the Board of Liquidation of State Debt. The new board could appropriate or borrow about $2 million a year compared to $1 million at present, and it would have more flexibility in allocating amounts. A two-thirds rather than a majority vote of the legislature would

be required for approval of interim appropriations or bonds, and the purpose would have to be for a true emergency not reasonably anticipated by the legislature and for a public purpose for which the legislature could have appropriated funds.

- Require the governor to submit annually a comprehensive state operating budget.

- Stipulate that the legislature must approve a balanced state budget, not now required. The executive article would require the governor to use his veto power also to achieve a balanced budget.

- Provide better central cash management by requiring most state money to be deposited in the state treasury and requiring the state treasurer to invest all such funds available for investment.

- Add a provision making financial information a matter of public record, except taxpayer returns.

- Continue a prohibition against the state or its political subdivisions lending or giving anything of value to persons, associations or corporations, whether public or private, or from purchasing stock of any corporation or association. Certain reasonable exceptions are added.

Comments

Many commendable changes would be made, such as elimination of several constitutional tax rates and most constitutional dedications, requiring a balanced state budget, mandating the preparation and implementation of a long-range capital budget, improving the state's already excellent bond-issuing procedures, enabling the state to earn even more from investing idle funds through improved central cash management, and adding safeguards and needed flexibility in interim emergency funding.

While this article has much to commend it, it contains other provisions not nearly so commendable. For example, income tax rates would continue to be embedded in the constitution for individuals but not for corporations. Louisiana already places a greater tax burden on business than any other state, and various provisions of the proposed constitution would allow this imbalance to become even greater in the total state and local tax structure.

While the legislature would be given greater power over the purse through eliminating some constitutional tax rates, dedica-

tions and exemptions, the legislature would continue to be subverted by other provisions, such as freezing the deduction of the federal income tax in the constitution, retaining the $3 auto tag and expanding dedication of the severance tax to parish governing authorities.

At present, parish governing authorities, school boards and special districts receive about $8 million a year from dedication of a portion of the severance tax; about a third of the parishes with mineral production receive most of this money. School boards receive about $4 million, and parish governing authorities and special districts, about $4 million. Under the proposed constitution, the portion of the severance tax dedicated to parishes would increase from $8 million a year to about $15 million, which would mean a reduction of $7 million available to the state. Parish governing authorities would keep all of the $15 million dedication, thus edging out school boards. The severance tax is counted as a factor in the state school distribution formula; if the state picks up this item through another means of financing, then the state would lose an additional $4 million a year, for a total loss of $11 million.

There is no more basis for kicking back a portion of the state severance tax to parishes than any other state tax—sales, income or corporate franchise, for example, which are paid primarily by the wealthier urban parishes. The effect is to nullify a fundamental purpose of state government which is to raise taxes from whatever sources are available, and spend such money for the benefit of all the people wherever needs exist. Increasing the severance tax to parish governing authorities with mineral production will make the rich parishes richer, even though their need may be less than in other areas. The legislature has defeated similar efforts to expand the severance tax kickback in the past.

Because of the many inherent problems resulting from tax dedications, all dedications should have been prohibited, whether constitutional or statutory.

Bond-issuing procedures would be improved generally under this proposal. However, in order to provide better control and appraisal of revenue bonds which should be self-financing, there should have been a requirement that the legislature approve revenue bonds and also that such bonds be incorporated into a comprehensive capital budget so that all construction projects of the state could be assigned a priority, coordinated with similar projects, and evaluated for future operating and maintenance costs.

Parts II and III. Property Taxation and Revenue Sharing

Highlights

The proposal would:

- Eliminate a requirement that the true value of property be shown on the assessment roll along with the assessed value for taxing purposes. Only the percentage of assessed value would be listed.

- Replace the present constitutional provisions for uniform assessment of property with a system that favors certain classes of property over other property. Land and residences would be assessed at 10 percent and all other property at 15 percent of fair market value.

- Substitute use value for market value as the basis of assessing farm, forest, marsh and horticultural land.

- Give assessors primary responsibility for determining the value of all property except public utilities which would be determined by the Louisiana Tax Commission.

- Make no change in the present system of relief for a taxpayer who may object to improper valuations.

- Expand the regular homestead exemption from $2,000 to $3,000. A $5,000 exemption for veterans would be made permanent. A $5,000 exemption for persons 65 and over would be added. The regular homestead exemption could also be expanded to $5,000 by a two-thirds vote of the legislature.

- Continue other exemptions in the present constitution and add several, including stocks and bonds; property of labor unions, trade, business, professional, charitable and civic associations; and commercial fishing boats.

