



*Public Affairs Research
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Guide to the Constitutional Amendments September 30, 2006, Ballot

Introduction

Louisiana voters will be asked to make decisions on 13 proposed constitutional amendments on the September 30 ballot. This is the third largest number of amendments on a single ballot since the 1974 Constitution was adopted. An additional eight proposals will appear on the November 7 ballot, making 2006 the year with the largest number of proposed changes to this Constitution.

Several proposals on the September ballot stem from recent regional and national events. Developed in the aftermath of Hurricanes Katrina and Rita, the first four amendments address hurricane protection and levee board consolidation. The next two proposals, dealing with expropriation of private property, were developed after the United States Supreme Court's 2005 *Kelo v. City of New London* decision. The other proposals on the ballot deal with changes to the homestead exemption, the investment of public funds, spending mandates for school boards, elections for statewide officials and qualifications for judges. Voters will have to familiarize themselves with a wide variety of state and local government issues, some of which are quite complex and technical, in order to make informed decisions.

Louisiana has a long history of frequent constitutional changes. The state leads the nation in the number of Constitutions adopted and has been among the most prolific in adopting amendments. Louisiana's previous Constitution initially contained 49,200 words when it was adopted in 1921 but, with 536 amendments, grew to 255,500 words. Voters finally rebelled in 1970, defeating all 53 amendment proposals on the ballot that year.

The newly revised Constitution of 1974 was a brief 35,000 words after much of the old constitutional detail was moved to the statutes. Since then, another 189 amendments have been proposed, of which 127 have been adopted.

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, seek exception or protections for special interests or correct errors in existing provisions. Unfortunately, as more detail is placed in the Constitution, even more amendments may be required as conditions change or problems arise with the earlier provisions.

The concept of the Constitution as a relatively permanent statement of basic law for governing the state fades with the adoption of many amendments. Too frequently, amendments are drafted for a

Voter Checklist

September 30, 2006, Ballot

Proposed Amendments

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2	<input type="checkbox"/>	<input type="checkbox"/>	Consolidation of Coastal Funds.....	4
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specific situation rather than setting a guiding principle and leaving the legislature to fill in the details by statute. In some cases very rigid principles are set, but then numerous exceptions are added by amendment. Occasionally, the legislature approves amendment proposals hurriedly without considering all of the potential costs or ramifications, requiring subsequent amendments to undo the unintended consequences. In addition, special interests and the general public frequently demand constitutional protection for favored provisions to avoid legislative interference, resulting in numerous detailed revenue dedications and trust fund provisions.

Thus, voters are often asked to decide issues that are highly complex, specialized, applicable to a single place or time, extremely minor or, in some cases, purely symbolic. Many of these situations are illustrated by the current proposals:

Two proposals add or change revenue dedications for coastal funds, which in one case involves detailed modifications to a fund that has never held any money. The other involves changing the name of a fund created only three years ago.

Two proposed amendments would add to a lengthening list of exemptions from the broad constitutional prohibition against the purchase of stock. Instead of providing a way for the legislature to grant reasonable exceptions, the proposals would individually exempt very specific types of investment funds, thus inviting future exemptions for other types of funds.

Because much of the detail regarding the homestead exemption is lodged in the Constitution, amendments are necessary to make any changes or extensions of it. Two proposals would make these changes – one adapting the exemption to conditions in the aftermath of the 2005 hurricanes, the other extending a proposal passed in 2004. These amendments would not be necessary if this type of policy were in statutory law.

In another proposal, a drafting error complicates the amendment and could create problems if the amendment is adopted. The oversight could potentially contradict the purpose of the amendment, which was intended to prohibit unfunded mandates to local school boards, and may instead prohibit funded mandates. Should the proposal pass, the Constitution will likely once again have to be revised to make it consistent with the intent of the proposed amendment.

While the idea of seeking voter approval for a wide range of policy issues may appear democratic, the practice is less encouraging. Voter participation is often quite low. But even when there is a high turnout, many of those voting for candidates fail to vote on proposed amendments. Over the life of the current Constitution, the percentage of registered voters who have voted on

proposed amendments has ranged from a low of 18.1 percent to a high of 55.7 percent. Thus, a proposal has never needed more than the votes of 28 percent of the registered voters, and as little as nine percent, to amend the Constitution.

Regardless of the number or length of amendments on the ballot, voters must carefully evaluate each proposal individually and make a decision based on its merits. One important consideration should always be whether or not the proposed language belongs in the Constitution.

PAR has suggested in the past that it might be useful to begin looking at ways to improve the process of proposing amendments. Some states make the process more difficult and thoughtful by requiring a three-fourths super-majority vote of the Legislature (Louisiana requires two-thirds), limiting the number of amendments that can be put on a single ballot, requiring passage in two sessions or even requiring adoption by a certain percentage of the voters. However, before such limits might be considered in Louisiana, the Constitution would have to be pared back to basic law, and that would require a constitutional convention.

A comprehensive review of the Constitution may be in order, particularly since the last thorough overhaul occurred more than 30 years ago. However, unless the state is ready to accept the concept of a Constitution as fundamental law and place greater trust and responsibility in the Legislature to deal with the details of government, the proliferation of law by amendment is likely to continue.

Constitution vs. Statute

A constitution is the fundamental law of the state and as such contains the essential elements of government organization and structure, the basic principles concerning governmental powers and the rights of citizens. A constitution is meant to have permanence. Statutory law, on the other hand, provides the details of government that are subject to frequent change.

Process

The process of amending the constitution is more difficult than passing or amending a statute. In general, a proposed statute requires only a majority vote in each house of the Legislature and the governor's signature to become law. A constitutional amendment requires a two-thirds vote of the members in each house (the governor's approval is not required) and approval by a majority of those voting on the issue at a statewide election. An amendment affecting five or fewer parishes or municipalities requires voter approval in each affected area and statewide. A proposed constitutional amendment often has companion statutory legislation that provides more detail but becomes effective only upon adoption of the amendment.

1

Coastal Protection and Restoration Fund

CURRENT SITUATION: The Wetlands Conservation and Restoration Fund (WCRF), established in 1989, provides a recurring, dedicated source of revenue for the conservation and restoration of Louisiana’s wetlands. Money in the fund may be spent for purposes outlined in the Wetlands Conservation and Restoration Plan (WCRP) developed by the Wetlands Conservation and Restoration Authority (WCRA). This plan includes strategies for wetlands conservation and restoration as well as hurricane protection.

The WCRF is currently authorized to receive funds from three primary sources: mineral revenues, the Mineral Revenue Audit and Settlement Fund (Settlement Fund) and nonrecurring revenues. The statutory cap for mineral revenue dedicated to the fund is currently \$500 million. The WCRF retains its unexpended balance each year. Currently, the cash balance of the WCRF is approximately \$131 million.

PROPOSED CHANGE: The amendment would change the fund’s name to the Coastal Protection and Restoration Fund (CPRF). Similar adjustments in statute change the names of the authority and plan that govern the use of the fund to the Coastal Protection and Restoration Authority (CPRA) and Coastal Protection Plan (CPP) respectively. Failure of the amendment would maintain the fund’s current name. Statutory law would require the names of the CPRA and CPP to revert to their previous names as well.

The amendment would also authorize a fourth revenue source for the fund – federal revenues received by the state from Outer Continental Shelf (OCS) oil and gas activity. The only allowable expenditure for these funds would be hurricane protection and coastal protection, including conservation, restoration and infrastructure directly impacted by coastal wetland losses. The fund balance limitation for mineral revenues would not apply to the federal funds from OCS activity. The amendment would have no effect on local government revenue.

COMMENT: Statutory changes have already expanded the use of the fund to include hurricane protection as well as coastal conservation and restoration. Regardless of whether this amendment passes, the money in this fund may be appropriated for hurricane protection

projects. Changing the name of the fund reflects the state’s broader approach to coastal protection after the 2005 hurricanes. The change would also align the fund’s name with the CPRA and CPP, which govern its use.

Currently, the federal treasury receives approximately \$5 billion annually from OCS oil and gas activity off the coast of Louisiana. For oil and gas produced between three miles and six miles off the Louisiana coast, the state receives 27 percent of the federal government’s share. This money goes to the Louisiana Education Quality Trust Fund, commonly known as the “8(g)” fund, which is dedicated in the Constitution for education, and would not be affected by this amendment. Beyond six miles, the state receives no portion of federal royalties for oil and gas activity. Members of Louisiana’s congressional delegation are currently seeking a greater share of federal revenues from OCS activity beyond six miles. However, there is no guarantee of either congressional approval for an increased share of OCS revenue for Louisiana or the size of that share if approved.

You Decide

- A vote *for* would change the name of the Wetlands Conservation and Restoration Fund to the Coastal Protection and Restoration Fund and would deposit into that fund all potential federal revenues from Outer Continental Shelf oil and gas activities.
- A vote *against* would retain the current name and allow potential federal revenues from Outer Continental Shelf oil and gas activities to be deposited in the general state treasury fund.

Proponents of the amendment argue that the change is necessary to increase the state’s capacity to fund coastal restoration and hurricane protection projects. The negotiations between Louisiana’s congressional delegation and the federal government raise the possibility of an increased share in federal revenues from OCS activity. These potential revenues are a logical source for coastal protection funding.

Proponents suggest that the change would put Louisiana in a better posture to negotiate an increased share of OCS revenues by dedicating 100 percent of any

OCS revenue received by the state to coastal restoration and hurricane protection efforts. If Congress approves an increased share for Louisiana, this amendment could potentially lock billions of dollars into plans for coastal restoration and hurricane protection. The proposal is not only important for the immediate work of coastal restoration and protection, but also for persuading Congress to pass legislation that will provide desperately needed funding for these projects. The passage of this amendment by the voters would assure the nation that Louisiana will not divert these funds to other uses.

Critics of the amendment argue that the geologic factors affecting Louisiana’s coastal erosion make restoration a futile effort. These critics propose that a more logical solution would be to let nature take its course and dedicate funding instead to moving coastal communities, such as New Orleans, out of harm’s way.

LEGAL CITATION: Act 69 (Senator Dupre) of the 2005 1st Extraordinary Session, amending Article VII, Sections 10(D)(2)(e), 10.2 and 10.5(B) and (C). Companion legislation is Act 8 (Senator Dupre) of the 2005 1st Extraordinary Session.

