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# Guide to the Proposed Constitutional Amendments November 4, 2008

## Introduction

On November 4, 2008, Louisiana voters will be asked to make decisions on seven proposed constitutional amendments. Those amendments would:

- Establish term limits for members of state boards and commissions;
- Require two additional days of notice before calling a special legislative session;
- Allow a temporary successor to be appointed for legislators called to active military duty;
- Redistribute state severance tax revenue;
- Allow the transfer of the special property tax assessment level for certain homeowners;
- Change the requirements for public bodies to re-sell expropriated property; and
- Authorize certain post-retirement benefit funds to be invested in stocks.

The Constitution is considered the fundamental law of the state. Its purpose is to address the rights of the citizens and the authority of the government. The concept of the Constitution as a relatively permanent statement of basic law, however, fades with the adoption of each new amendment. As more detail is placed in the Constitution, even more amendments may be required as conditions change or problems arise with earlier provisions. For example, in 2006 voters passed two complex amendments changing the state's laws regarding property rights and expropriation. One of the amendments (No. 6) being proposed this year seeks to reverse some of the changes enacted by those earlier amendments.

Louisiana leads the nation in the number of constitutions it has adopted and has been among the most prolific in adopting amendments. The state's most recent Constitution of 1974 originally was a brief 35,000 words. To date, however, 214 amendments have been proposed and 151 (71 percent) of those have been adopted. In 2006 alone, voters had to decide on 21 amendments, the largest number of proposed changes in a calendar year since the 1974 Constitution was adopted. Since 2003, only one of 30 proposed constitutional amendments has been defeated by voters.

Some states make the amendment process more difficult by requiring a three-fourths super-majority vote of the Legislature, limiting the number

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of amendments that can be put on a single ballot, requiring passage in two consecutive legislative sessions or even requiring adoption by a certain percentage of the voters.

Louisiana only requires a two-thirds vote of the Legislature and a majority vote of the people for a constitutional amendment to be adopted.

### Voting on Louisiana Proposed Constitutional Amendments (1921-2007)

	Number of Amendments		Average Percent of Registrants Voting
	Proposed	Approved	
<b>1921 Constitution</b>	<b>802</b>	<b>536</b>	--
<b>1974 Constitution</b>	<b>214</b>	<b>151</b>	--
November 7, 1978	1	1	29.9
October 27, 1979	3	3	37.5
November 4, 1980	4	4	55.7
September 11, 1982	8	4	24.9
October 22, 1983	3	3	44.2
November 6, 1984	5	0	53.7
September 27, 1986	7	2	39.3
November 21, 1987	5	5	32.3
October 1, 1988	1	0	27.5
April 29, 1989	1	0	46.8
October 7, 1989	13	5	28.3
October 6, 1990	15	14	46.9
October 19, 1991	8	5	47.1
October 3, 1992	5	2	29.4
November 3, 1992	7	0	53.7
October 16, 1993	6	6	18.1
October 1, 1994	4	4	30.9
October 21, 1995	15	13	46.9
November 18, 1995	1	1	53.2
September 21 1996	2	2	36.1
November 5, 1996	3	3	54.4
October 3, 1998	18	15	19.6
November 3, 1998	2	2	26.4
October 23, 1999	10	5	31.9
November 20, 1999	6	6	23.1
November 7, 2000	4	0	51.0
November 5, 2002	12	6	35.7
October 4, 2003	15	11	38.1
September 18, 2004	1	1	27.8
November 2, 2004	4	4	50.6
September 30, 2006	13	13	22.3
November 7, 2006	8	8	28.7
October 20, 2007	4	3	46.6

SOURCE: Official Promulgation, Secretary of State

Typically, constitutional amendments are proposed to deal with emerging issues, authorize new programs or policies, ensure that reforms are not easily undone by future legislation or seek exception or protections for special interests. Ideally amendments to the Constitution should be reserved only for significant policy changes. In reality, voters often are asked to decide numerous issues that are highly complex, specialized, applicable to a single place or time or extremely minor.

Regardless of the number, complexity or length of amendments on the ballot, however, voters must evaluate each proposal carefully and make a decision based on its merits. In evaluating each proposal, voters should consider not only whether the proposal is a sound concept but also whether the proposed language belongs in the Constitution or if the suggested change should be statutory in nature. Changes to statutory law do not require voter approval.