- Provide for a roll-up or roll-back in tax millages automatically upon implementation of the new assessment percentages to guarantee the same tax revenues the year following implementation as the year before.

- Repeal statutes now providing for special taxing of certain groups which would result in major increases in assessments on

rural electric co-ops and waste products manufacturers, while reducing significantly assessments on bank stock.

- Provide that implementation of this article shall occur January 1, 1978, after all property has been reappraised. Future reappraisals would be required at least once each 4 years.

- Authorize the legislature to reinstate up to a 5 3/4-mill state property tax, a tax which was repealed by the voters in November 1972.

- Continue a state revenue sharing program, increasing the minimum in the fund to $90 million a year.

Comments

All homes valued at $30,000 or less would be exempt from property taxes and $50,000 homes of veterans and the elderly would be exempt. This would result in removing about 97 percent of all home property from taxation. The legislature could extend the exemption to cover all homes valued up to $50,000. As at present, the exemption would not apply to municipal taxes except those of New Orleans.

No tax relief would be granted to renters—some 40 percent of Louisiana's residents—although the legislature would be authorized to grant such relief. Another 30 percent of Louisiana's residents live in homes valued at $15,000 or less, most of which are already exempt. The expanded exemption would thus benefit only residents who own middle and large size homes—about 30 percent of all residents.

Taxes previously paid by these homeowners would be shifted to:

- Apartment units, and passed on to renters in increased rent.
- Merchants, and passed on to consumers in higher prices for groceries, clothes, appliances, and other goods and services.
- Agricultural and forest land in rural areas where there is little else but land and homes.
- Utilities, and then passed on to residents in higher electric, gas, water and telephone bills.
- Industry, which could well decide to make future expansions in neighboring states and deprive Louisiana of badly needed jobs to relieve the serious unemployment that chronically plagues this state.

Municipalities could find it difficult to pass property taxes in the future, since their levies would not be homestead exempt ex-

cept those of New Orleans. The same services now provided by cities could be provided by special districts created by police juries that would be coterminous with the cities and the taxes would be exempt for homeowners. This has happened already in a number of communities, but the incentive to do this more in the future would be increased under the greatly expanded homestead exemption. This could result in police juries taking over more and more of the functions of cities and towns. While some would regard such a result as a desirable streamlining of local government, it is questionable that police juries should absorb municipal functions as a result of expanding the homestead exemption program.

The roll-up and roll-back provision would assure that the average taxpayer would pay no more taxes on the same property the year following implementation of the proposal than the year before. On the other hand, these provisions would result in granting to local governments widely different authority to levy taxes without a vote of the people. For example, the 4-mill general alimony tax now granted all parishes (Orleans and Jackson excepted) without a vote of the people would be converted to about 2 mills in Jefferson Parish and about 8 mills in Caddo Parish because of the low assessment level now in Jefferson and the high assessment level now in Caddo. The same would occur on the 5-mill school tax and the 7-mill municipal tax.

There are no effective enforcement provisions in the proposal to assure that "fair market value" would be equitably determined or that reassessment would actually occur unless through court order. Past failures to comply with property tax law are well known, despite several penalties provided in the statutes. Economic sanctions—which have been effective in other states—could and should have been included.

Failure to improve the cumbersome system of taxpayer relief is another weakness of the proposal. It has taken 6 years for a single court suit to be decided to bring taxpayer relief under present law; no change was made in that law by this proposal.

Conclusion

Part I of the revenue and finance article would give constitutional status to or initiate many sound principles of fiscal administration. It is unfortunate that it, together with other

provisions of the document, reflects policies which may be considered politically expedient today but which will almost certainly place Louisiana in a financial bind in the future and cause harmful shifts in the tax burden.

The state would be limited in its ability to raise money from certain taxes, due to freezing in the constitution the $3 auto license, personal income tax rates and federal income tax deductions when paying the state income tax.

The major source of state revenue has been the severance tax, primarily from oil and gas. While the new constitution would not limit these rates, nevertheless the state will receive less from this source due to a continuing decline in oil and gas production. Over the next 10 to 15 years, the state faces a potential loss of hundreds of millions of dollars a year from the severance tax because of depleting resources.

It becomes clear that the state will be short of money unless a replacement for the severance tax is found. Expansion of state revenue is most likely to come from the sales tax, already at 6 percent in some areas. The state may also be forced to reduce its financing of many local programs, such as public schools, and shift more of the burden to the local level.