2

Consolidation of Coastal Funds

CURRENT SITUATION: Louisiana currently has two major coastal funds: The Wetlands Conservation and Restoration Fund (WCRF; see Amendment No. 1) and the Louisiana Coastal Restoration Fund (LCRF). The LCRF, established in 2003, is authorized to receive revenues generated by the possible future sale of the state's share of the 1998 tobacco Master Settlement Agreement (the tobacco settlement). Louisiana sold 60 percent of its share of the tobacco settlement for \$1 billion prior to the establishment of the LCRF. The LCRF has remained dormant, with a \$0 cash balance, since it was established, because no further sale of the state's share of the tobacco settlement has occurred in that time.

You Decide

- A vote *for* would consolidate the Louisiana Coastal Restoration Fund and its future revenue into either the Wetlands Conservation and Restoration Fund or the Coastal Protection and Restoration Fund.
- A vote *against* would maintain a separate Louisiana Coastal Restoration Fund.

In the event of a future sale of the state's tobacco settlement, 80 percent of the funds will be deposited into the Millennium Trust and distributed among three special funds for their use: the Health Excellence Fund, the Education Excellence Fund and the TOPS

Fund. The remaining 20 percent of the revenue will also be deposited into the Millennium Trust's three special funds, but will be reserved for transfer to the LCRF.

If federal funds for coastal restoration that require a state match become available, one-third of up to 20 percent of the revenues generated by sale of the tobacco settlement will be transferred from each of the Millennium Trust's three special funds to the LCRF. Only the amount necessary to match the maximum amount of federal funds available in a fiscal year may be transferred to the fund, leaving the remaining portion of the 20 percent in the three special funds to continue accruing investment earnings for those accounts. Money

from other sources, such as donations, appropriations and dedications, may also be deposited into the LCRF.

Money in the LCRF may be invested by the treasurer under the same regulations as the Millennium Trust, which allows for investment of up to 35 percent of the fund in stocks. Money from the LCRF may be appropriated by the legislature to the Department of Natural Resources solely for programs to reduce coastal erosion and to restore the areas of the state directly affected by coastal erosion. Each appropriation from the fund is required to include performance expectations.

PROPOSED CHANGE: This amendment would repeal the LCRF and redirect any future revenue into the state's other coastal fund. In the event of a future sale of the state's tobacco settlement, 20 percent of the revenue would be deposited directly into the WCRF. If Amendment No. 1 also passes, then the money would be deposited into the Coastal Protection and Restoration Fund (CPRF). The WCRF/CPRF fund balance limitation for mineral revenues would not apply to this revenue. The treasurer would no longer have authority to invest this 20 percent share of revenue from a sale of the state's tobacco settlement in the same manner as funds deposited in the Millennium Trust. Therefore, the funds would be prohibited from investment in stocks.

By redirecting the money into the WCRF/CPRF, its eligible use would be expanded to include hurricane protection as well as coastal restoration. Appropriations would not require performance expectations. Up to 20 percent of the funds received by the WCRF/CPRF from revenues from sale of the state's tobacco settlement may be appropriated by the legislature to the Barrier Island Stabilization and Protection Fund.

COMMENT: This amendment only addresses the means by which revenue from the state's tobacco settlement would reach coastal protection projects. The source of the money would remain the same. The use of the money would be only slightly modified by adding hurricane protection projects.

The state continues to hold 40 percent of its original share of the tobacco settlement. Changes to its value will affect the amount of revenue generated by any future sale. However, the treasurer's office estimates that sale of the state's remaining share of the settlement would yield from \$900 million to \$1.1 billion. A 20 percent share of this revenue would be \$180 million to \$220 million.

This is a permissive piece of legislation, poising the state to invest additional funds in the WCRF/CPRF if and when the window of opportunity to sell the tobacco settlement arises. Passage of this amendment does not guarantee any additional funding for the WCRF/CPRF.

Proponents of the amendment argue for consolidation of the LCRF with the WCRF/CPRF, because these funds all deal with coastal protection. Proponents also argue that the move would further demonstrate Louisiana's reinvigorated, comprehensive approach to coastal restoration and hurricane protection as well as the state's willingness to fund its share of the work.

Opposition is based on the principle that dedications from sale of the state's share of the tobacco settlement should be limited to programs related to the revenue source. Tobacco settlement revenues are directly related to health care and only loosely related to coastal protection if at all. However, failure of this amendment would not prohibit proceeds from the sale of the tobacco settlement from reaching coastal protection projects.

LEGAL CITATION: Act 854 (Senator Dardenne) of the 2006 Regular Session, adding Article VII, Section 10.2 (F) and repealing Article VII, Section 10.11. Companion legislation is Act 548 (Senator Dupre) of the 2006 Regular Session.

3

Regional Flood Protection Authorities

CURRENT SITUATION: Louisiana's coastal location and its many waterways subject the state to the danger of flooding. Levee districts are special jurisdictions created by the state and charged with construction and maintenance of levees for flood protection. There are over 20 levee districts created by statute. They are located throughout the state, mostly in southeast Louisiana as well as along the Mississippi, Atchafalaya, Red and Ouachita Rivers. They coordinate with the U.S. Army Corps of Engineers and the Louisiana Department of Transportation and Development.

Governance: Levee districts are political subdivisions of the state. The legislature can create, consolidate, divide or reorganize levee districts. Once established,

levee districts are administered by levee boards. These levee boards are invested with control of all public levees in their respective districts.

Levee boards are authorized to engage in

activities related directly to flood protection. Levee boards can build, maintain and inspect levees and drainage work projects; build and maintain recreational facilities immediately adjacent to levees; buy, sell, hold, transfer or lease property; expropriate land; enter into contracts; incur debt; employ police; and do other things incidental to carrying out their responsibilities. The Orleans Levee District, located in Orleans Parish, is also authorized to build and maintain floodwalls; conduct drainage work; and build and maintain recreational facilities that are not immediately adjacent to levees as well as airports and marinas.

Finances: All levee boards except the Orleans Levee Board are authorized to levy a property tax of up to five mills without a vote of the citizens within the district. Because it is authorized to generate income by operating non-flood control facilities, the Orleans Levee Board may levy a property tax of only up to two and one-half mills without a vote of the citizens within the district. All levee boards may increase the property tax of their district above this limit with voter approval.

Board Membership: Levee boards range in size from three to 11 members. Currently, levee board members are appointed by the governor. Each member of the legislature that represents an area within the levee district may submit one nominee for the board from the area of the district he represents. The governor must select appointments from this list of nominees. Because the Constitution allows the legislature to set the rules for selecting levee board members, several levee districts have additional requirements specific to themselves.

PROPOSED CHANGE:

Governance: The amendment would authorize the legislature to establish regional flood protection authorities within the state's coastal zone. The regional authorities would be governed by boards responsible for levee construction and maintenance, levee drainage, flood protection and hurricane flood protection within their boundaries.

Levee districts within these regional authorities would continue to exist. However, the levee boards of those districts would be repealed. The governing board of a regional authority would also serve as the governing board of each levee district within its territorial jurisdiction.

The legislature would be able to include levee districts and parts of levee districts within the jurisdiction of a regional authority. When only part of a levee district is included in a regional authority, the board of the original levee district would retain its responsibility for district projects, taxing authority and property in that part.

You Decide

- A vote *for* would authorize the legislature to establish regional flood control authorities and create two in southeast Louisiana
- A vote *against* would maintain the current system of separate levee boards.

Companion legislation would establish the Southeast Louisiana Flood Protection Authority-East (SLFPA-E), which would govern (*see Figure 1*):

- The East Jefferson Levee District;
- The Lake Borgne Basin Levee District;
- The part of Orleans Levee district on the east side of the Mississippi River;
- The St. Tammany Levee District;
- The Tangipahoa Levee District; and
- The parts of St. Charles and St. John the Baptist Parishes east of the Mississippi River (only for regional projects).

The St. Tammany and Tangipahoa Levee Districts do not currently exist. The companion legislation would create them in the areas of each of these two parishes that extend from Interstate 12 south to Lake Pontchartrain.

Companion legislation would also establish the Southeast Louisiana Flood Protection Authority-West Bank (SLFPA-WB), which would govern:

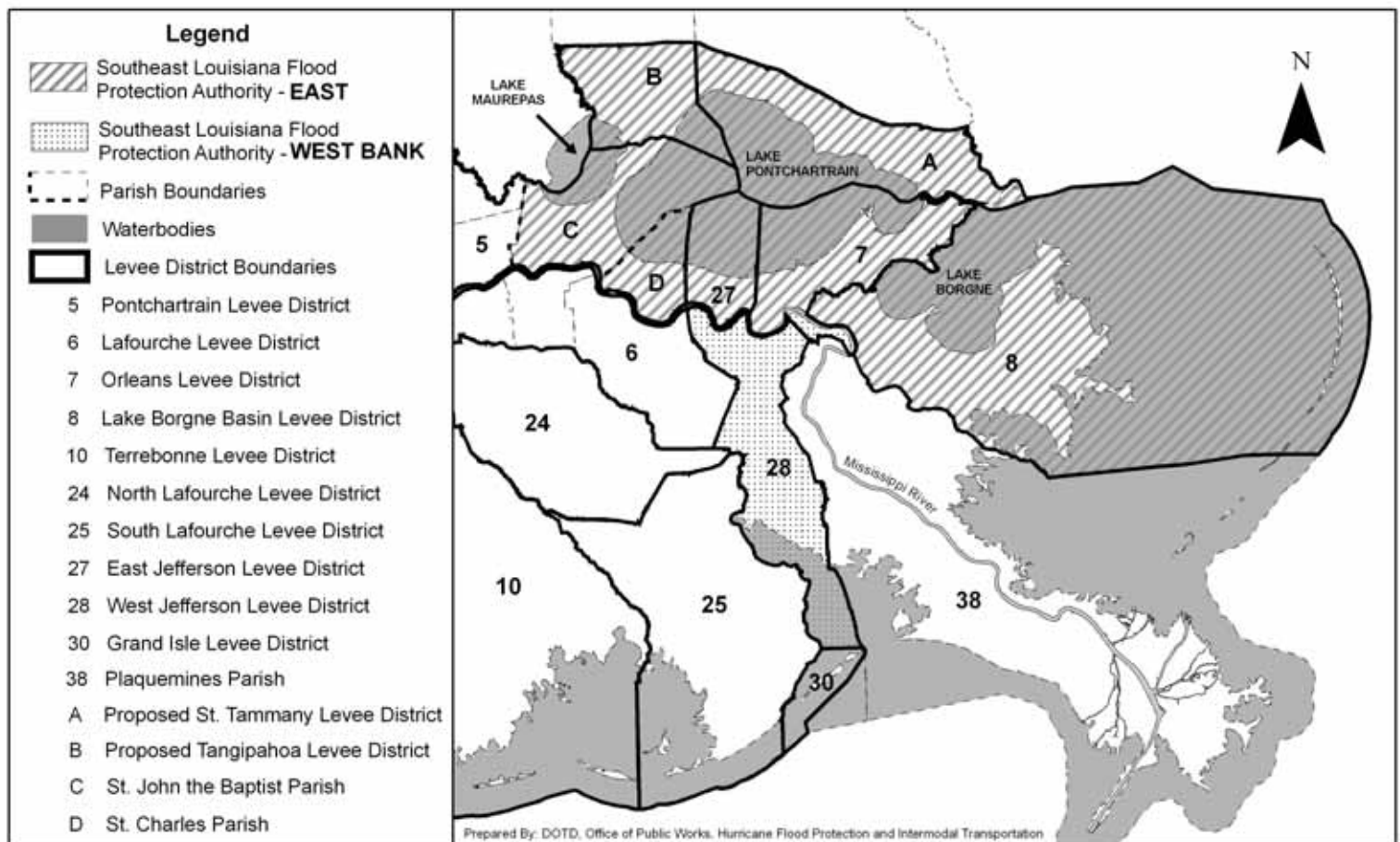
- The West Jefferson Levee District; and
- The part of Orleans Levee District on the west side of the Mississippi River.