# 1

## Term Limits for Members of State Boards and Commissions

### You Decide

- A vote *for* would impose term limits for members of certain state boards and commissions.
- A vote *against* would continue to allow members of certain state boards and commissions to be elected or appointed for an unlimited number of terms.

### CURRENT SITUATION

There are more than 500 appointed boards and commissions in the executive branch of government. Some are established in the Constitution and most are established by statute. A few of them already have limitations on the number of terms a member can be

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appointed or elected to serve, but there are no term limits that apply generally or that prevent appointment to a separate board following a term limit being reached.

### **PROPOSED CHANGE**

The amendment would limit to three the number of consecutive terms a person could be appointed to serve on the following boards and commissions:

- Public Service Commission
- State Board of Elementary and Secondary Education
- Board of Regents
- Board of Supervisors for the University of Louisiana System
- Board of Supervisors of Louisiana State University and Agricultural and Mechanical College
- Board of Supervisors of Southern University and Agricultural and Mechanical College
- Board of Supervisors of Community and Technical Colleges
- Forestry Commission
- State Civil Service Commission
- State Police Commission

If a person serves more than two and one-half consecutive terms, he/she could not be reappointed or re-elected to any board or commission on the list for a period of at least two years following completion of the terms.

Current members of boards and commissions would be allowed to finish out their terms and their next term would count as their first for the purposes of term limits.

### **COMMENT**

The proposed change would follow passage of a similar three-term limit on consecutive terms for legislators, which was imposed by a 1995 constitutional amendment. The proposed amendment would impose term limits on all of the boards and commissions established in the Constitution that do not already have term limits.

Separate legislation passed during the 2008 Regular Legislative Session places a general term limit on state boards and commissions established in statute. Appointees of affected boards and commissions now are limited to serving no more than three consecutive terms or 12 consecutive years on the same board or commission. The statute also imposes a two-year prohibition on serving on a different executive branch board or commission following service on one or more boards or commissions for at least two and a half consecutive terms or 12 consecutive years. Boards and commission that already have term limits would not be affected by this change. The Board of Ethics, for example, already has a two-term limit and is not affected by the legislation.

An exception would allow appointees to serve unlimited consecutive terms if their membership on the board or commission is a duty of a separately held elected or appointed position.

Proponents argue that entrenched board and commission members tend to favor the status quo and be a barrier to reform. They argue that term limits encourage diversity of perspectives in public service.

Opponents to term limits argue that appointment and selection processes are already in place to prevent any problems associated with consecutive terms of service. They argue that board service often requires development of specialized knowledge that takes a long time to acquire and should not be set aside for the sake of an arbitrary term limit.

**LEGAL CITATION** Act 935 (Sen. Mount) of the 2008 Regular Session, amending Article IV, Section 21(A), Article VIII, Sections 3(B), 5(B), 6(B), 7(B), 3 and 7.1(B), Article IX, Section

8(B), and Article X, Sections 3(B) and 43(B) and to add Article IV, Section 22. Companion legislation is Act 875 (Sen. Mount) of the 2008 Regular Session.

## 2

### Time Limits for Calling Special Sessions

#### You Decide

- ❑ A vote *for* would require that the call for a special legislative session be issued at least seven calendar days prior to the start of the session.
- ❑ A vote *against* would continue the requirement that the call for a special legislative session be issued at least five days prior to the start of the session.

#### CURRENT SITUATION

The Constitution prescribes the methods by which the Legislature can be called into special sessions held in addition to the regular annual sessions. They can be called by either the governor or a majority vote of the Legislature. Legislation during special sessions is limited to the specific topics listed in the call, which determines the length of the session not to exceed 30 days. The call must be issued by the governor or presiding officers of the Legislature five days prior to convening the session.

#### PROPOSED CHANGE

This amendment would change the required advance notice for calling a special session from five days to seven calendar days.

#### COMMENT

Legal prescriptions for timelines and event scheduling can be tricky to interpret. The distinctions among calendar days, business days and 24-hour periods are important ones when deadlines are tight. Vague constitutional language aimed at requiring sufficient notice for legislators being called into a special

session prompted this amendment.

