

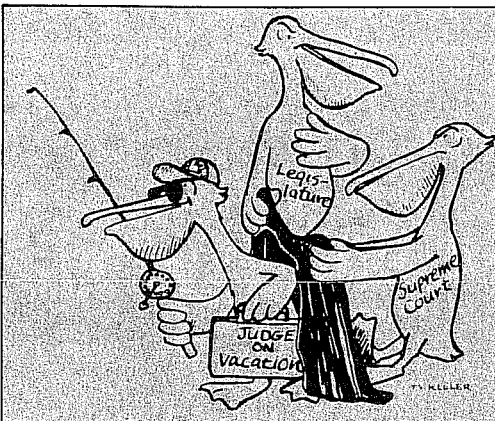
# PAR

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COUNCIL OF LA., INC.

November 21, 1987 Election

## Guide to the Proposed Constitutional Amendments

### No. 1 Appointment of temporary lower court judges



**The Amendment Would:** Give the state supreme court sole authority to provide, by rule, for appointments of attorneys as temporary or ad hoc judges of city, municipal, traffic, parish, juvenile or family courts.

**Voter Decision:** A vote for the amendment would give the state supreme court sole authority to provide for temporary appointments of lower court judges and eliminate legislative involvement in this area. A vote against the amendment would continue the present system which is governed by state law.

**Current Situation:** The state constitution allows the Louisiana supreme court to establish procedural and administrative rules concerning other courts as long as the rules are not in conflict with state law. Under the Louisiana Code of Civil Procedure enacted by the Legislature, when a parish or city judge is unable to preside due to temporary illness, absence or inability, he can appoint an attorney or other judge to

replace him temporarily. The temporary judge must meet the same qualifications as the judge being replaced. The appointment usually runs from one day to a month.

The constitutionality of appointments made under authority of the Code of Civil Procedure was questioned in a 1982 state supreme court case concerning a temporary appointment by a city court judge. The Louisiana supreme court upheld the authority of the temporary judge because his appointment was made in conformity with state law. However, concern over the constitutionality of the law, the legal standing of such appointments and the variety of local appointments has continued. Also, complaints have arisen that such appointments have been abused by attorneys running for judgeships who portray themselves as judges in campaign literature when they may have served only one day. The supreme court feels the matter should be clarified in the constitution and such appointments supervised by the court as is the case for the state's district and appellate court judges. The constitution gives the supreme court power to assign a sitting or retired judge to any court, and the supreme court uses this power to fill temporary vacancies in district and appellate courts.

**Proposed Change:** The proposal would eliminate the conflict between (a) the law authorizing judges of courts of limited jurisdiction to appoint lawyers to fill temporary vacancies for illness, vacations and seminars, and (b) the constitutional requirements that all judges be elected (with the sole exception that the supreme court can appoint a lawyer to fill temporarily a judicial vacancy created by death, a retirement or resignation). The proposal would allow the supreme court to provide by rule for procedures to appoint lawyers to the courts of limited jurisdiction, such as city and parish courts. It would eliminate the Legislature's authority to provide by law for temporary judicial appointments.

**Comment:** These appointments to courts of limited jurisdiction now are made under constitutionally questionable authority and a system which has the potential for political patronage appointments as well as pressure upon judges to appoint unqualified lawyers. The proposed amendment would be consistent with the supreme court's "general supervisory jurisdiction over all other courts" granted by the state constitution.

**Legal Citation:** Act 945 of 1987 amending Article V, Section 5 (A).



## No. 2 Constitutional Wildlife and Fisheries Conservation Fund

**The Amendment Would:** Give constitutional protection to the existing Louisiana Wildlife and Fisheries Conservation Fund.

**Voter Decision:** A vote for the amendment would give the statutory fund constitutional status and eliminate the Legislature's ability to change revenue sources dedicated to the fund or the ways monies in it could be spent. A vote against would continue the present situation of a conservation fund created by law and subject to change by legislative action.



**Current Situation:** Louisiana has had a Wildlife and Fisheries Conservation Fund, enacted by the Legislature, since 1912. The fund receives all revenues collected by the Wildlife and Fisheries Commission, except for certain fees dedicated to the Seafood Promotion and Marketing Fund and an annual appropriation to the Louisiana Wildlife Stamp Research Fund. The commission is the policymaking board for the Department of Wildlife and Fisheries.