Neither of these two regional authorities would include the Pontchartrain Levee District. The Pontchartrain Levee District would retain control of the parts of St. Charles and St. John the Baptist Parishes east of the Mississippi River with respect to local projects. The SLFPA-E's authority over those parishes would only apply to region-wide projects and region-wide taxes in areas east of the Mississippi River. No other levee districts would be immediately affected.

The SLFPA-E and SLFPA-WB would have similar powers and duties as levee boards. They would also be authorized to establish adequate drainage, flood control and water resource development. However, neither the regional authorities nor any district included in them would be allowed to own, operate or control any facility not directly related to flood control. Any non-flood protection facilities currently owned or operated by a levee district included in a regional authority would be managed by the Division of Administration (DOA). After deducting any management expenses, DOA would transfer any revenue generated by these facilities to the regional authority for use in the originating levee district. However, any surplus funds generated by the Lakefront Airport must be expended only for airport improvements per FAA regulations. DOA would be authorized to sell these facilities.

Figure 1

Proposed Regional Flood Protection Authorities



Questions regarding the status of levee police followed the passage of the proposed amendment's companion legislation. Legislation passed in the 2006 Regular Session says that current levee police may continue in their employment.

Approval for flood protection projects in either regional authority would require approval of two-thirds of the voting members of the appropriate board regardless of whether the project is limited to one or more levee districts within the authority.

Companion legislation also recognizes the Coastal Protection and Restoration Authority (CPRA) as the single entity responsible to act as the local sponsor for construction, operation and maintenance of all hurricane, storm damage and flood control projects in the coastal zone. The CPRA would have oversight over regional flood protection authorities and include them in the design and implementation of the state's comprehensive coastal protection master plan.

Finances: The board of commissioners of a regional authority would be authorized to levy property taxes region-wide (applying throughout the regional authority) and district-wide (applying to a specific levee district). Any region-wide tax would require approval by a majority of voters in each parish within the regional authority. Region-wide taxes could only be proposed for specific regional projects.

For district-wide taxes, the board of commissioners of the regional authority would retain the constitutional taxing power in any levee district within its jurisdiction that already exists. In levee districts created after January 1, 2007, including the St. Tammany and Tangipahoa Levee Districts, any district-wide tax funding a specific project would require approval by a majority of voters in the district.

Additionally, the amendment would authorize the annual appropriation of up to \$500,000 from the Coastal Protection and Restoration Fund to regional flood protection authorities.

Companion legislation would establish separate accounts for each levee district within the SLFPA-E and SLFPA-WB and prohibit any commingling of these funds. District-wide taxes and any other district-specific revenue would only be used in the designated levee district.

Board Membership: Companion legislation provides for the selection of board members for the SLFPA-E and SLFPA-WB. The SLFPA-E board would be made up of 11 commissioners, including one from each parish within its jurisdiction. Four members would be appointed from outside the regional authority's territorial jurisdiction. Other requirements include:

- Five members in engineering or a related field, including one civil engineer and one hydrologist or geologist;
- Three members with at least 10 years experience in other professional fields, including one resident of either St. Charles Parish or St. John the Baptist Parish; and
- Three at-large members, including one resident of either St. Charles Parish or St. John the Baptist Parish.

The members of the SLFPA-E board from St. Charles and St. John the Baptist Parishes would vote only on regional projects.

The SLFPA-WB board would be made up of seven commissioners, including two from each parish within its jurisdiction. Three members would be appointed from outside the regional authority's territorial jurisdiction. Other requirements include:

- Three members in engineering or a related field, including one civil engineer and one hydrologist or geologist;
- Two members with at least 10 years experience in other professional fields, including one resident of Orleans Parish from the west side of the Mississippi River; and
- Two at-large members, including one resident of Orleans Parish from the west side of the Mississippi River.

The members of the SLFPA-WB board from Orleans Parish would vote only on those projects that include the parish.

The governor would appoint board members from a list of nominations submitted by a nominating committee made up of individuals representing a variety of professional fields and civic organizations. Each appointment to the boards for the SLFPA-E and SLFPA-WB would be subject to confirmation by the Senate.

Regional Directors: Each regional authority's board would be authorized to hire a regional director and establish qualifications, duties and salary for this position. However, qualifications would also have to include:

- Residence in the regional authority;
- At least a bachelor's degree in business, engineering, geology, hydrology, natural sciences, environmental sciences, renewable resources or any similar field; and
- At least 10 years of executive experience.

Ethics: Members of a regional authority's board and their immediate family would not be eligible to conduct any business with the regional authority or any levee district within its jurisdiction.

No former board member would be eligible to run for public office until 12 months after the end of service on the board. No elected official or former elected official would be eligible to serve on a regional authority's board until 24 months after the end of the term. No public employee or former public employee would be eligible to serve on a regional authority's board until 12 months after the end of the public employment.

No person registered as a lobbyist within two years prior to appointment would be eligible to serve on a regional authority's board. Any person on a regional authority's board who registers as a lobbyist would be required to immediately resign from the board.

No member of a regional authority's board would be allowed to support or oppose the election of a candidate to public office or to support or oppose a particular party or issue in an election; be a member of a committee of any political party; make or solicit campaign contributions for political parties, candidates or issues; or play any role in the management of a political campaign or party.

Regional authority board members would be prohibited from serving on any other boards or commissions that are appointed by elected officials.

Continuity: Levee districts would retain their property, debt and legal proceedings. However, the regional authorities would take over the management of any district property and unfinished business.

COMMENT: Proponents of the amendment argue that creation of regional flood protection authorities would strengthen the state's hurricane and coastal protection efforts. The amendment offers a unified approach to replace the disjointed, fragmented patchwork of levee districts that cannot accommodate region-wide planning and protection. Flood protection authorities ensure that districts would be united by similar geographic challenges rather than divided by artificial political boundaries. Uniting districts into regional authorities that share challenges would ease the coordination of regional spending priorities with the priorities established in the statewide master plan under development by the CPRA.

Proponents argue that the amendment would ensure strong professional expertise among members. Additionally, the boards would be focused entirely on flood control instead of the operation of non-flood protection facilities.

Proponents also argue the amendment would place the regional authorities under the same ethical standards as the Board of Ethics. Board members would have no involvement in political activity. These standards reduce opportunities for political patronage.

Proponents further argue that the amendment sends a strong signal for reform and could sway national and local public opinion. Proponents suggest that the amendment was necessary to secure \$12 million in federal funding for the Louisiana Hurricane Protection Study. Many supporters add that the redesign of flood control in southeast Louisiana would attract people and businesses back to the region.

The most vocal opponents of the amendment argue that the current levee district boards should not be punished for the errors of the Orleans Levee District and the U.S. Army Corps of Engineers. The punishment they fear lies in being forced to compete with New Orleans for future project funding. Many opponents also fear the loss of local expertise in the levee districts run by a region-wide authority. Some opponents question the need for engineers and scientists on the board since boards make many business decisions that these professionals may be unaccustomed to making.

Opponents also question the value of the regional authority. Since the levee districts and the CPRA remain, the amendment would merely insert another layer of bureaucracy into the flood control planning process. They argue that local levee districts can already handle flood control projects and that most have been successful. These opponents argue that the amendment would simply address perception rather than actual flood risks.

Some opponents also question the regional flood protection authorities' ability to implement region-wide projects. Voters in a single parish would be able to kill a region-wide project if they vote it down.

Additionally, some oppose the amendment because it could raise the prospect of a property tax increase in the area.

Others oppose the amendment because it is not sufficiently comprehensive. They argue that the authorities should have jurisdiction over all levee districts and parishes that are potentially affected by hurricanes and coastal erosion. Other opponents suggest that one regional board that includes all parishes in the southeast corner of the state would be more effective.

LEGAL CITATION: Act 43 (Senator Boasso) of the 2006 1st Extraordinary Session, amending Article VI, Sections 38(A)(1) and 39 and adding Section 38.1. Companion legislation is Act 1 (Senator Boasso) of the 2006 1st Extraordinary Session.

4

Hurricane Protection Liability

CURRENT SITUATION: Under the Constitution, private property may not be taken unless the expropriation is for a public purpose and the owner receives just compensation. The Constitution also allows the legislature to limit the liability of the state. Unlike the federal government and most other states that use a lower “fair market value” standard, current law requires the state to compensate the landowner “to the full extent of his loss,” which may include several types of damages.

State and local governments are required to pay damages on the property based on its “highest and best use” at the time the property was taken. Under this standard, the landowner must prove what the potential use of the property would have been had the government not taken the property. For example, currently undeveloped property could have been used for residential or commercial purposes. The landowner may also receive severance damages that compensate the landowner for the diminished value of any remaining property.