The governor called the Legislature into two special sessions in 2008 prior to the convening of the regular session. The proclamation announcing the second special session in March was publicly announced by the governor on Tuesday, March 4, but signed by the governor the previous day. The session was scheduled to be convened on Sunday, March 9 – giving legislators four business days to prepare for the Sunday start date. If the constitutional requirement had been interpreted to require notice five 24-hour business days in advance, the requirement might not have been met.

The short notice prompted questions regarding how to interpret the words “days” and “issue” in this law. Language in the Constitution specifically says that the governor or presiding officers “shall issue” the call “five days prior to convening.” Because the proclamation was signed one day and publicized the next, it was noted that a governor could circumvent the advance notice requirement by keeping a signed (issued) proclamation secret until publication of it became convenient. It was not suggested that such a tactic was used here, but the potential for abuse was highlighted.

The proposed amendment would eliminate confusion over whether days must be counted by calendar days or by 24-hour periods. It also would extend the requirement from five to seven days, eliminating the problem of how to count weekend days while maintaining at least five weekdays between calling and convening. However, the debate over whether signature suffices for issuance would not be addressed. There still would be no required timeline for making public a call for a special session.

**LEGAL CITATION** Act 937 (Sen. Adley) of the 2008 Regular Session, amending Article III, Section 2(B).

# 3

## Temporary Successors for Legislators Ordered to Active Military Duty

### You Decide

- ❑ A vote *for* would allow the Legislature to appoint a temporary successor for any legislator called to active military duty that prevents performance of the duties of office.
- ❑ A vote *against* would continue to require districts to be without representation in the case of their elected legislator being called away to active military duty and refusing to resign.

### CURRENT SITUATION

The Louisiana Legislature currently has one member at risk of being called away to active duty. Unless he resigns and a special election is called for his replacement, his district will be without representation in his absence.

The Uniformed Services Employment and Reemployment Rights Act (USERRA) provides job protection and rights of reinstatement to service members who are deployed and must take a leave of absence from their civilian jobs. Employers are required to allow service members to return to their positions with full benefits and compensation as they would have accrued if the service member had not been deployed. However, the Department of Defense prohibits service members called to active duty (for more than 270 days) from exercising duties of elected state office. They are allowed to continue holding their elected office.

### PROPOSED CHANGE

The amendment would require that the Legislature provide for a method of appointing a temporary successor for legislators who are called to active military duty.

Companion legislation outlines further details, including a prohibition on a temporary

successor from qualifying to run for the office while serving as a replacement for a legislator on active duty. Immediate family members would not be allowed to serve as temporary successors. Immediate family is defined as children, the spouses of children, siblings and their spouses, parents, spouse, and the parents of the spouse.

The statute would require that the elected legislator's order to active duty must be for a period of 180 days or more for a successor to be appointed. All applicable qualifications for eligibility to serve in that district would be required of the successor.

The appointment procedure is described in the companion legislation. The process would require that potential temporary successors be identified in advance of a legislator being called away. Legislators who might be called to active duty during their term of office would submit a list of at least three qualified nominees to either the Speaker of the House or President of the Senate. Those nominees then would be vetted in hearings by the governmental affairs committee of the appropriate house. That committee would make a recommendation for appointment, but the presiding officer of the appropriate house would make the appointment if and when the legislator were called to duty.

Temporary successors would serve only for the duration of the elected legislator's term of office or until he/she returns from active duty. Successors would be required to comply with the same ethics laws governing all elected legislators, except financial disclosure statements would be required only of those who serve six months or more.

### COMMENT

The author of this bill is the only member of the current Legislature at risk of being called to active duty. He has received indication that he will be called up near the end of 2008. This legislation was proposed so his district would be represented in his absence.

In the past 36 years, it has happened only once that a Louisiana legislator was called to active duty. That was during the Gulf War. As the military increasingly relies on reserve and guard units for active deployment, it is conceivable that this could occur more frequently.

Proponents argue that a district should not suffer lack of active representation in the Legislature when its senator or representative is called to duty. This amendment is proposed as a solution to that rare situation.

**LEGAL CITATION** Act 931(Rep. Lorusso) of the 2008 Regular Session, amending Article III, Section 4(F). Companion legislation is Act 702 (Rep. Lorusso) of the 2008 Regular Session.