However, the proposed constitution would also limit sources of local taxes, due to a new prohibition on local income taxes and a ceiling—legally as well as realistically—on local sales taxes. These factors would militate in favor of future local money coming from property taxes—about the only substantial tax source remaining for local governments. Currently property taxes annually yield about $300 million in Louisiana, but a drastic increase is likely. Considering limitations on other state as well as local taxes, inflation and increasing needs, property taxes could well triple in the next 10 years. Since most homeowners would be completely exempt from paying property taxes, it would be the nonresidential property owners who would be subjected to massive tax increases, and most of the ultimate burden would have to be passed on to renters and other consumers.

Article VIII
Education

The education article is the only one in which voters will have a choice—between Alternate A or B. If the proposed constitu-

tion receives a majority of favorable votes, then the alternate also receiving a majority vote will be the education article incorporated into the new document.

Highlights of Alternate A

Alternate A would:

- Declare that the "legislature shall provide for the education of the people of the state" *and* that the legislature "shall establish and maintain a public educational system." Similar provisions are in the present constitution, although the first declaration was added in 1962 as part of an amendment attempting to provide financial assistance to children attending private schools; the federal courts later declared the program unconstitutional.

- Eliminate the constitutional prohibition on public aid to private and sectarian schools.

- Retain an elected state superintendent, but in conformance with the executive article, the legislature by a two-thirds vote could make the position appointive after 1976. Appointment would be by a new State Board of Elementary and Secondary Education; the superintendent's authority would continue to be confined to elementary and secondary schools.

- Provide for five constitutional state education boards, encompassing 77 board members compared to 38 under the present three boards.

Authority of the present State Board of Education would be divided essentially among three boards—the elementary and secondary board, a board for Southern University, and another board for all other state colleges and universities except LSU; the LSU board would be retained; and a Board of Regents would replace the present Coordinating Council for Higher Education. The five constitutional boards would be:

1. An 11-member State Board of Elementary and Secondary Education with authority over public elementary and secondary schools, vocational-technical training and special schools (for the handicapped) under its jurisdiction.
2. A 15-member State Board of Regents with authority similar to that now given the coordinating council to coordinate and plan all public institutions of higher education. A new power would allow the board to eliminate existing programs or departments; the present coordinating council can only recommend such action. Another innovation would require the Board of Regents to meet at least twice a year with the elementary and

secondary board to coordinate programs of all levels of education.

The State Board of Regents would be a constitutional board, whereas the present council is authorized by the constitution but can be abolished or its powers changed by the legislature.

3. A 17-member continuing LSU board to "supervise and manage" the LSU system.

4. A new 17-member Southern University management board.

5. A new 17-member Board of Trustees for State Colleges and Universities as the management board for all other state institutions of higher education.

While there would be three constitutional management boards for campuses, there could be an indefinite number of statutory boards for particular institutions or groups of them. The legislature would be authorized to create management boards, but could not take such action, except with a two-thirds vote and after study by the Board of Regents, or after a year elapsed from the time of the proposal and no written study was received.

- Contain the following provisions common to all or most of the proposed boards:

1. All board members would be appointed by the governor with Senate consent, except for 8 of the 11 members of the elementary and secondary board who would be elected from single-member districts.

2. Most gubernatorial appointments would be made on the basis of congressional districts.

3. All members would serve 6-year overlapping terms. Thus, terms of LSU board members would be reduced from 14 years, and terms of 8 of the 11 Board of Education members would be reduced from 8 years.

4. Dual board membership would be prohibited.

5. Members would serve without pay except for per diem and expenses.

6. The legislature could provide for student representation on the higher education management boards, but terms would be limited to 1 year and such representatives would have no voting rights.

- In making new appointments to the management boards, the governor is to consider appropriate alumni representation.

- Remove constitutional requirements that the New Orleans campuses of Southern and LSU remain with those institutions and their governing boards.

- Continue the present local school structure.

• Continue to require that the legislature establish and maintain a public education system and that sufficient funds be appropriated to insure a minimum foundation program.

• Delete constitutional restrictions on local school tax millages and debt. Local school boards, except Orleans, would continue to have authority to levy up to 5 mills in ad valorem taxes without voter approval, and Orleans, 13 mills. Additional mills could be levied, subject to voter approval and to any limits the legislature might impose.

• Continue constitutional recognition of Tulane University as well as legislative tuition-free scholarships it must grant.

Highlights of Alternate B

The primary difference between Alternate A and Alternate B is not only the proposed number of constitutional boards for education but also the makeup of the boards and the authority granted the state superintendent. Other provisions are the same. Alternate B would:

• Establish two constitutional boards.

1. A State Board for Elementary and Secondary Education with membership, terms and authority similar to Alternate A.
2. A State Board of Regents with terms and authority similar to Alternate A, except that 8 of the 15 members would be elected.