A comprehensive plan currently being developed and funded by local, state and federal governments will require the building of many structures to protect people and property from future hurricanes. Coastal restoration projects over the next 20 years are likely to cost \$14 billion - \$20 billion and require the purchase of private property. Seventy-five percent of the state’s coastal property is privately owned.

PROPOSED CHANGE: The amendment would allow the legislature to limit the government’s liability for damage caused by hurricane protection projects and lower the compensation owed for buying private property needed for hurricane protection. In either case, buildings or structures damaged by a president-declared emergency would remain eligible for higher compensation for three years after the emergency. The companion legislation would adopt the lower “fair market value” standard for compensation used by the federal government and most other states.

The amendment would limit levee districts’ liability for actual damage to land and improvements caused by hurricane protection projects and lower the compensation owed for buying private property needed for hurricane protection.

COMMENT: Proponents of the amendment and companion legislation argue that the state needs to prevent excessive compensation claims to protect future hurricane protection projects that may damage or require the purchase of private property. Future compensation awards may jeopardize the state’s work if they are too high. Public officials estimate that hurricane protection efforts could require the taking of much private property at a cost of \$3 billion. Approval of this amendment, they argue, is needed to reassure the federal government that its money would not be used to pay exorbitant judgments and help ensure predictable and reasonable compensation to landowners. Limiting damages to “fair market value” would match the standard used by the federal government and most other states.

You Decide

- A vote *for* would lower compensation paid by the government for private property taken for or damaged by hurricane protection projects. Buildings or structures damaged by a president-declared emergency would remain eligible for higher compensation for three years after the emergency.
- A vote *against* would maintain the current higher compensation for private property taken for or damaged by hurricane protection projects.

Proponents point to the outcome of an expropriation case in St. Charles Parish where the landowner received a damage award of \$7 million. The defendant-levee district believed \$72,000 was the appropriate amount of damages for the expropriated wetlands property. The court found that the landowner could have obtained permits to develop much more valuable residential or commercial projects.

Opponents counter that this was an isolated case that does not justify changing the Constitution. They argue that the damages to which landowners are entitled should include such components as lost income and the diminished value of

the property. In addition, they say that the amendment unfairly targets those landowners whose property is taken for hurricane protection projects. The law, they say, should be applied equally to all property throughout the state and not just to those having property interests affected by a particular type of damage within an arbitrarily set time.

Proponents say that the amendment strikes a fair balance by maintaining the current level of compensation for buildings or structures destroyed or damaged by a president-declared emergency and taken within three years of such an event. They point out that the state already has a bifurcated system with the passage of a 2003 amendment limiting the state’s liability for damage caused by coastal restoration projects.

LEGAL CITATION: Act 853 (Senator Dupre) of the 2006 Regular Session, amending Article VI, Section 42(A) and adding Article I, Section 4(G). Companion legislation is Act 567 of the (Senator Dupre) of the 2006 Regular Session.

5

Limits on Expropriation of Private Property

INTRODUCTION: Private landowners' rights have been in sharp focus following the June 2005 U.S. Supreme Court decision in *Kelo v. City of New London*. In a 5-4 decision, the Court decided that economic development was a valid public purpose for taking private property by either the government or another private entity. Government takings, using the power of eminent domain, are called expropriation and condemnation under Louisiana law. The Court's decision was rendered a few months before hurricanes Katrina and Rita destroyed an unprecedented number of homes, businesses and infrastructure in Louisiana. Over a year later, recovery and rebuilding efforts, marked by uncertainty and high costs, make land use policy a top priority.

Historically, the government seized private property in order to build projects that could be used by the general public for roads, schools or hospitals. The government also authorized takings by private entities, referred to as common carriers, such as railroads, and telephone and pipeline companies. Later cases approved of taking blighted property to restore neighborhoods. More recently, private property has been taken to implement a project that may enhance local and state revenues such as a convention center or hotel. In all takings, the government is required to compensate the owner for his losses.

The most controversial aspect of *Kelo* validated the taking of several non-blighted homes in order to build a business park for a large company. Opponents argued it was an unconstitutional transfer of property from a person to a private entity. Supporters said that the taking would boost the local economy through job creation and increased tax revenue. Additionally, the plan had been subject to a sufficiently open review process.

The Louisiana Supreme Court has not looked at this specific issue, but some state appellate courts have approved takings for economic development purposes.

The *Kelo* decision has inspired much action at both the federal and state levels. Congress is considering legislation that would prohibit the use of federal funds for projects where states have used expropriation for economic development. The White House issued an executive order condemning the use of eminent domain for economic development.

According to the National Conference of State Legislatures, many states have considered a variety of responses to the *Kelo* decision.

- Twenty-six states have passed legislation limiting the use of eminent domain for private projects or modifying eminent domain procedures. One other state passed legislation and still awaits action by the governor.
- Six states will vote on state constitutional amendments this fall (including three that have passed statutory changes). Five of the states, including Louisiana, will vote on proposals prohibiting eminent domain for private development. The sixth state took a different approach by focusing on the process of taking property for redevelopment instead of an outright ban.
- Fourteen legislatures did not pass new restrictions on eminent domain.
- Three governors vetoed legislation, but one legislature overrode its governor's veto.

You Decide

- A vote **for** would prohibit the taking of private property for many economic development projects.
- A vote **against** would continue to allow private property to be taken for economic development projects.

- Three states created state commissions to study the use of eminent domain.
- One state called for a moratorium on the use of eminent domain until its legislature could revise its eminent domain laws.

In this context, the Louisiana Legislature passed two proposed constitutional amendments dealing with expropriation. (See the analysis of amendment no. 6 providing procedures for transferring

expropriated property under Act 859 on *pages 14-15*.)

CURRENT SITUATION: The Constitution allows the taking, or expropriation, of private property (both homes and businesses) without the consent of the owner if “just compensation” is paid. In the case of governmental entities, takings are allowed for a “public purpose.” Private entities may expropriate if it is for a “public and necessary purpose,” a higher standard. Some of the private entities and common carriers authorized by statute to take private property include telephone companies, various energy-related businesses, and companies that build railroads, toll roads, navigation canals, and water and sewerage plants.

Public purpose is not defined in either the federal or state Constitutions, thus leaving that determination to the courts. The courts have interpreted “public purpose” broadly. Some appellate courts have deemed economic development a valid public purpose, but none of the cases decided before *Kelo* dealt with the taking of a private residence. The Louisiana Constitution does prohibit the taking of a private business to operate it or to halt competition with a government enterprise.

The Constitution authorizes expropriation for economic development purposes if it is for industrial projects. Any political subdivision, deep-water port, deep-water port commission, harbor or terminal district may take private property to improve industrial plant sites. The Constitution defines “deep-water” facilities as those that can accommodate vessels requiring at least 25 feet of draft to float and can engage in foreign commerce. Property taken for industrial projects may never be transferred to a foreign entity.

The Constitution says that a landowner may be compensated to the “full extent of his loss.” Damages may include the landowner’s litigation costs, attorney fees, moving costs, the cost of re-establishing a business that is forced to relocate and the loss of future rentals. In all expropriation proceedings, both parties may ask a jury to determine the amount of compensation. The prior Constitution had provided a lower standard of “just and adequate compensation.” Compensation under the federal Constitution is limited to a “fair market value” standard.

PROPOSED CHANGE:

The proposed amendment:

- **Limits some takings of private property.** It would prohibit state and local governments from giving substantial control or transferring ownership over property to a private third party.
- **Defines public purpose.** Government takings for a public purpose would be limited to a “general public right to a definite use of the property”; publicly-owned property dedicated to specific uses (*See Box A*); or the removal of a threat to public health or safety.
- **Prohibits takings for some economic development projects.** It would explicitly exclude economic development, tax revenue enhancement or any other “incidental benefit” as a factor in determining if a taking is for a public purpose.

Box A
Proposed Valid Uses of Taken Property

- Public buildings in which publicly funded services are administered, rendered or provided.
- Roads, bridges, waterways, access to public waters and lands, ports, airports, and other public transportation, access and navigational systems available to the general public.
- Drainage, flood control, levees, coastal and navigational protection and reclamation for the benefit of the public generally.
- Parks, convention centers, museums, historical buildings and recreational facilities generally open to the public.
- Public utilities for the benefit of the public generally.
- Public ports and public airports to facilitate the transport of goods or persons in domestic or international commerce.

- **Expands judicial remedies.** It would give property owners the right to a trial by jury to determine whether compensation is just for any action to take property.
- **Defines compensation.** It would define the “full extent of loss” to include the appraised value of the property and all costs of relocation, inconvenience and any other damages actually incurred by the owner because of the taking.
- **Expands takings for industrial projects.** It would authorize local governments to provide incentives to facilitate public port operations and define ports and port commissions more broadly.
- **Protects the family home.** It would prohibit the taking of a home for industrial projects. A home includes a residence on property not exceeding 160 acres. Homes may still be taken for other public purposes.

COMMENT: Many important and conflicting individual rights and governmental functions are affected by the proposed amendment. Private property rights have always been limited by the need to serve the greater good. For example, the government seizes thousands of properties every year for traditional purposes that include roads, schools or hospitals. Those purposes have grown over the years to include blight abatement,

which includes takings of property because of abandonment, failure to pay taxes and health or safety problems. Economic development has been an underlying benefit of many takings.

The clash between economic development needs and private property rights in the *Kelo* case has led many state legislatures to closely examine whether individual property rights or the needs of the public will be primary and to what extent under varying circumstances. Louisiana, unlike other states, faces unique and numerous challenges following last year’s storms.

Hurricanes Katrina and Rita present a situation never faced by a single state at any time in the nation’s

history. The unprecedented level of destruction includes approximately 205,000 severely damaged or destroyed homes. In addition, many businesses and much critical infrastructure, including hospitals, schools, roads and bridges, require extensive and costly repair or replacement. Miles and miles of neighborhoods, lacking basic services for months, remain abandoned. The successful restoration and recovery of the affected areas are viewed as critical to the entire state's future.

The key issues debated in the Louisiana Legislature included the effect of the amendment on economic development issues, post-hurricane rebuilding efforts and private property rights. Other arguments focused on the question of whether to amend the Constitution or make changes in statute—all against the backdrop of a controversial U.S. Supreme Court decision. More than 35 proposals were introduced during the 2006 Regular Session that included locking new restrictions in the Constitution, making various changes in statute and issuing a moratorium on takings to allow for study of the issues.