## 4

### State Severance Taxes to Parishes

#### You Decide

- ❑ A vote *for* would dedicate additional state severance taxes to parishes of origin, restrict the use of a portion of these funds and dedicate a portion of severance taxes collected on state lands to the Atchafalaya Basin Conservation Fund.
- ❑ A vote *against* would maintain the maximum amount of severance tax revenue that has to be paid by the state to parishes at \$850,000, adjusted annually for inflation.

#### CURRENT SITUATION

##### Severance tax revenue

The Constitution requires the state to give parish governments a portion of the severance taxes collected in each parish. It requires that 20 percent of the state severance tax on all natural resources, other than sulfur, lignite or timber, be shared with the parish of origin. But, the amount each parish can receive is capped at \$850,000, adjusted annually for

inflation. The current cap for the 2009 fiscal year is around \$875,000.

Local governments are prohibited from levying a severance tax. The sharing of state severance tax revenue, which goes back to at least the 1921 Constitution, is intended to help compensate parishes for wear and tear on roads and bridges by oil and gas drilling equipment and other related traffic. The present cap has been in place since 2007, when it was increased from \$750,000. In 2007, the state collected \$890 million of these severance taxes and remitted nearly 4% back to the parishes where the tax was generated. Oil and natural gas collections account for almost 98 percent of all severance tax collections.

Parishes would have received \$178 million if the full 20 percent were distributed, but the per-parish cap limited the actual distribution to about \$32 million. All but one of the 64 parishes received some severance tax revenue (one received only \$42), and 29 received the maximum amount of \$850,000.

##### Atchafalaya Basin Program

Programs to protect and restore the Atchafalaya Basin are funded by annual appropriations designated for Atchafalaya Basin master plan projects identified in Act 920 of the 1999 Regular Legislative Session. That law scheduled \$85 million in annual appropriations through FY 2014, but did not establish a permanent funding source or guarantee the appropriations.

#### PROPOSED CHANGE

##### Severance tax revenue

The amendment would increase the amount of severance tax revenue the state is required to share with the parishes in which the severance tax was generated. The maximum amount per parish would be increased from \$850,000 per year (2007 dollars) to \$1.85 million for fiscal year 2009 and \$2.85 million thereafter. Each year after 2010, the cap would be adjusted upward for inflation.

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The amendment also would dedicate 50 percent of the additional severance tax revenue parishes receive after July 1, 2009, to transportation projects eligible to receive funds from the Parish Transportation Fund.

### **Atchafalaya Basin Program**

The amendment also would create the Atchafalaya Basin Conservation Fund to be appropriated by the Department of Natural Resources. A new dedication of 50 percent of severance tax revenue collected on state lands – up to \$10 million annually – would be directed to the fund, which would be used exclusively for certain Atchafalaya Basin projects.

Further restrictions on how much of the fund could be spent for specific types of projects and administrative costs are outlined in the amendment.

### **COMMENT**

A 2007 constitutional amendment increased the cap in question from \$750,000 to \$850,000 and added an annual adjustment for inflation to prevent having to present this question to voters once again. The current proposal to raise the cap by \$1 million in a single year essentially skips 26 years of inflationary adjustments (assuming a stable 3 percent growth rate). The additional \$1 million transfer in 2010 would fast forward the cap by another 14 years.

If the cap is raised as proposed, 30 parishes are estimated to receive an additional \$26 million in FY 2010 and \$46 million in FY 2011. The remaining parishes do not generate enough severance tax revenue to benefit from the cap increase.

The severance taxes that would be dedicated to the Atchafalaya Basin Conservation Fund are likely to hit the annual \$10 million cap each year. The overall loss to the general fund if the proposal passes is estimated to be \$37 million the first year and \$56 million annually thereafter.

Natural resource and mineral production take a huge toll on local infrastructure, and the severance tax distributions to parishes help to offset the losses. For this reason, a portion of the additional revenue above 2008 levels would be dedicated to transportation purposes. Parishes are not currently limited in how the severance tax revenue is spent.

Proponents argue that boosting the cap above the rate of inflation is justified by the recent spike in state severance tax revenue. As prices and production rise, parishes should get to share in the windfall, they argue. Severance tax revenue is likely to rise further in coming years as production increases in Northwest Louisiana due to the recent Haynesville Shale natural gas strike.