• Provide no constitutional management boards for various campuses, but like Alternate A, would allow the legislature to create them.

• Continue the LSU board in the transitional article, but on a statutory rather than a constitutional basis. Powers of the LSU board, if continued by the legislature, would be "limited to management of the daily operations" of the LSU system.

• Retain an elected superintendent, but like Alternate A, allow the legislature by a two-thirds vote to make the position appointive. If the superintendent were appointed, the two constitutional boards would make the appointment.

The superintendent would be the administrative head of both boards and would be responsible for administering policies of the two boards, encompassing all of public education—whether he remained elective or became appointive.

Comments

There are two basic issues in the proposed education article: (1) the state's education organization and (2) public aid to private schools.

Organization: Alternate A is characterized as a five-board plan and Alternate B as a two-board plan. However, both are quite similar in several respects. Both would create a separate board for elementary, secondary and special schools. Both would create a Board of Regents over institutions of higher education. The difference lies in the number of constitutional boards to manage various campuses or groups of them. Alternate A would provide for three constitutional management boards and would allow the legislature to create others. Alternate B would provide no constitutional management boards, but would make the LSU board statutory, and allow the legislature to create others.

Alternate A would create a separate constitutional management board for campuses of Southern University which are predominantly black institutions. This could remove Southern from the mainstream of higher education and worsen problems Louisiana is having with the federal government concerning desegregation of institutions of higher education.

Another difference concerns governance of the state's post-secondary vocational-technical schools. Alternate A fails to specify whether such schools would be under the elementary-secondary board or the Board of Regents. Alternate B clearly would place such schools under the elementary-secondary board. Presently, these schools are under the State Board of Education which has responsibility for all of public education except LSU.

Both proposals would separate higher education from other levels of education, thus possibly making coordinating of all of education more difficult than it is now. The potential for effective coordination of all of education would exist under Alternate B, not because of two boards but because of the added authority given the superintendent and his staff. Alternate B has the possibilities of conflict not only between the two boards—one university oriented and the other public school oriented—but also within the Board of Regents which would be almost evenly split—between the elected members who represent the people directly and the members appointed by the governor who therefore owe allegiance to him.

Both alternates would retain the LSU board, but Alternate B would allow the legislature to abolish or phase it out.

Under Alternate B, the state superintendent would be the state's chief administrative officer for all facets and levels of public education. If the superintendent were appointed by the two constitutional boards, administrative problems should be minimal, for the superintendent would be directly responsible to the boards. However, the situation could be quite different if the superintendent continued to be elected, and it seems likely that this would happen. With predominantly elected boards and an elected superintendent, there could be much confusion as to where ultimate responsibility for education would rest. Such confusion exists now in the area of elementary and secondary education because of an elected superintendent and an elected board, but does not exist in the area of higher education nor vocational-technical schools over which the superintendent now exercises no authority. It is also possible that the ultimate responsibility and control over all of education would be assumed by the elected superintendent under Alternate B. If conflicts were to arise, the elected superintendent could ignore the boards, for he would be responsible to the voters, not the boards.

The transition of present board members to new boards should not present problems under Alternate A, but could under Alternate B. All members of the coordinating council would serve on the new Board of Regents, and all Board of Education members could choose service on either board under Alternate B. This could result in an initial 24-member Board of Regents. Also, since new slots on both constitutional boards would be both elective and appointive, there is a question as to when and how elective or appointive posts would be filled as terms of present members expire.

Both proposals would provide for boards to "manage" higher education institutions, but such thinking runs counter to sound principles of administration. Boards may be used effectively in an advisory or policymaking capacity, but not to manage, particularly daily operations. Management is an executive function that should be assigned to administrative officers such as college presidents. If boards do not like their "manager," they should get a replacement.

Public Aid to Private Schools: Both alternates would delete the constitutional prohibition against public aid to private and sectarian schools which has been in Louisiana's constitution since 1864. Both would declare that the legislature "shall provide for the education of the people of the state" but would not require that this be done *by* or *through* the public schools.

Rather, this declaration could make "education of the people of the state" a public purpose, attainable through means other than the public schools.

The proposed constitution would retain provisions in other articles which some argue would prohibit public aid to private schools, but this is questionable. The other provisions cited in the proposed new constitution are:

1. Article I, Section 8, which would provide for freedom of religion, but would not require separation of church and state.
2. Article VII, Section 10 (D) which would require that appropriations be for a public purpose. However, providing education through aid to private schools could be a public purpose, since the legislature would be mandated to "provide for education of the people of the state."
3. Article VII, Section 14 (A) which would prohibit the state or local governments from lending, pledging or donating funds, credit, property or things of value to persons, associations or corporations, whether public or private, but this would not prevent purchasing services, as governments frequently do.