A major area of controversy concerns how the lengthy, detailed and complicated proposal may be interpreted by the courts and at what cost to future projects. Legal experts are split on the potential impact of the amendment, which is certain to result in a substantial amount of litigation. Some believe the amendment is sufficiently specific to protect private property rights but also appropriately broad to provide necessary latitude to governmental entities. Others are concerned that judicial interpretations may lead to unintended consequences—detrimental to property rights, economic development and rebuilding needs.

Some critics are concerned with undefined and inconsistently used terms that may lead to conflicting or undesirable results. As examples, prohibitions on the taking of property “for predominant use” or “for transfer” to a private third party may be interpreted to eliminate management contracts or operating agreements that facilitate a variety of public services and functions. The proposal may also prevent the redevelopment of blighted property by private companies. Critics also question what may result when the courts interpret the new definition of public purpose, changes to compensation and a prohibition on economic development. The courts must also consider revisions to a separate provision that currently allows takings for industrial projects.

Some commentators observe that the proposal goes beyond the issues raised in the *Kelo* case. Instead of adding a new prohibition narrowly tailored to address *Kelo*, the proposal would make many detailed changes. They express concern that the amendment was rushed through the legislative process with no opportunity for formal review by the Louisiana Law Institute or other important governmental entities that may need their own statutory changes to implement the proposal. Other

experts counter that a rapid response was necessary and that adjustments can be made in the future.

ARGUMENTS:

Economic Development Proponents argue that economic development is an overused and often unsubstantiated label for a wide range of projects. State and local governments operate in a highly competitive environment that promotes the aggressive pursuit of commercial projects, some of which may have few tangible, positive outcomes. The government's role, they say, should focus on building key infrastructure such as roads, parks and schools. Establishing this climate is more important for attracting and retaining business than pursuing speculative economic development projects that may require expropriation.

Other proponents argue that the industrial incentives already allowed in the Constitution are sufficient for economic development needs. Manufacturing projects, for example, are more likely to create more jobs and tax revenue than ones geared toward retail, “big box” projects. More aggressive tools, like expropriation, should be selectively used and reserved for large-scale industrial ventures.

Opponents argue that the government must play an active role in building the economy. Successful economic development efforts require a wide range of public-private partnerships to create new jobs and aid declining neighborhoods that should not be limited to industrial projects. For example, the city of Shreveport needed private commercial property to build a convention center and an adjacent hotel. The expansion of the convention center in New Orleans also required the use of expropriation. Although the courts upheld the takings for economic development, opponents are concerned that the amendment would jeopardize similar projects in the future. As one example, a proposed cargo airport project in Ascension Parish includes the construction of several non-airport businesses. The amendment would allow seized private property to be used for the airport but not for retail businesses.

Opponents point out that new restrictions on expropriation may discourage companies from locating in Louisiana or returning because the government would not be able to put together significant tracts of land for future projects. Also, proposed changes to the compensation provision may prove too costly. Site selection experts are keenly aware of legislative activity and critics note that a neighboring competitor, Mississippi, did not pass any new limits on expropriation.

Post-Hurricane Rebuilding Proponents argue that the amendment will not hamper post-hurricane rebuilding efforts because the proposal specifically allows taking for the removal of threats to public health

or safety. In their view, the amendment also protects individuals who have managed to rebuild their homes and businesses from opportunistic developers and public officials by limiting expropriation.

Opponents argue that the proposal will impede recovery and jeopardize many livelihoods and homes because any new restriction may slow and, in some cases, stop rebuilding efforts. First, they reiterate the concerns related to economic development projects stated above. Second, they question the sufficiency of the health and safety exception because it does not include the word “welfare,” noting that current blight statutes are more broadly drafted to allow takings for the public’s welfare.

As an example, a handful of property owners who rebuild their homes in an otherwise abandoned neighborhood may disrupt a comprehensive rebuilding plan by blocking expropriation to benefit the public’s welfare. The costs to maintain basic services for a few citizens in such a situation would be too high and might not serve the greater good.

Constitutional Amendment or Statute Supporters argue that Louisiana should strengthen private property rights in the Constitution to protect homes and businesses from being transferred to a private entity, unless it would benefit the general public with projects such as roads, hospitals or schools. The U.S. Supreme Court’s June 2005 decision in *Kelo v. City of New London* eliminates any federal constitutional relief a property owner may have sought after exhausting protection under the state Constitution. Although the *Kelo* decision did not expand the grounds on which property may be taken under state law, it held that the federal Constitution would not prevent the taking of homes and businesses for economic development.

Proponents argue that a constitutional amendment is the only way to overcome any contradictory statutes and establish a policy of equal weight with other provisions in the Constitution (such as one authorizing political subdivisions to expropriate property). Supporters believe it would be imprudent to wait for a lawsuit to be filed, because it forces an individual to litigate an important public policy that should be decided by a vote of the people.

Opponents argue the amendment is simply a knee-jerk, political reaction to the *Kelo* decision and alleged takings abuse occurring in other states. The proposal is unnecessary, because the Constitution and state law provide sufficient protection for private property rights. Additionally, the Constitution currently authorizes compensation to private property owners that is more generous than is offered by other states or by the federal government.

Further, opponents argue that there is no need for the amendment, since expropriation is used sparingly

and no *Kelo*-type lawsuit has been filed in the state. Any concerns with private property rights should be addressed statutorily. A statute is much easier to change and more responsive to changing conditions, while an amendment is much more difficult to correct as it requires a two-thirds vote by the legislature and a majority vote of the general public. Critics note that a majority of states have chosen not to change their Constitutions. Twenty-nine states made statutory changes, 14 states made no changes and only six may amend their state Constitutions.

Industrial Enterprise Provision The Constitution currently authorizes a taking of private property for economic development purposes related to industrial projects. Proponents argue that the proposal will broaden the industrial enterprise exemption by expanding the type of entities that are included from deep-water facilities to public ports, port commissions, harbors and terminal districts. It also expands the types of projects that benefit from industrial incentives. They note that although more public entities would have expropriation powers, a private residence could not be taken.

Opponents argue that the expansion is too broad and covers a variety of entities that will produce little significant economic impact yet would have expropriation powers. For example, a flat-boat dock on a shallow river may be deemed a “public port” and have significant new authority while other projects that could create more jobs and greater tax revenue would be prohibited.

Compensation Proponents argue that landowners should receive all of the damages that are specifically included in the proposal because private property rights are very important. Although current statutes and the courts already recognize the damages, the amendment locks them into the Constitution.

Opponents argue that the damages required by the amendment may jeopardize millions in public and private projects because of potentially exorbitant compensation awards. In the case of projects involving the federal government, the state must pay for all costs that go beyond “fair market value.” The proposal, they say, defines damages too broadly to include even “inconvenience.” Further, they argue that the added detail is unnecessary and is sufficiently addressed by statute and judicial opinions.

Judicial Remedies “Action to take property” is not defined in the proposal. Opponents are concerned that this new provision could greatly increase the number of lawsuits filed for a wide variety of regulatory actions. For example, a city council’s adverse decision on zoning could result in a lawsuit where the plaintiff asks to be compensated to the “full extent of his loss.”

Leases/Management/Privatization

Many public operations are managed by private entities. For example, the Louisiana Superdome is managed by a private firm that specializes in the operation of large-scale facilities. Proponents argue that the amendment allows a publicly-owned building to be leased and managed by a private entity. Opponents question if such leases would be prohibited, because the government may not let private entities have “predominant use” over expropriated property. Port facilities are almost all managed by specialized contractors.

LEGAL CITATION: Act 851 (Senator McPherson) of the 2006 Regular Session, amending 19 Article I, Section 4(B) and Article VI, Section 21(A); and adding Article VI, Section 21(D).

6

Procedures to Transfer Expropriated Property

Note: The introduction, comment and arguments dealing with economic development, post-hurricane rebuilding, and amendment versus statute presented in the analysis of amendment no. 5 apply to no. 6. See pages 10-13.

CURRENT SITUATION: Both the Constitution and statutory law allow many state and local governmental entities to take, or expropriate, private property without the consent of the owner with the payment of just compensation. Many private entities are also authorized to take private property. Some of the private entities authorized by statute to take private property include telephone companies, various energy-related businesses, and companies that build railroads, toll roads,

You Decide

- A vote *for* would change and provide in the constitution a method of selling and leasing some expropriated property.
- A vote *against* would leave in statute procedures for selling and leasing expropriated property.

needed for a public purpose. For example, in the case of highway takings, the Department of Transportation and Development (DOTD) is required to use expropriated property within 15 years of the expropriation. The secretary of DOTD has broad discretion over the property and may donate, exchange or sell the

navigation canals, and water and sewerage plants.

Many public entities have their own statutory requirements as to how and when they may transfer back or otherwise dispose of expropriated property that is no longer

expropriated property when it is no longer needed. However, this is only a single example of the many procedures scattered across various statutes.

Local development districts and redevelopment authorities, such as the New Orleans Redevelopment Authority (NORA), currently have wide latitude in revitalizing blighted neighborhoods. They may use expropriation to consolidate tracts of land to either renovate or rebuild blighted homes and businesses. They are also typically excepted from competitive bid laws to maximize negotiation with and selection of participants in redevelopment plans.

PROPOSED CHANGE: This proposal would replace many, but not all, of the various procedures for transferring expropriated property with a single set of rules. If expropriated property has been held for 30 years or less, the amendment would require some governmental entities to first offer it for purchase to certain parties at the current fair market value. The parties with a right of first refusal include the owner at the time of expropriation and any heirs, or if no heir, the successor in title. If the property is not sold to any of these parties, it may then be sold by competitive bid to the general public. Property that has been held for more than 30 years may be sold or transferred according to state law.

The amendment would also require the government to declare as surplus any property that is not needed for the public purpose of the project within one year of completing the project. A year after completing the project, certain parties may ask the taking entity to declare some portion of the property as surplus. If the entity does not act, a court may make the declaration.

Within two years of completing the project, the government must offer the surplus property to the parties noted above at current fair market value. If the surplus property is not purchased within three years of completion of the project, it may be sold by competitive bid to the general public.

The amendment would not apply to leases or operation agreements for port facilities, highways, airports, qualified transportation facilities or private entities.

COMMENT: Proponents say that the proposal creates a uniform process in the Constitution for managing expropriated property, balancing the interests of the government and landowners. It grants the government sufficient time to use the expropriated property but recognizes the continuing interest of certain parties by providing a right of first refusal when the property is sold. The buyer, however, would not receive a windfall, because the amount paid would include any improvements made to the property. It also authorizes certain parties to legally reclaim property not used for the project.