Opponents of the proposal question the need for the state to give up more revenue to benefit parishes that already receive other revenue from the economic activity associated with severance operations, like jobs and sales taxes. If mineral resources are considered assets of the state as a whole, then the dedication prevents the state from using its revenue where most needed.

**LEGAL CITATION** Act 932 (Rep. Gallot) of the 2008 Regular Session, amending Article VII, Section 4(D)(3) and to enact Article VII, Section 4(D)(4) and (5).

# 5

## Transfer of Special Property Tax Assessment Level

### You Decide

- ❑ A vote *for* would allow homeowners to transfer any special property tax assessment level to their new homes when their property is sold to or expropriated by the state, federal or local government.
- ❑ A vote *against* would continue to prohibit the transfer of special property tax assessment levels to new properties.

### CURRENT SITUATION

The Constitution gives a special property tax break to homeowners who are seniors (age 65 or older), permanently and totally disabled, and certain members of the military and their surviving spouses (with certain age restrictions depending on the purpose for which the special assessment level was granted).

The property tax assessment is frozen at a “special assessment level,” which is the assessed value of the property when it first qualified for the freeze. The assessment remains the same as long as (1) the property value does not increase more than 25 percent due to construction or reconstruction or (2) the property is not sold. The benefit is lost if the applicant’s combined adjusted gross income for federal income tax purposes exceeds a threshold equal to \$50,000 in 2000, adjusted annually for inflation. The current threshold is around \$64,000.

While the eligible homeowner’s assessment is frozen, the millage rates applied to that assessment are not. The tax bill on that assessed value could rise because of new or increased millage rates, but not because of an increase in local property values.

### PROPOSED CHANGE

The amendment would enable certain homeowners to maintain their property tax breaks in the event they sell or forfeit their

homes due to expropriation by state, federal or local authorities. The special assessment level granted the homeowner would be transferred to the replacement home unless the fair market value of the new home exceeds 200 percent of the fair market value of the home sold or expropriated. The new home would have to be acquired no later than 24 months after the expropriation or sale is final.

### COMMENT

If this amendment passes, revenues derived from property taxes would not be reduced. However, revenue growth could be slowed in parishes where a high number of properties are expropriated from citizens claiming a special assessment level. Owners of the replacement homes would have tax bills that could grow only as a result of millage increases and not property value increases.

Because so few homeowners are expected to be affected by this tax break, the fiscal effect would be minimal on governments, but significant for the recipients of the tax break. The potential loss of additional revenues to local governments or the value of the tax break to recipients cannot be estimated.

Proponents argue that this amendment is needed to protect certain homeowners from large tax increases if the government forces them to move. Those granted the special assessment level are generally people who live on a fixed or declining income. Without the assessment freeze, they can expect to pay increased property taxes when they purchase a new home at fair market value.

Opponents argue that special assessment levels, in general, render property tax assessment rolls inaccurate. An alternate way to grant a tax break to deserving property owners would be to freeze the tax bill at a certain level. To freeze the assessment level creates an impression of inequity among neighbors and fosters confusion about home values.



**LEGAL CITATION** Act 933 (Rep. Ritchie) of the 2008 Regular Session, amending Article VII, Section 18(G)(6).

# 6

## Re-Sale of Certain Expropriated Property

### You Decide

- ❑ A vote *for* would remove the requirement that public authorities first offer expropriated property back to its prior owner before the property can be sold to a third party if the property was taken to remove a threat to public health or safety and was held for less than 30 years. It also would remove the requirement that such property be sold by public bid and eliminate the opportunity for certain property owners to challenge surplus takings.
- ❑ A vote *against* would maintain the same re-sale requirements for property taken to remove a threat to public health and safety as for property taken for other public purposes.

### CURRENT SITUATION

Both the Constitution and statutory law allow many state and local governmental entities to force the sale, or expropriation, of private property without the consent of the owner. One of the public purposes for which private property can be expropriated is to remove a threat to public health or safety. Often, property taken for this purpose is cleaned up and sold back to private interests for redevelopment. Local authorities in the state's hurricane-affected communities depend on this authority in order to implement large-scale redevelopment plans where property is taken, cleaned up and sold back to private interests. Plans often call for sites to be cleared and sold in large tracts to specific buyers for specific development projects.