It has also been argued that a prohibition against public aid to private schools is not needed in the state constitution since federal courts have taken over and ruled against such aid. However, federal decisions were not based on a federal prohibition of public aid to private schools, for there is none. Rather, such decisions rest on separation of church and state. Hence, there would be no federal protection against public aid to nonsectarian schools unless there were discrimination, and the proposed state constitution would not ban such aid, either to private or sectarian schools. The present state constitution includes a clear prohibition against public aid to private and sectarian schools.

Conclusion

Both alternates would make considerable changes in the operation and structure of the state's educational system, although neither would represent an improvement. Rather, it seems likely that the situation would be worse under either proposal.

Both alternates could open the door for public aid to private schools, thereby placing the public school system in jeopardy. If there were substantial aid, the public school system could end up serving only the poor.

Article IX
Natural Resources

Highlights

The proposal would:

- Continue the present prohibition against the transfer of beds of navigable rivers and lakes to private ownership except for purposes of reclamation, and add the provision that the land to be reclaimed would have to have been previously lost through erosion and could only be reclaimed by the owner of the adjoining land. All other reclamation projects would have to be only for public use. Presently some governmental authorities, as in Jefferson and St. Charles parishes, are allowed to reclaim the beds of water bodies and sell most of the reclaimed land to private developers.

- Retain and strengthen present provisions which reserve mineral rights on property sold by the state.

- Continue the present state claim, contested by the federal government, to revenues from minerals located beyond the gulf shores of the state.

- Retain the Wildlife and Fisheries Commission and Forestry Commission and their membership in the constitution.

- Add a requirement that no interstate natural gas pipeline may be interconnected with any intrastate natural gas pipeline, and vice versa, without a certificate of public convenience and necessity, to be issued only upon application and hearing as provided by law.

- Add a constitutional requirement for public notice or public bidding on state-owned mineral leases and agreements. Public notice for bidding is now required by statute only for leases.

Comments and Conclusion

Present constitutional safeguards against the loss of public land and mineral rights to private interests would be strengthened by the proposal.

The new requirement on the interconnection of natural gas pipelines is designed to prevent the Federal Power Commission from extending its jurisdiction over pipelines in Louisiana through its "comingling" doctrine. Under this doctrine the mixture of natural gas in an interstate pipeline with gas in an intrastate pipeline through the pipelines' interconnection transforms the intrastate pipeline into a part of the interstate system.

Preservation of two state commissions in the constitution would continue to fragment authority in the executive branch.

Article X
Public Officials and Employees

Highlights

The proposal would:

- Retain the self-operative constitutional approach to civil service with nonpartisan state and city civil service commissions granted rulemaking authority over the systems with their rules having the effect of law. City civil service would apply to cities with over 400,000 population, i. e., only New Orleans at present.

- Add seniority as a constitutional factor in promotion along with the present factors of merit, fitness and efficiency as ascertained by competitive examinations.

- Add a provision allowing the legislature to supplement the pay of state policemen and enforcement officers of the wildlife and fisheries department; supplementing the pay of all other state workers would continue to be prohibited.

- Add a prohibition against discrimination based upon an applicant's or employee's membership or nonmembership in a private organization such as a labor union or the NAACP.

- Add a provision allowing collective bargaining between any state agency, department or political subdivision and employee organizations with respect to wages, hours, grievances and working conditions in a manner not inconsistent with the constitution, civil service law or a valid rule or regulation of the respective civil service commission.

- Increase the number of members of the state civil service commission from five to seven by adding a state classified employee elected by the classified employees, adding two predominantly black private universities to the current nominators (four predominantly white private universities), and deleting the only public university.

- Increase the membership on the city civil service commission from three to five by adding two predominantly black private universities and one predominantly women's private university to the current nominators (two predominantly white private universities) while deleting the member selected directly by the city governing authority.

- Retain the provision prohibiting political activity by classified employees, except voting and serving as commissioners or watchers at the polls, and it would add an exemption allowing involvement in elections on tax referenda, bond issues and constitutional amendments.

- Add prohibitions against discrimination on the basis of race and sex to those presently forbidding discrimination against classified employees based on politics or religion.

- Change the burden of proof in disciplinary actions from the employee to the employer while retaining the burden of proof on the employee for alleged discriminatory actions.

- Retain the provision allowing other cities between the population of 10,000 and 400,000 to be governed by the city civil service provisions if approved in local election.

- Retain the present fire and police civil service system subject to change by two-thirds vote of the legislature including promotion based solely on seniority and the use of pass-fail rather than competitive examinations.