Opponents argue that this proposal threatens redevelopment efforts by imposing too many onerous restrictions that may create complicated legal snarls. This could be especially detrimental to rebuilding efforts in hurricane-affected areas.

First, it requires redevelopment authorities to maintain expropriated property for an excessively long period. For example, redevelopment authorities would have to wait 30 years to sell or lease rehabilitated property if not selling to the few parties identified in the proposal. Second, any sale of such property prior to that time would face the expensive and time-consuming process of tracking down parties specified by the proposal. If the property were not sold to any of these parties, only then could the property be transferred by a competitive bid open to the general public.

Although opponents note that public bid may reduce problems associated with favoritism, it would greatly weaken the planning options of redevelopment agencies. Some situations are better served if property can be donated, exchanged or sold at a private sale.

Proponents counter that property rights are fundamental and require the government to give the original owner and others an opportunity to repurchase their land. The requirements in the amendment, they say, serve to protect the rights of property owners when they are most vulnerable, following the *Kelo* decision and the devastation of the hurricanes.

Opponents also argue that the proposal adds unnecessary detail to the Constitution that is better suited to statute. Further, current statutory provisions are sufficient and specifically designed for the needs of specific public entities.

Critics note that many public entities not included in the amendment (i.e. ports, highways, airports, etc.) are responsible for many takings. Other critics believe the proposal may be interpreted to apply to all public entities including the new surplus property requirements. Further, the proposal does not include the many private entities that are allowed to expropriate. Proponents counter, stating that the proposal has sufficiently broad application, since it would apply to many expropriations.

Opponents also note a drafting oversight that will need to be corrected by amendment. Specifically, the original owner's heir is not included as a party who may petition the court.

LEGAL CITATION: Act 859 (Representative Farrar) of the 2006 Regular Session, adding Article I, Section 4(G).

7

Medicaid Trust Fund Investment

CURRENT SITUATION: (See Box B) The Medicaid Trust Fund for the Elderly, created in 2000, resulted from several windfall payments from the federal government. This fund was established to protect the payments and provide a permanent source of support for healthcare programs for the poor and elderly. Earnings from the investment of the Medicaid Trust Fund principal are spent on nursing home care; home and community services; and primary care services for the elderly. The principal of the fund may be spent only in limited cases for nursing home care.

The state treasurer is required to invest monies deposited in the Medicaid Trust Fund. Statutory legislation passed in 2001 would allow for investment of a portion of the fund in stocks, but the Constitution prohibits that type of investment for public funds.

The Medicaid Trust Fund currently totals about \$830 million. Nearly the entire fund has been invested in relatively low-risk, low-yield fixed income investments since its creation. The fund's investments had a total rate of return of 6.01 percent in 2005 and -0.38 percent in 2006.

PROPOSED CHANGE: The amendment would authorize the state treasurer to invest in stocks a portion of the Medicaid Trust Fund for the Elderly not to exceed 35 percent of the aggregate of all such funds. Previously passed legislation authorizing the state treasurer to engage outside investment managers for stock investment would be activated.

COMMENT: The proposal is permissive only, allowing investment of a portion of the Medicaid Trust Fund. It would not mandate investment in stocks. This amendment would give the state treasurer the same investment authority for the Medicaid Trust Fund that applies to other permanent funds, such as the "8(g)" fund, the wildlife trust funds and the Millennium Trust Fund. The potential problems of speculation and involvement in private business would be reduced, because current legislation authorizes the state treasurer to hire outside, professional investment consultants.

You Decide

- A vote **for** would authorize the state to invest up to 35 percent of the Medicaid Trust Fund for the Elderly in stocks.
- A vote **against** would continue to prohibit the state from investing this fund in stocks.

Box B Introduction to Investment Amendments

Two amendments on the ballot would relax the constitutional prohibition against the investment of state funds in equities, or stocks. Amendment No. 7 would allow for the investment of a share of the Medicaid Quality Trust Fund for the Elderly in stocks, and Amendment No. 10 would allow for the investment of a share of university endowments in stocks.

With a few exceptions, the constitution prohibits the state or a political subdivision from subscribing to or purchasing the stock of a corporation, association or other private enterprise. 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 invest in stocks. (See Table 1.)

Six amendments to except various funds from the constitutional prohibition have appeared on ballots over the last 12 years.

In the absence of an exception, public funds may only be invested 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, investment-grade commercial paper and investment-grade corporate notes and bonds.

The constitutional prohibition against state ownership of stock was meant to avoid direct state participation in private business, speculation and short-run fluctuations. Short-run fluctuations in investment earnings would be a serious problem for typical idle state fund investments but not for a permanent fund.

Professional investment advisors strongly recommend including stocks as a significant part of any long-term investment portfolio. A perpetual trust fund can take optimum advantage of a long-term investment strategy. Although subject to greater fluctuation in the short-term, stocks historically outperform other investment types over the long run. (See Table 2.)

Table 1

Percent Invested in Equities (2005)

National Average for University Endowments	58.50%
“8(g)” Trust Fund	25.80%
Millennium Trust Fund	14.42%
Rockefeller Wildlife Refuge Fund	29.24%
Russell Sage/Marsh Island Trust Fund	23.14%
Teachers’ Retirement	63.00%
School Employees’ Retirement	56.65%
State Employees’ Retirement	62.70%
Firefighters’ Retirement	64.00%

SOURCE: Louisiana State Treasury, NACUBO, and State Retirement Systems

Table 2

**Investment Performance Comparison
Index Total Returns as of March 31, 2006**

	1 Year	3 Year	5 Year	7 Year	10 Year
Equities/S&P 500	11.73	17.22	3.97	1.66	8.95
Fixed Income/Lehman Bros. Aggregate Bond	2.26	2.92	5.11	5.66	6.29
Consumer Price Index (CPI)	3.65	2.81	2.51	2.75	2.54

SOURCE: Louisiana State Treasury

In 1995, the state treasurer began to implement a stock investment plan for a portion of the “8(g)” fund. The highest percentage of the fund invested in the stock market has been 25.8 percent — well within the 35 percent investment allowance. The total rate of return for the “8(g)” fund reached a high of 12.1 percent in 2003. Although the total rate of return fell to 1.89 percent in 2006, the rate of return for the portion of the fund invested in stocks was 9.62 percent that same year. (See Figure 2.)

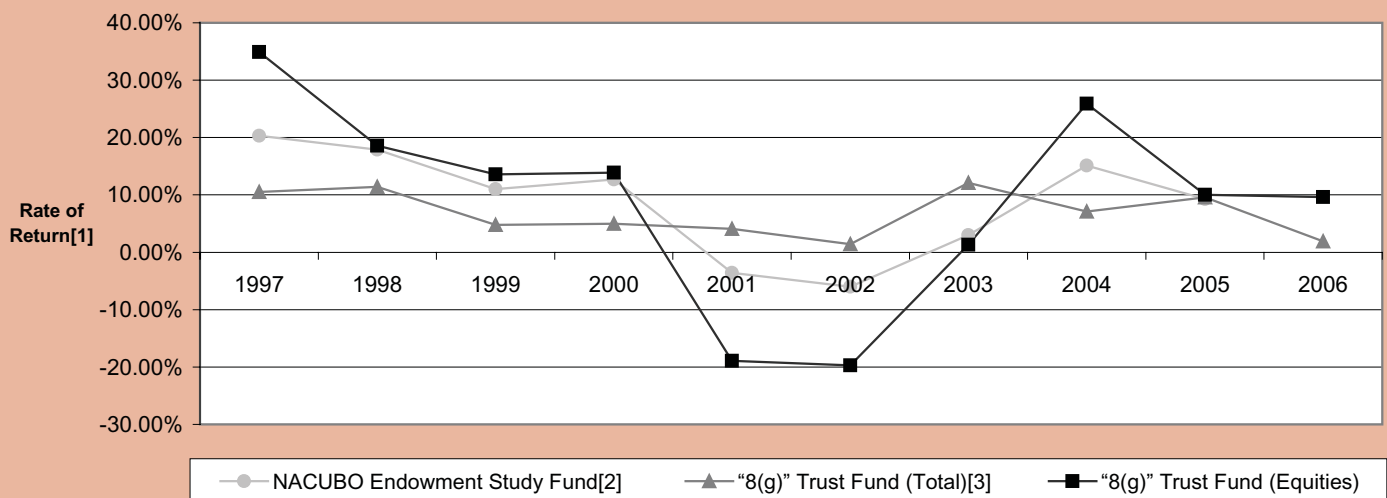
Proponents of the amendment argue that investment in stocks allows more potential to earn greater revenue and provide greater financial stability for elderly programs in a state with a growing number of elderly citizens.

Some healthcare observers are concerned about the potential impact on revenue from this fund for primary care services and home and community services. Moving a portion of the fund from fixed income securities to stocks could reduce the total income earned on the principal over the short term. Any potential reduction of interest income will be slowly mitigated over time by the growth in total assets which will produce more

revenue for appropriation in the long term. However, in the meantime, a potentially lower yield on stocks could reduce funds available for appropriation for primary care services and home and community services since they may only receive revenue from interest earnings. Nursing home services may dip into the principal of the trust fund and would be less directly impacted by any potential reduction in interest revenue.

LEGAL CITATION: Act 857 (Representative Daniel) of the 2006 Regular Session, amending Article VII, Section 14(B).

Figure 2
Investment Performance Comparison
NACUBO Endowment Fund Study vs. "8(g)" Trust Fund



[1] The Total Rate of Return for the NACUBO Endowment Study Fund and the "8(g)" Trust Fund includes actual income earned, realized gains (losses) and unrealized gains (losses) which reflects the market value of all securities held. For "8(g)" Trust Fund (Equities), the same calculation was made only for the share of the fund invested in equities.

[2] The 2005 National Association of College and University Board Officers Endowment Study reports data for 746 private and public higher education institutions. Figures show the annual nominal rates of return using the equal weighted mean to give each institution equal weight, regardless of its endowment or investment pool size. Data for 2006 are not yet available.

[3] The Louisiana Education Quality Trust Fund is better known as the "8(g)" Trust Fund.