A 2006 constitutional amendment placed new legal restrictions on how expropriated property can be transferred back to private interests when it no longer is needed for a public purpose. Supporters of the 2006 change argued that it was intended to protect private property rights by preventing government from essentially taking property from one citizen and selling it to another for economic development purposes.

If expropriated property has been held for 30 years or less, some governmental entities (with a few exceptions) first must offer it for purchase at the current fair market value to parties with this right of first refusal, including the owner at the time of expropriation, any heirs, or if no heir, the successor in title. If the parties do not exercise their right of first refusal, the property then may be sold by competitive bid to the general public. Property that has been held for more than 30 years does not have to be offered first to these parties and may be sold or transferred according to other state laws, which in many cases require competitive bid open to the general public.

Other provisions of the 2006 constitutional change were designed to remedy surplus takings, which are situations where more property is expropriated than is needed for a project. The Constitution requires expropriating authorities to declare property as surplus if it is no longer needed for a public purpose within one year after completion of the project. The Constitution also gives property owners the right to petition authorities to declare property as surplus if those authorities have not done so voluntarily within one year after completion of the project. Surplus property must be offered for re-sale to the parties entitled to the right of first refusal. If they do not exercise their right to repurchase the property, it then may be sold by public bid.

### PROPOSED CHANGE

The proposed change to the property rights section of the Constitution would eliminate the right of first refusal on property expropriated to remove a threat to public health or safety.

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Property expropriated for other purposes would remain subject to the right-of-first-refusal requirement and still would have to be offered back to the original owner, any heirs, or a successor-in-interest if no longer needed for a public purpose.

The change also would eliminate the requirement that property taken for health and safety reasons be sold by public bid and would eliminate the right of an original owner, an heir or a successor-in-interest to re-purchase surplus property.

### **COMMENT**

When the 2006 amendment was proposed, opponents argued that it threatened redevelopment efforts by imposing too many onerous restrictions on the re-sale of expropriated property. Supporters of this proposed 2008 amendment argue that it would fix some of the problems created in 2006.

Redevelopment officials contend that the 2006 amendment to the Constitution is unclear and has had the unintended effect of hampering sale and redevelopment of blighted property. The current expropriation requirements have hampered the redevelopment goals of the New Orleans Redevelopment Authority (NORA) on two fronts. Both the right of first refusal and public bid requirements interfere with the authority's ability to repackage individual properties for sale as a larger unit to a specific developer. NORA argues that an exemption from competitive bid laws would maximize negotiation with and selection of participants in redevelopment plans.

Properties that are taken for health and safety reasons are often considered blighted. It is estimated that there are tens of thousands of blighted properties in New Orleans alone.

This amendment removes the right of first refusal for properties expropriated for health and safety reasons only. That public purpose is the one most often cited to justify expropriation by redevelopment authorities in storm-

affected areas. The amendment also would eliminate the constitutional requirement that such property be re-sold through a public bid process, leaving the re-sale method to be determined by statute.

Proponents of the amendment, including officials representing other storm-affected parishes besides Orleans, argue that these changes are necessary for recovery.

Opponents counter that property rights are fundamental and should continue to require the government to give the original owner and others an opportunity to repurchase their land – no matter why the property originally was taken. The exclusion from existing protections of property labeled as blighted has the potential to unfairly impact lower-income property owners. More broadly, they point out that the constitutional section being amended is entitled “Right to Property” and the change actually weakens rather than strengthens private property rights.

Opponents also argue that when an expropriation takes more property than necessary for the stated public purpose of a project, the excess property should be returned to its original owner. By stripping property owners of their constitutional right to repurchase surplus property, the proposed change could encourage the state or its political subdivisions to expropriate more property than is needed for their projects.

**LEGAL CITATION** Act 936 (Sen. Murray) of the 2008 Regular Session, amending Article I, Section 4(H)(5).

# 7

## Investment of Non-Pension Benefit Trusts

### You Decide

- ❑ A vote *for* would allow public funds reserved for non-pension, post-employment benefits to be invested in stocks.
- ❑ A vote *against* would continue to prohibit public funds reserved for non-pension, post-employment benefits from being invested in stocks.