- Prohibit the legislature from abolishing the fire and police civil service or from making it inapplicable to any municipality having a population in excess of 13,000.

- Add a provision allowing the New Orleans firemen and policemen to be excluded from city civil service if approved in a local election within 1 year; if excluded, they would automatically be covered by the fire and police civil service system.

- Freeze the present constitutional provision relating to political activity for firemen and policemen in the new constitution by reference.

- Retain the provision authorizing the legislature to establish a code of ethics for all state officials and employees and expand this to include political subdivisions. The transitional article would move the present constitutional provision creating the two boards of ethics—one for state elected officials and one for all other state employees—to the statutes so that it would be subject to change by the legislature.

- Delete the present constitutional provision concerning dual officeholding and require the legislature to enact laws defining and regulating dual employment and defining, regulating and prohibiting dual officeholding in state and local governments.

- Retain the legislature's power to impeach state and district officers on the grounds of commission or conviction of felonies, malfeasance or gross misconduct while in office.

- Delete the present procedures on removal from office, by suit, of all state, district, parochial, ward or municipal officials except the governor, lieutenant governor and judges of a court of record and require the legislature to establish procedures for removal by suit for all of these officers.

- Retain the present constitutional provision requiring the legislature to establish procedures for recall which would cover the same officials eligible for removal by suit.

- Delete the present constitutional provisions allowing the legislature to address any officer out of office for reasonable cause.

- Replace the detailed self-operative provision on compensation of survivors of law enforcement officers and firemen with a provision requiring the legislature to establish a system for compensating these persons.

Comments

Having a classified employee as a member of the state civil service commission would place the employee in a position not only to help design rules and regulations regarding his and his peers' working conditions and salaries, but also in a position to decide quasi-judicial matters such as disciplinary and discrimination appeals. The commission should be an independent and impartial body; however, the addition of an employee representative with no balancing one for management could destroy the impartiality and independence of the commission.

The addition of seniority as a constitutionally recognized

factor in promotions could leave the employer with less choice in selecting the most qualified candidate for promotion and it could make recruitment of talent difficult in that highly qualified persons could be discouraged from seeking public employment out of fear that their abilities might be passed over in favor of a less able person with seniority. In addition, seniority could become the major factor in state and city civil service through the collective bargaining process thus making a mockery of a civil service system based upon merit.

Personnel policy could become fragmented among departments by giving constitutional status to permitting department heads to negotiate contracts independently with employee organizations. In addition, if the commission were to become prolabor, its effect as an impartial counterweight to the bargaining process would be nullified.

The self-operative approach to civil service would effectively prohibit the legislature from passing any legislation in this field short of proposing a constitutional amendment.

The provision prohibiting the legislature from abolishing the fire and police civil service or making it inapplicable to cities with more than 13,000 persons would deny city governing authorities the opportunity to petition the legislature for a unified city civil service system.

The present constitution and statutes contain various prohibitions against dual officeholding and employment. Unfortunately numerous interpretations by the courts and the attorney general have limited the application of these provisions to the extent that they are largely meaningless. Requiring the legislature to enact laws in this area could provide adequate control over dual employment and officeholding. Other sections of the proposed constitution would prohibit the holding of office in more than one branch of government and prohibit a statewide elected official from holding any other public office.

While the authority of the legislature to address an official out of office would be removed, other methods for removal of officials, i. e., impeachment, removal by suit and recall, would be retained. Addressing an official out of office has been abused by the governor and legislature in the past. Since there would be no constitutional authority permitting this practice, the separation of powers provision would probably prohibit it.

Conclusion

The proposed article would do little or nothing to improve provisions relative to civil service; instead it would weaken civil

service by including seniority in the constitution as a factor in promotion and permitting collective bargaining on a departmental basis. In addition, authorizing supplemental pay for state police and wildlife and fisheries enforcement personnel, and adding an employee, but not an employer, representative on the state civil service commission represent steps backward in maintaining a fair and impartial civil service system.

Article XI
Elections

Highlights

The proposal would:

- Continue present provisions requiring voting by secret ballot, the counting of ballots in public and the immunity of electors from arrest when voting or going to and from the polls (except for felony or breach of the peace).

- Continue the present requirement that persons voting in elections while in a representative capacity would have to vote "viva voce." (They would have to vote orally, so the voters who elected them will know how they voted, e. g., school board members voting on their choice for school superintendent, or members of the legislature voting on their choice for presiding officer.)

- Continue the appointment of registrars of voters by the governing authority of each parish, and would add a prohibition against removal of registrars by the authority that appointed them. (At present registrars are to be removed only by the State Board of Registration.)