SOURCE: Louisiana State Treasury

8

Homestead Exemption and Special Assessments for Damaged Homes

CURRENT SITUATION: The Constitution lists all eligible exemptions from property taxes. It exempts from most property taxes up to \$7,500 of the assessed value of a homestead. In order to qualify for the homestead exemption, the owner must both own and occupy the property.

The Constitution gives a special property tax break for the owner-occupied homes of seniors (age 65 or older) and their surviving spouses (if 55 years of age or older or with minor children). The property tax assessment is frozen at a special assessment level, which is the assessed value of the property when it first qualifies 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 \$50,000, adjusted annually for inflation.

While the eligible homeowner's assessment is frozen, the millage rates applied to that assessment are not. (The

You Decide

- A vote **for** would allow persons unable to reoccupy homes damaged by a governor-declared emergency to retain the homestead exemption for a set period of time and provide for special assessments for eligible elderly.
- A vote **against** would result in the loss of the homestead exemption and special assessments for eligible elderly for those unable to reoccupy their homes within one year of a governor-declared emergency.

PROPOSED CHANGE: The amendment would allow homeowners to maintain their homestead exemptions if they file an annual affidavit with the assessor stating their intention to reoccupy within five years of the end of the calendar year following a governor-declared emergency. It would also allow eligible elderly to keep their special assessments if they reoccupy their rebuilt or repaired home within that same five-year time period. If the homeowner receives another homestead exemption on a different property, he forfeits both the homestead exemption and the special assessment.

COMMENT: If this amendment passes, a homeowner could maintain his homestead exemption even if he is unable to occupy his home because of damage caused by a governor-declared emergency. The amendment would also allow eligible elderly to keep their special assessment. The value of the land and buildings would not be increased above the value assigned immediately prior to the disaster.

Under current requirements, the applicant would lose the homestead exemption and special assessment for failing to satisfy the occupancy requirement and be required to pay any additional property taxes.

Proponents say this amendment would ease the burden on property owners unable to occupy homes damaged by a governor-declared emergency. It would allow homeowners sufficient time to rebuild or repair their homes. It would also provide fairness by setting a time limit of five years and requiring homeowners to file an affidavit every year stating they intend to return.

Opponents argue that the amendment would give a windfall to some elderly homeowners by freezing assessments permanently without regard to any potential increase in the value of the rebuilt home. For example, a home valued at \$100,000 before the damage

tax bill on that assessed value could rise due to new or increased millages.)

Hurricanes Katrina and Rita severely destroyed or damaged 205,000 Louisiana homes in 2005. Shortages of supplies and labor have slowed rebuilding efforts and prevent homeowners from reoccupying their homes.

would keep the frozen assessment even if rebuilt as a \$300,000 home. Under current law, this house would have to be reassessed. Proponents suggest that few elderly homeowners would likely be in a position to build homes much larger and more expensive because of income limitations and high rebuilding costs.

LEGAL CITATION: Act 70 (Representative Alario) of the 2005 First Extraordinary Session, adding Article VII, Section 18(G)(5) and Section 20(A)(10).

9

State Mandates on School Spending

CURRENT SITUATION: The Constitution provides that, with certain exceptions, a state law or executive order requiring increased spending by a local political subdivision is not effective unless (1) the affected local governing authority approves, (2) the state appropriates the needed funds or (3) the state provides for a local source of revenue and the local government authorizes its collection. The provision does not apply to a law or regulation approved or authorized by a two-thirds vote of the elected members of each house of the Legislature.

This provision does

not apply to local school boards. State mandates can require local school boards to increase expenditures without local approval, appropriation of state funds or authorization of a local revenue source. School boards must comply with state-mandated levels for staffing, services, salaries, employee benefits and other areas.

School boards pay for their operations — including state and federal mandates as well as local initiatives through a combination of local, state and federal funds. Local districts raise revenue predominantly through property and sales taxes, however they must do so within constitutional limitations. To exceed these limitations would require legislative and local voter approval.

You Decide

- A vote **for** would prohibit some state mandates to increase local school spending unless the state provides for a local source of revenue and the local government authorizes its collection. The provision would not apply to a law approved by a two-thirds vote of the Legislature.
- A vote **against** would continue to allow the state to mandate increases in local school spending without providing a local funding source.

On average, local taxes provide approximately 38 percent of school board revenue while approximately 48 percent comes from the state. Some state funding is provided through targeted funds for specific purposes, but most is provided through the Minimum Foundation Program (MFP). Some funds in the MFP include specific spending requirements, but others are flexible and may be spent at the local school board's discretion.

PROPOSED CHANGE: The amendment would prevent a state law from becoming effective if it required increased local school board expenditures, unless the state provides for a local source of revenue and the local government authorizes its collection.

Due to a drafting error, it is unclear how the prohibition would apply to mandates that provide state funds to cover increased costs.

The provision would not apply to a law or regulation approved or authorized by a two-thirds vote of the elected members of each house of the Legislature. It would also not apply to any rule, regulation or policy implemented by the Louisiana Department of Education.

The prohibition also would not apply to laws that are:

- requested by the affected local governing authority;
- define crimes;
- are in effect prior to adoption of this amendment;
- are to comply with federal mandates;
- have insignificant fiscal impact;
- are part of the MFP;
- involve the implementation of the state's accountability system.

The proposal would not affect existing mandated expenditures. It would only apply to future mandated increases.

COMMENT: A drafting error complicates the amendment and may contradict its intended purpose. As originally introduced, the proposed amendment would have prohibited state laws requiring increased expenditures from going into effect until (1) the legislature appropriated state funds or (2) the legislature provided a local revenue source. However, during the many changes made throughout the legislative session, one instance of the word "until" was deleted. The meaning of the language in that part of the proposal is no longer apparent. As a result, it is unclear how this provision might be interpreted and applied to mandates that provide state funds.

Because of this error, critics argue that the amendment could even be interpreted to prohibit the legislature from providing state funds for any future mandated spending increases. They argue that if this proposal passes another amendment would be required to correct the oversight.

Proponents argue that despite any errors in language the legislative intent of the amendment is clear. They also argue that any oversights can be resolved in the future.

Proponents add that in necessary cases the state would be able to pass a mandate as long as it receives two-thirds of the votes in the legislature. They also note that this constitutional amendment does not restrict the Department of Education from implementing any rule, regulation or policy with respect to education for either state-wide reform or parish-by-parish changes.

Proponents of the amendment argue that the proposal would cause the state to focus on the cost and source of funding for local programs it might mandate in the future. They also argue that it is unfair for the state to require districts to increase spending without providing a means of funding. To cover such costs, school boards must raise additional taxes or cut spending in other areas. The state currently restricts local school board taxing authority by prohibiting certain taxes, limiting some rates and requiring certain tax exemptions. Because much of a school system's budget is dedicated to costs, such as salaries and benefits, which are protected by state law from being cut, school boards have a very limited area that they can cut.

Proponents also argue that this amendment places local school boards on the same footing as other local governing authorities, which are already protected from unfunded mandates. They note that this constitutional protection has worked effectively for other local governing authorities for several years and that education should receive at least as much protection as streets or drainage.

Opponents of the amendment argue that the language of the amendment would cause problems. These opponents point to the fact that there is no clear definition or determination of what mandates are unfunded. They also suggest that neither current law nor the proposed amendment defines insignificant fiscal impact. The exclusion of the MFP also raises concerns. Although the proposal explicitly excludes expenditures included in the MFP from the prohibition, much of the money provided to local school systems through the MFP is flexible revenue not dedicated to specific expenditure requirements. It is unclear whether this flexible revenue can be considered funding for state mandates outside of the MFP. If not, then the state would have to provide flexible MFP funds and additional mandate-specific funds to local school districts. As a result, state mandates may increasingly be included in the MFP in order to avoid the prohibition. In that event the flexibility of MFP dollars would be restricted.

Opponents also argue that this amendment would unduly tie the state's hands. Improvements to education sometimes require statewide reform, as with

the accountability system passed in the 1990s. This proposal could potentially restrict the state's ability to require districts to comply with any future statewide reforms without providing additional money.

Some opponents argue that certain districts are in financial trouble not because of unfunded mandates but because of poor fiscal management at the local level.

Some observers of state-local relations suggest that the similar amendment designed to protect other local government entities from unfunded mandates and passed in 1991 has had only a small effect. They argue that the amendment has proven to be an ineffective deterrent of state mandates and has made little practical difference.

LEGAL CITATION: Act 855 (Senator Quinn) of the 2006 Regular Session, amending Article VI, Section 14.

10 Higher Education Investments

Note: See the Introduction to Investment Amendments on page 16 in Box B.

CURRENT SITUATION: Most Louisiana colleges and universities have endowment funds provided largely by gifts to the institution. Endowments are funds given to a university or college for investment in order to provide revenue for professorships, fellowships, scholarships and other programs. The endowment principal is invested, and only a portion of investment earnings derived from the principal is spent. The Constitution prohibits the investment of public funds in stocks.

The vast majority of most institutions' endowment funds are private dollars given to private foundations associated with particular campuses. However, a small portion of endowed funds are public dollars. These public funds in endowment come from state

contributions made through the "8(g)" fund. Endowment gifts made by private donors directly to a public campus, rather than the private foundation associated with that campus, are also considered public funds.

You Decide

- A vote *for* would allow public or private colleges and universities to invest up to 35 percent of state-funded permanently endowed funds in stocks.
- A vote *against* would continue to prohibit public colleges and universities from investing state funds in stocks.

Those funds, however, were typically endowed prior to the extensive use of private foundations and the "8(g)" program. In both cases, these public funds make up only a small portion of funds in endowment.

The managing board of each higher education system invests endowment funds in accordance with its written investment policy and with the approval of an investment advisory committee composed of the state treasurer, the legislative auditor and the commissioner of administration.

Public colleges and universities are allowed to invest public funds in stock in 16 of 20 states examined by PAR. An annual survey by the National Association of College and University Board Officers (NACUBO) showed that the responding 746 public and private institutions invested, on average, nearly 60 percent of endowment funds in equities in 2005.

PROPOSED CHANGE: The amendment would authorize higher education institutions or their respective management boards to invest up to 35 percent of state-funded, permanently endowed funds in stocks. The authorization would apply to "8(g)" funds provided by the state for endowments as well as any endowed funds held directly by public higher education institutions. Stock investments would undergo the same approval process required of non-equity investments. All proceeds from interest, dividends, realized and unrealized gains may be invested.