### CURRENT SITUATION

The Constitution prohibits the investment of state funds in equities, or stocks, with a few exceptions. Some exceptions include the Louisiana Education Quality Trust Fund, better known as the “8(g)” Trust Fund; the Russell Sage/Marsh Island Trust Fund; the Rockefeller Wildlife Refuge Trust and Protection Fund; and the Millennium Trust Fund. The state treasurer may invest up to 35 percent of these funds in stocks; however the Legislature can increase this amount to 50 percent for the Millennium Trust Fund. The various state retirement systems, which include both public funds and employee contributions, are also exempt from the prohibition and can invest in stocks.

A post-employment benefit trust provides retirees’ health care, life insurance or any other benefit not including pension payments. There are currently no non-pension, post-employment benefit trusts funded in the state. A 2007 law (Act 202) was passed to authorize the creation of these funds by political subdivisions. In 2008, another law (ACT 910) authorized the establishment of a state-level fund. These non-pension benefit trust funds are meant to answer accounting issues created by a new national accounting standard that went into effect in 2008.

In the absence of an exception, public funds may be invested only in low-risk and relatively low-yield investments – specifically U.S. Treasuries, U.S. government agencies, repurchase agreements for the preceding, bank certificates of deposit and investment-grade commercial paper.

### PROPOSED CHANGE

The amendment would permit state and local trusts for non-pension post-employment benefits to be invested in stocks. If funded, the state-level trust would be invested by the treasurer and the local trusts would be invested by local authorities according to state law.

Related legislation (Act 87) sets certain restrictions on the type and manner of investments in equities that would be allowed for the local trusts. For example, no more than 55 percent of a local post-employment benefit trust could be invested in equities and of that amount, no more than 5 percent could be invested in any single company or 25 percent in any single industry. Other rules regarding the investment of post-employment benefit trusts also are established by the legislation.

Other related legislation (Act 910) authorizes investment of the state’s trust according to the rules and guidelines that govern other major state trust funds.

### COMMENT

The Governmental Accounting Standards Board (GASB) issued Statement No. 45, Accounting and Financial Reporting by Employers for Postemployment Benefits Other Than Pensions, in 2004. The new accounting standard addresses how state and local governments should account for and report their costs and obligations related to post-employment health care and other non-pension benefits. State and local governments nationwide are struggling to comply with this rule without claiming huge unfunded liabilities on their balance sheets.

The current practice for funding non-pension benefits in Louisiana is to budget for them from year to year. They are not backed by a first draw on general fund dollars as normal pension benefits are, so they are treated as short-term liabilities for accounting purposes. But, because these benefits (especially at the state level) would be nearly impossible to rescind, the GASB has required that they be treated like other pension benefits.

Good accounting practices dictate that long-term liabilities be balanced with long-term funding sources. Louisiana's Act 202 of 2007 was intended to create a mechanism by which local governments could balance the non-pension benefit liabilities with a growing asset in the form of a post-employment benefit trust. The constitutional prohibition against investing these funds in stocks was not taken into account when the solution was enacted.

Proponents of the change argue that to create a long-term asset, the trusts must be established and invested in such a way that they would likely grow at a fast pace. The investment options currently allowed for such funds prohibit appropriate growth. If this amendment fails, they argue, many parish governments may have to choose to discontinue benefits rather than list unfunded liabilities.

Generally, opposition to investment of public funds in equities stems from an unwillingness to take on additional risk. Active management of the investment portfolio would be allowed. This is often touted as a safeguard against the additional risk.

**LEGAL CITATION** Act 934 (Rep. Downs) of the 2008 Regular Session, amending Article VII, Section 14(B). Related legislation is Act 87 (Rep. Downs) and Act 910 (Sen. Michot) of the 2008 Regular Session.



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**Public Affairs Research  
Council of Louisiana, Inc.**  
4664 Jamestown Avenue, Suite 300  
P.O. Box 14776  
Baton Rouge, LA 70898-4776  
Phone: (225) 926-8414  
Fax: (225) 926-8417  
E-mail: [staff@la-par.org](mailto:staff@la-par.org)  
or [jimbrandt@la-par.org](mailto:jimbrandt@la-par.org)  
[www.la-par.org](http://www.la-par.org)

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