- Add a prohibition against the use of public funds to support or oppose any political candidate, party, campaign or proposition, except that public funds could be used to disseminate factual information about propositions appearing on the ballot.

- Mandate the legislature to adopt a comprehensive election code to include permanent registration. (Permanent registration is in effect under present statutes.)

Comments and Conclusion

The article outlines the general principles and a few restrictions on the conduct of elections, giving the legislature responsibility to fill in the details. Overall, it would be a vast improvement over present detailed provisions.

Article XII
General Provisions

Highlights

The proposal would:

- Permit suits against the state and its political subdivisions in matters involving contracts, or injury to persons or property, without obtaining prior legislative approval to sue. Other suits would continue to require legislative authorization.

- Provide a constitutional guarantee allowing citizens to observe deliberations of public bodies and to examine public documents, except as provided by law. Statutes now grant similar although, in some cases, more limited rights.

- Add a mandate that rules, regulations and procedures adopted by all state administrative and quasi-judicial boards be published and made available to the public.

- Recognize the right of people to preserve and promote their linguistic and cultural origins.

- Continue the military as subordinate to the civil power.

- Retain the prohibition against laws abolishing forced heirships, but permit establishment of trusts.

- Continue to outlaw the conducting of a lottery by the state and its subdivisions.

- Mandate, as at present, the legislature to suppress gambling but add a provision requiring the legislature to define gambling.

- Preserve the prohibition against the granting of perpetual franchises, while retaining the authorization for the legislature to allow perpetual or indefinite incorporation.

• Continue the prohibition against prescription (the length of time in which a claim may be initiated) from running against the state in civil matters, except as provided by law.

Comments

A significant change which would result from this proposed article concerns a citizen's right to sue his government. The present constitution adheres to the long-standing legal principle of "sovereign immunity" for the state and local governments under which an individual cannot sue his government without legislative consent. The proposal would overturn this concept, in part, by prohibiting such immunity in matters involving contracts or injury to persons or property.

The proposed constitutional guarantee of the right of a citizen to observe and examine his government in action (unless specifically provided otherwise by law) and the requirement that rules, regulations and procedures of state administrative agencies be made available are sound public safeguards.

The proposed gambling section would remove from the constitution the moral declaration that "gambling is a vice" while continuing the mandate for the legislature to suppress it. The proposed prohibition on lotteries is weaker than existing provisions, however. At present, any and all lotteries are prohibited as is the sale of lottery tickets. The proposal would only outlaw lotteries conducted by the state or its political subdivisions. The legality of lotteries by private enterprises would be determined by the legislative definition of gambling.

Conclusion

Many sections in this proposed article would be an improvement over the present article in that they would strengthen the rights of individuals as they relate to government.

Article XIII

Constitutional Revision

Highlights

The proposal would:

• Retain the present provision that proposed constitutional amendments be introduced as joint resolutions which require

approval of two thirds of elected members of both houses as well as majority approval of voters voting on each amendment.

- Require that resolutions proposing amendments be prefiled at least 10 days before the beginning of a regular session rather than during the first 21 days as presently provided.

- Retain the present provision that proposed amendments affecting five or fewer parishes or parts of parishes must be approved statewide as well as locally. However, the proposal would change the provisions for local approval to require approval in each affected parish or municipality rather than "in the aggregate" as now provided.

- Add a provision allowing amendments to be voted on at any election designated by the legislature including special elections. At present, only amendments to the education article may be voted on at special elections; all others must be voted on at general elections for state legislators and congressmen.

- Add a provision authorizing the legislature by a two-thirds vote to call a constitutional convention to revise or propose a new constitution, subject to approval by a majority of voters.

Comments and Conclusion

Present procedures for amending the constitution would remain essentially the same except proposed amendments would have to be prefiled prior to regular sessions, and amendments could be voted on at any election designated by the legislature, including special elections.

The changed provisions relating to approval of amendments pertaining to five or fewer parishes or parts of parishes could prevent more populous parishes and municipalities from outvoting others in deciding the fate of amendments affecting all of them, but this could also mean that a small locality could defeat a proposal overwhelmingly supported by all other affected localities. Another problem relates to voting on amendments affecting five or fewer special districts. Apparently the vote on such proposals would be counted parishwide rather than just within the affected special districts, thus permitting voters parishwide to determine the outcome of special district amendments.

Another change would place in the constitution the right of the legislature to call a constitutional convention, with the resulting document being subject to voter ratification.

Article XIV
Transitional Provisions

Article XIV would provide for transition from the present to the new constitution. Since most of the provisions of Article XIV relate to other articles, they have been discussed in this *Guide* in context with the related articles.