COMMENT: Members of the higher education community initiated this amendment to maximize the potential of all funds held by their respective institutions. For example, LSU projects that it could potentially earn an additional \$1.6 million on its endowments if this proposal passes. Earnings from endowment investments are essential to higher education institutions, because they provide support for financial aid, faculty salaries and other operating costs. Endowed chairs, professorships and fellowships are important tools for attracting top faculty members, which improves the institution's ranking.

The proposed 35 percent constitutional cap on stock investment of the state-funded share of endowments would maintain the same investment allowance for the "8(g)" funds prior to transfer to higher education institutions. The cap would also be relatively conservative compared with the investment practices of colleges and universities nationally. NACUBO's 2001 Endowment Study reported private and public institutions investing an average of 58.5 percent in equities, down from 64.3 percent in 1999. With the exception of a few years, the greater investment flexibility of institutions participating in the NACUBO study yielded relatively high rates of return. (See Figure 2 on page 17.) The more conservative limit of 35 percent

on stock investment proposed, however, is consistent with stock investment caps placed on other Louisiana funds.

The proposal is permissive only, allowing investment of a portion of college and university endowments. It would not mandate investment in stocks.

LEGAL CITATION: Act 856 (Representative Cazayoux) of the 2006 Regular Session, amending Article VII, Section 14(B). The companion legislation is Act 717 (Representative Cazayoux) of the 2006 Regular Session.

11 Homestead Exemption for Homes in Revocable Trusts

CURRENT SITUATION: The state Constitution lists all eligible exemptions from property taxes. It exempts from most property taxes up to \$7,500 of the assessed value of a homestead. Because homes are assessed at 10 percent of fair-market value, the first \$75,000 in market value is exempt. However, the exemption does not apply to municipal taxes, except in Orleans, and the state does not levy a property tax.

You Decide

- A vote *for* would extend the homestead exemption to property placed in a revocable trust by a person who continues to occupy the home.
- A vote *against* would continue to allow the homestead exemption for irrevocable trusts, but not for revocable trusts.

Historically, the exemption was granted only to property owned and occupied by a person. As Louisiana is a community property state, a “person” can be an individual or a married couple. The Constitution also specifies that a surviving

spouse or minor children who continue to occupy the home are eligible.

As forms of home “ownership” arrangements evolved over the years, some failed to clearly meet the specific constitutional eligibility requirements. This resulted in a lack of uniformity in the way assessors interpreted eligibility for revocable and irrevocable trusts.

Revocable trusts are commonly called living trusts or family trusts. In this legal arrangement the owner (also known as a grantor or settlor) specifies who will receive the trust assets when the owner dies. The owner keeps control of the trust assets during his or her lifetime and can alter or terminate the trust at any time. It is

considered part of the grantor’s estate and is subject to taxation. Property ownership is passed on to the beneficiaries only after the grantor’s death.

A 2003 Legislative Auditor’s report examining assessors’ practices and the Louisiana Tax Commission’s response resulted in a proposal to ratify the practices common to many assessors. A 2004 constitutional amendment extended the homestead exemption fully to a variety of circumstances including otherwise eligible property placed in an irrevocable trust by a person who continues to occupy the home and who is also the principal beneficiary and settlor of the trust.

Since the amendment took effect in December 2004 property owners that have placed their property in revocable trusts have complained that they are not allowed to benefit from the homestead exemption.

PROPOSED CHANGE: The proposed amendment would extend homestead exemption eligibility to otherwise eligible property placed in a revocable trust by a person who continues to occupy the home and who is also the principal beneficiary and settlor of the trust.

COMMENT: Proponents argue that the homestead exemption should be uniformly applied to both revocable and irrevocable trusts. Homeowners should be able to transfer ownership and retain the exemption for as long as they remain in the home. Elderly homeowners are increasingly transferring ownership of their homes through trusts to their children to qualify for medical assistance and to protect their estates.

Currently, the transfer of ownership to a revocable trust would render the property legally ineligible for the exemption, because one must both own and occupy the homestead unless the property is placed in an irrevocable trust. Many assessors had granted an exemption before the 2004 amendment to revocable trusts even though the ownership requirement was no longer met. The proposal would legitimize exemptions where such transfers have occurred.

Proponents state that many elderly homeowners cannot afford the additional legal fees required to alter their trust documents in order to regain the homestead exemption.

Opponents object to expanding the homestead exemption to revocable trusts because it would further erode the original public policy promoting home ownership.

The amendment would also result in some amount of property being removed from the tax assessment rolls. Ultimately, other taxpayers would have to pick up the slack for any new tax reductions granted. Proponents argue that there are relatively few homes placed in a revocable trust, so the tax implications are low.

LEGAL CITATION: Act 852 (Representative Triche) of the 2006 Regular Session, amending Article VII, Section 20(A).

The amendment would also require the governor to call a special election if there were no regularly scheduled congressional or statewide election within one year of a vacancy of any statewide elected office (except the governor's office).

12 Vacancy in Statewide Elected Offices

CURRENT SITUATION: The Constitution provides the method by which vacancies in statewide elected offices are filled. A vacancy can occur with death, resignation or removal by any means or failure to take office for any reason. In the case of a vacancy in the lieutenant governor's office, the governor appoints a replacement who takes office after confirmation by a majority vote of both the House and Senate. The appointee serves the remainder of the unexpired term regardless of the amount of time left.

Vacancies in the other statewide elected offices, except the governor, are filled by the first assistant. The other

You Decide

- A vote *for* would require an election if there is a vacancy in the office of the lieutenant governor and more than a year remains in the term. It would also require a special election, if necessary, to fill vacancies in statewide elective offices.
- A vote *against* would continue to allow an appointed lieutenant governor to serve the remainder of the full term. It would also continue to allow elections to fill vacancies for statewide elected officials only on regularly scheduled election dates.

statewide elected officials are the commissioner of agriculture, the commissioner of insurance, secretary of state, treasurer, and the attorney general. If the unexpired term for these offices is more than one year, the first assistant serves only until a new person is elected at the next regularly scheduled congressional or statewide election.

However, there is no such election in one out of every four years.

Only elected officials may fill a vacancy in the governor's office. Because there is no election requirement to fill a vacancy in the office of the lieutenant governor, anyone appointed to fill a vacancy in the office would not be eligible to succeed the governor. The next in line for gubernatorial succession would be the secretary of state.

PROPOSED CHANGE: The amendment would require a vacancy in the lieutenant governor's office to be filled by an election if there is more than one year left of the unexpired term.

COMMENT: Proponents argue that this proposal would correct flaws in the constitutional provisions related to gubernatorial succession. Because only elected officers may succeed the governor, a lieutenant governor could be passed over if he has been appointed to that office. This amendment would allow vacancies in the lieutenant governor's office to be filled by elected replacements who would be eligible for gubernatorial succession. Proponents also argue that it would bring uniformity to the process of filling vacancies in statewide elected offices by allowing more frequent elections. Since gubernatorial successors must be elected, special elections to fill vacancies in other statewide elected offices would allow those offices to be filled by elected officials as soon as possible.

Opponents argue that requiring more special elections would be expensive to the state. A statewide election costs just under \$3 million.

LEGAL CITATION: Act 858 (Representative Beard) of the 2006 Regular Session, amending Article IV, Sections 15 and 16.

13 Judges' Qualifications

CURRENT SITUATION: The Constitution establishes minimum qualifications and residency requirements for state judges. All candidates for state supreme court, court of appeals, district court, family court, parish court and juvenile court judgeships must have been admitted to practice law in Louisiana for at least five years prior to election. Additionally, these candidates must be domiciled in their respective districts, circuits or parishes for at least two years prior to election.

You Decide

- A vote *for* would require judicial candidates to have been admitted to the practice of law for eight or 10 years, depending on the court, and reside in their districts for one year prior to qualifying for election.
- A vote *against* would continue to require state judges to be admitted to the practice of law for five years and reside in their districts for two years prior to qualifying for election.

PROPOSED CHANGE: The amendment would increase the minimum qualifications for certain judges. Candidates for state supreme court and court of appeals judgeships would be required to have been admitted to the practice of law in Louisiana for at least 10 years prior to election. Candidates for state district court, family court, parish court and juvenile court judgeships would be required to have been admitted to practice law in Louisiana for at least eight years prior to election.

The amendment would also reduce the residency requirements for certain judicial candidates. All candidates for state supreme court, court of appeals, district court, family court, parish court and juvenile court judgeships would be required to be domiciled in their respective districts, circuits or parishes for at least one year prior to election.

The amendment would not apply to city and municipal courts, mayor’s courts or justices of the peace.

The amendment would not take effect until January 2008 and would not apply to candidates for judicial elections in the interim.

COMMENT: Passage of this amendment would place Louisiana among those states with stronger minimum qualification requirements for judges. A survey of state laws regulating minimum qualifications and residency requirements for state judges indicates that over 20 states currently require more than five years of admission to the practice of law before eligibility to serve as judge for state court of appeals, supreme court or both. Over half of these states require at least 10 years to serve on those courts. Nine states require more than five years admission to the practice of law before a candidate is eligible to serve as a lower court judge. Five of these states require eight or more years to serve on those courts.

Approximately 20 states have residency requirements at least as long as Louisiana for judges of supreme courts, courts of appeals and district courts.

Proponents argue that Louisiana is among states with the lowest qualifications for judges. Proponents also argue that judges need life experience as well as legal expertise. Requiring candidates to wait longer between admission to the practice of law and running for judicial election would provide them with more of the skills and knowledge that come from experience. Proponents also note that the proposal would not require attorneys to practice law for eight or ten years but simply to be admitted to the practice of law for that time. They also argue that reducing the residency requirement would ease the impact of the proposal in rural areas where there are fewer candidates for office.

Opponents argue that the amendment places undue restrictions on democratic participation in the selection

of judges. The amendment would limit the candidates who can run for office and therefore limit voters’ choices. Opponents also argue that the current system is working and that many successful judges today began their judicial career with fewer than eight years of admission to the practice of law.

LEGAL CITATION: Act 860 (Representative Greene) of the 2006 Regular Session, amending Article V, Section 24.

Voting on Louisiana Proposed Constitutional Amendments (1921-2004)			
	Number of Amendments		Average Percent of Registrants Voting
	Proposed	Approved	
1921 Constitution	802	536	--
1974 Constitution (Total)	189	127	--
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

SOURCE: Official Promulgation, Secretary of State.

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