The conservation fund's revenues are derived from sport and commercial hunting and fishing license fees, motorboat registrations, and mineral income from state lands under the commission's jurisdiction. These dedicated revenues are related to department and commission

functions of preserving and protecting the state's wildlife and natural resources. Monies in the conservation fund can be used only for the programs and purposes appropriated each year to the commission and department by the Legislature. (A separate statutory Natural Resources Conservation Fund exists which the amendment would not affect.)

The table shows deposits into the conservation fund for fiscal 1985-86. The conservation fund received \$18.7 million, 56% of the wildlife and fisheries department's total state and federal revenue that year. The Seafood Promotion and Marketing Fund received \$346,967 (1%) and the Wildlife Stamp Research Fund, zero. The conservation fund retains any year-end surplus.

The conservation fund makes up 66% of the wildlife and fisheries department's operating budget for fiscal 1987-88. The fund is projected by the State Budget Office to receive \$27 million in fiscal 1987-88 (\$5 million from mineral income and \$22 million from licenses and fees).

Fear that the fund would be raided to finance other government operations due to the state's poor financial condition led to this amendment. During fiscal 1986-87, the Governor proposed to transfer \$2 million from the conservation fund to the general fund but did not do so due to opposition from commercial and recreational groups.

**Proposed Change:** The proposed amendment would place a conservation fund in the Louisiana constitution but tie it to the existing statutory fund. All revenues deposited into the existing conservation fund, and any increases, would continue to be dedicated to the fund even if the names of the affected fees or other revenues were changed. Increases in these revenues also would be dedicated to the fund unless the Legislature enacted a law specifically appropriating or dedicating the revenue to another fund or purpose. The amendment would continue the exception for the Seafood and Promotion Marketing Fund, as it currently exists, but does not refer to the Wildlife Stamp Research Fund.

The amendment would specify that monies in the fund would be appropriated to the Department of Wildlife and Fisheries, or its successor, to be used solely for the programs and purposes of "conservation, protection, preservation, management, and replenishment of the state's natural resources and wildlife, including use for land acquisition or for federal matching fund programs which promote such purposes, and for the operation and administration of the Department and the Wildlife and Fisheries Commission, or their successors."

The proposal also would require that the fund's year-end surplus remain in the fund, interest earnings on fund revenues be deposited into the fund, and the state treasurer prepare a quarterly report showing the amount of money in the fund from all sources.

**Comment:** The proposed amendment would give constitutional status to an existing statutory fund. The Legislature would no longer be able to change by a simple majority vote of both houses the dedication to the conservation fund or use the revenues for another purpose. The amendment also would preclude the Legislature from transferring any surplus in the conservation fund to the general fund. It would provide a tighter dedication by setting more specific limits within which the Legislature could appropriate money from the conservation fund. The amendment would not dedicate additional sources or types of revenue to the fund, such as another tax or fee not now dedicated. It would give the fund first priority on increases in the revenues currently dedicated.

Dedications of designated revenues to particular programs or services have increased since ratification of the 1974 constitution which greatly reduced constitutionally earmarked revenues and was the catalyst for eliminating many statutory dedications. If the recent trend continues, the state budget will be self-executing with no need for the Legislature to meet and consider it. Dedications deprive the Legislature of its most important authority, the power of the purse, plus complicate the fiscal structure and make it inflexible. Alternatively, they are viewed as protecting certain revenues and the functions they finance from legislative tampering. This amendment could set a precedent of many more statutory dedications to special funds being placed in the constitution.

**Legal Citation:** Act 946 of 1987 amending Article VII by adding Section 10-A.

### Revenues Received by the Wildlife and Fisheries Conservation Fund, Fiscal 1985-86

Royalties	\$ 6,366,422
Rentals on land	614,348
Other income on land	113,671
Interest income	77,705
Severance taxes	2,309,599
License sales	8,677,327
Miscellaneous	506,834
<b>Total</b>	<b>\$ 18,665,906</b>

SOURCE: Louisiana Department of Wildlife and Fisheries, 1986 Annual Report.

## No. 3 Actuarial funding, retirement systems



**The Amendment Would:** Require sound funding of public employee retirement systems and payment of their existing debt over 40 years.

**Voter Decision:** A vote for the amendment is to set a firm policy requiring actuarially sound funding for public employee retirement systems with increased contributions to the systems in the near term but much greater savings in the future.

A vote against the amendment is to permit the Legislature to continue setting retirement funding policy each year. If, to avoid tax increases or spending cuts, the Legislature decided to underfund the systems, even greater costs would be passed on to future taxpayers.