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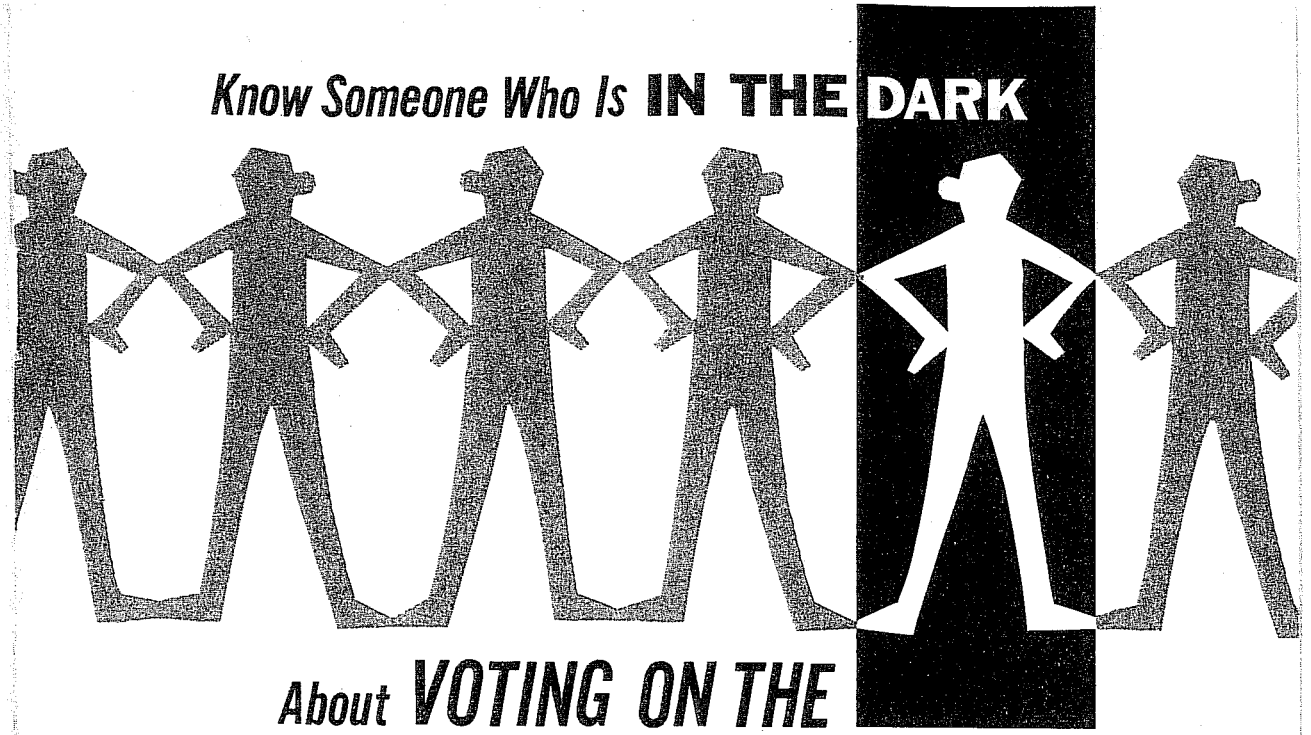

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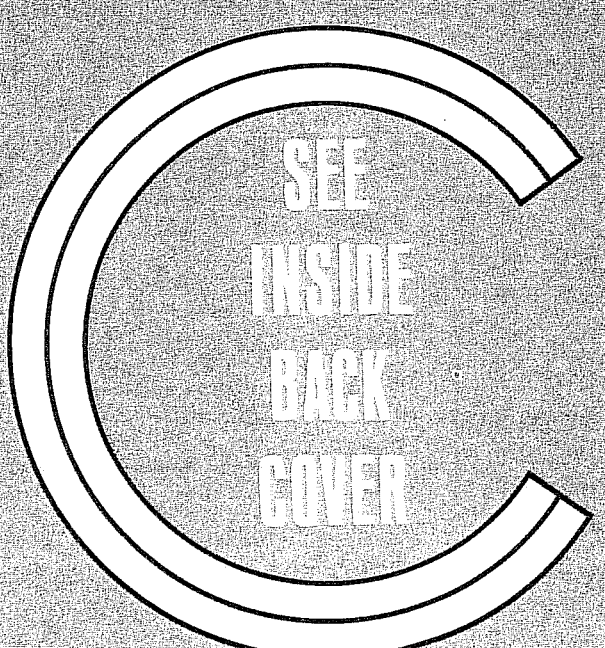
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