**Current Situation:** The four state-funded public employee retirement systems and the nine statewide systems for local employees are intended to be actuarially funded. That means a system should receive contributions over the working life of an employee which, together with investment earnings, will be sufficient to pay his retirement benefits. As of June 30, 1986, the 13 systems had a total of \$5.5 billion in unfunded accrued liabilities (UAL)—money that should have been paid in but was not. This was up from \$3.2 billion in 1980. The teachers' system alone accounted for \$3 billion in UAL.

Chronic underfunding of three of the four state-funded systems has allowed the unfunded liabilities to grow. Continued underfunding could require large increases in government spending in the future to pay constitutionally guaranteed benefits. The large and growing UAL has contributed to the state's lower bond ratings which can result in higher costs for state borrowing. In spite of statutory requirements that actuarially-determined contributions be made to certain systems, the Legislature has often appropriated less than was needed.

**Proposed Change:** The proposed amendment would require the 13 retirement systems to attain and maintain actuarially sound funding. The method of actuarial valuation would be determined by law and sufficient contributions would have to be made to

amortize the UAL over 40 years beginning fiscal year 1989-90. Any benefit increases in the future also would have to be accompanied by contribution increases sufficient to pay for them over time.

The Legislature would set the required contribution rates. However, in the state-funded systems, the 1987 employee-employer ratios could not be exceeded until the UAL was liquidated. Thereafter, employee rates could not exceed the employer's. If the Legislature failed to appropriate the full employer contribution to the state-funded systems, the state treasurer would be required to pay the amount directly from the general fund after the close of the fiscal year.

Neither the Legislature nor a system board could take any action, with certain exceptions, that would impair a system's actuarial soundness. One exception would allow a board to grant cost-of-living adjustments (COLAs) to retirees but only if the system were approaching actuarial soundness and the COLA did not require an increase in contribution rates.

The proposal further protects accrued retirement benefits and restricts the use of system assets to retirement purposes.

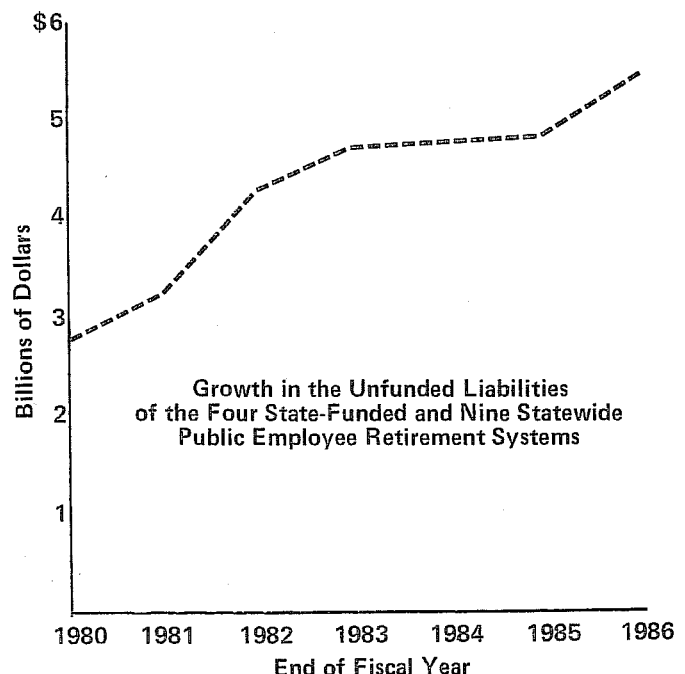
**Comment:** The proposal would establish a strict retirement funding policy for the state's major public employee retirement systems. Similar funding policies are common in other states and federal law currently requires this funding policy for private pension plans.

The Legislature would no longer be able to underfund the retirement systems and pass an even greater burden on to future generations of taxpayers. The proposed funding policy assumes that the cost of retirement benefits is a part of compensation for services rendered and should be paid by the generation of taxpayers receiving those services at the time they are rendered.

The additional funding required by the amendment would depend on the actuarial method and payment plan selected. The legislative actuary has indicated a possible range of \$45 million-\$160 million a year for the four state-funded systems. However, a method allowing lower payments in earlier years will require a future escalation in payments. The extra costs could be picked up by the state or shared with employees.

While the amendment protects employees' accrued benefits, it would permit changes in future benefits. Thus, the cost of retirement still could be cut by reducing benefits or raising eligibility requirements.

**Legal Citation:** Act 947 of 1987 amending Article X by adding Section 29 (E).

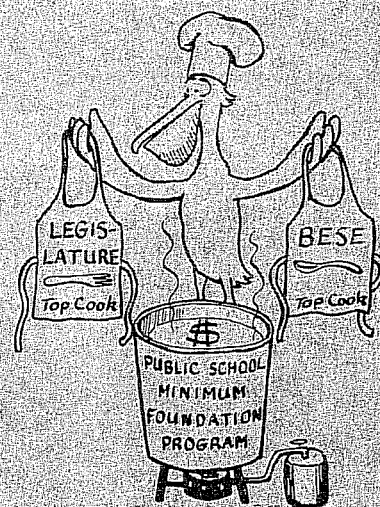


## No. 4 Legislature or BESE authority over state school aid program

**The Amendment Would:** Reinstate authority of the State Board of Elementary and Secondary Education (BESE) to determine what constitutes the Minimum Foundation Program (MFP) for all public elementary-secondary schools and its cost, now \$1 billion, and remove the Legislature's prerogative to make these policy and financial decisions. BESE establishes statewide school policies; eight of its 11 members are elected and three are appointed by the governor.

**Voter Decision:** A vote for the amendment would give BESE rather than the Legislature the power to decide components and objectives of a minimum education program for public elementary-secondary schools and how much must be appropriated to pay for it. A vote against, based on a new state district court ruling, would allow these decisions to be made by the Legislature, thus bolstering traditional legislative authority to determine state spending policies and priorities; BESE's role would be to devise a formula solely to distribute appropriated funds equitably to the 66 local school systems.

A vote for or against the amendment will not affect two important issues: (1) the Legislature would have to fund the MFP at 100% under present constitutional provisions as well as the proposed amendment, and (2) the governor would be authorized to cut MFP funding with two-thirds legislative approval under an existing statute and through a similar provision in the amendment.



**Current Situation:** Louisiana initiated a Minimum Foundation Program (MFP) approach for state aid to local schools in 1930. The major emphasis of the MFP since 1956 is creation and preservation of jobs for teachers and other staff for which the state pays minimum salaries. The constitution specifically requires the Legislature to appropriate sufficient funds to assure an MFP in all public elementary-secondary schools. Further, the State Board of Elementary and Secondary Education (BESE) is required to adopt "formulas" to allocate appropriated state funds equitably to the local systems.

The MFP "formulas" adopted by BESE have three parts: (1) a determination of a minimum program and cost, (2) a measure of local wealth which is what a 5.5 mill local property tax would yield, and (3) the amount of state aid needed to equalize which is the difference between total cost of the MFP less local support. Although the formula charges all local school systems a uniform 5.5 mills on their taxable assessed property value, it does not require the levy of any local school tax.

The last MFP formula approved by both BESE and the Legislature was in 1984, and it is still used. The Legislature has asked BESE to make changes but this has not occurred.

Fiscal 1986-87 was the first time the MFP was not funded at 100%. The Legislature cut funding by 4.5%. The Governor, through executive order, cut another 5% but later restored his cut.

These MFP cuts were the basis of a lawsuit filed in state district court and a decision, rendered August 21, 1987, provides a new judicial interpretation to present MFP constitutional requirements unless reversed on appeal. The decision held that the Legislature violated constitutional and related statutory provisions by not providing 100% financing of the MFP. However, the court ruled that the "formula and the appropriation are separate matters." The judge ruled it is up to the Legislature to determine what constitutes a minimum foundation "program" which it is required to fund. Based on this interpretation, the "formula" is a separate issue and its purpose is to establish a local wealth support factor so that MFP appropriations are distributed equitably to the local systems.

The court did not rule on whether the Legislature can authorize a governor to reduce MFP funding. The current 1987-88 MFP was funded at 100% and the general appropriations act, which provides the financing, prohibits gubernatorial reduction of the MFP. Act 689 of 1987, which is permanent law unless amended or repealed, also prohibits a governor from reducing MFP funding unless approved by two thirds of elected legislators in each house through mail ballot. Act 689 is not contingent on ratification of this proposed amendment.

Total cost of the 1987-88 MFP is \$1.039 billion; the state share is \$976 million, or 94%, and local support is \$63 million, or 6%. The state provides over \$200 million in school aid not in the MFP including textbooks, adult education, high school vo-tech programs, teacher retirement, and the Professional Improvement Program (PIPs) supplemental teacher pay.

**Proposed Change:** Amendment No. 4 would (1) reverse the recent court ruling by including in the BESE-adopted "formula" the cost of various components of the minimum foundation "program" (this has been past practice); (2) continue to make a new formula subject to legislative approval but prohibit the Legislature from amending it; (3) validate present practice that when the Legislature fails to approve the formula, the last jointly approved formula will remain in effect; (4) add a requirement that all local school systems contribute to financing the formula but not stipulate how much; (5) mandate the Legislature to appropriate 100% MFP financing, and (6) allow a governor to cut MFP funding if the act appropriating the money provides the means and if approved by two-thirds written approval of the elected members of each house of the Legislature.

**Comment:** This proposal would favor BESE rather than the Legislature over an important and large component of the state budget—the \$1 billion MFP. It also would overrule the recent court decision which distinguished between determining and financing a minimum foundation "program" (Legislature's responsibility) and devising a "formula" to distribute state school aid money equitably (BESE's responsibility).

Amendment No. 4, in effect, would mandate full funding of the MFP for public elementary-secondary education for it is unlikely that a governor could gain two-thirds legislative approval to cut funds.

This proposal would put beyond legislative control about a fourth of state revenue derived from taxes, licenses and fees. At present, the Legislature has discretion over only a small percentage of state revenue because of dedications and various mandates. This amendment would weaken even more the Legislature's chief power—to determine state spending priorities through its authority to appropriate money.

**Legal Citation:** Act 948 of 1987 amending Article VIII, Section 13 (B).



## No. 5 Nominees, New Orleans City Civil Service Commission



**The Amendment Would:** Replace defunct St. Mary's Dominican College as one of the colleges whose president nominates persons to serve on the New Orleans city civil service commission.

**Voter Decision:** A vote for the amendment would result in an employee-elected member serving on the New Orleans city civil service commission. A vote against would allow the New Orleans city council to continue making future appointments in the manner they choose.

**Current Situation:** St. Mary's Dominican College has closed; consequently, its president no longer can provide nominees for the New Orleans city civil service commission. However, the Louisiana constitution currently provides a procedure in the event that one of the nominating institutions ceases to exist. In such a case, the New Orleans city council makes the appointment; this procedure was followed by the city council in April 1987 when the term of the member last nominated by St. Mary's expired. The council requested the two major public universities in the city—University of New Orleans and Southern University at New Orleans—to submit names of nominees from which the council made the appointment. (This was the same procedure proposed in a 1986 constitutional amendment which failed.)

**Proposed Change:** This proposal would eliminate St. Mary's as one of the nominating institutions. Instead it would require an election at which three classified employees in New Orleans civil service would be nominated by a vote of the city civil service employees. The city council then would appoint one of the three nominees as the fifth member of the commission.

If the proposed amendment passes, the member selected under the new nominating procedure would not take office until 1993 at the end of the term of the member who took office April 1987.

The proposal must be approved by a majority of voters in both New Orleans and statewide.

**Comment:** Nominations by private colleges often are used in Louisiana to fill public positions desired to be politically neutral, such as civil service commissions. This has been the method used for the New Orleans city civil service commission. The proposal would replace nominations by a private college with employee nominations to give employees a voice on the commission. The new composition of the commission would be similar to that of the state civil service commission, six of whose seven members are chosen from nominations by private colleges with the seventh member selected by the state classified employees from their number. The employee member of the state commission is elected directly by the employees rather than being one of three nominees chosen by the commission.

This is the third time since 1984 that a constitutional amendment to fill this nominating vacancy has been on the ballot. Previous amendments in 1984 and 1986 failed statewide but passed in New Orleans. The necessity of a third statewide vote on this issue points up the problems inherent in placing essentially local material in the basic governing document of the state. Detail on the operation of a particular local government, such as that related to the New Orleans city civil service commission, normally is included in the charter of a home rule city. New Orleans is a home rule city.

**Legal Citation:** Act 949 of 1987 amending Article X, Section 4 (B) and (D) and adding Section 4 (E).

### Previous Voting on Proposed Amendments to 1974 Louisiana Constitution

Date	Number of Amendments		Average Percent of Registrants Voting
	Proposed	Approved	
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

### Sample Voter Ballot

Yes	No	Ballot		Subject
		Number		
<input type="checkbox"/>	<input type="checkbox"/>	1		Appointment of temporary lower court judges
<input type="checkbox"/>	<input type="checkbox"/>	2		Constitutional Wildlife and Fisheries Conservation Fund
<input type="checkbox"/>	<input type="checkbox"/>	3		Actuarial funding, retirement systems
<input type="checkbox"/>	<input type="checkbox"/>	4		Legislature or BESE authority over state school aid program
<input type="checkbox"/>	<input type="checkbox"/>	5		Nominees, New Orleans City Civil Service Commission*

\* Voter approval required statewide and New Orleans.



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