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1996 Guide to the Proposed Constitutional Amendments



VOTER DECISION



SEPTEMBER 21, 1996 BALLOT

No. 1 Local Voter Approval of New Gambling

A vote *for* would require the approval of a majority of voters in a parish before certain new gambling could be conducted there. In addition, a vote *for* would allow the Legislature to provide, by local or special law, for elections on propositions relating to allowing or prohibiting one or more forms of gambling authorized by legislative act.

A vote *against* would continue to allow new gambling in a parish without the constitutional requirement of local approval and would continue to prohibit the Legislature from calling local elections on gambling through local or special laws.

No. 2 Intangible Property Exemption

A vote *for* would make constitutional the long-standing practice of exempting certain intangible business property such as "goodwill" from the property tax, with limited exceptions. A vote *against* would leave intangible property subject to potential taxation.

NOVEMBER 5, 1996 BALLOT

No. 1 Part-Time Officials' Retirement

A vote *for* would prohibit participation in public retirement systems by legislators, school board members and other part-time public officials initially elected or appointed after January 1, 1997. A vote *against* would continue to allow part-time officials to join public retirement systems.

No. 2 Donation of Abandoned Housing

A vote *for* would allow parishes and municipalities to donate abandoned or blighted housing to nonprofit groups for renovation. A vote *against* would continue the general ban on donations of publicly-owned property.

No. 3 Sales Tax Exemptions—Local, State or Both

A vote *for* would ratify the current practice of applying different sales tax exemptions at the state and local levels. A vote *against* would continue the constitutional requirement that exemptions apply uniformly to both state and local sales taxes.

Statewide Proposition: Gambling—Local Option Election (Not a Constitutional Amendment)

Voters will be asked to vote separately on whether or not to permit each type of gambling (except for horse racing, the lottery, charitable gambling, and Native-American-operated casinos) now legal in their parish. Video poker will be on the ballot in all parishes. Riverboat casino gambling will be on the ballot in some 45* parishes adjoining waterways authorized for riverboat casinos. The New Orleans land-based casino will be on the ballot only in Orleans Parish.

* When this publication went to press, the Secretary of State's office still had not finalized the exact number of parishes that will vote on riverboat casinos; and it is estimated at 45.

September 21, 1996 Ballot

No. 1 Local Voter Approval of New Gambling

Current Situation: The constitution states that “gambling shall be defined and suppressed by the legislature.” The Legislature legalized riverboat casinos and video poker in 1991, and the land-based casino in 1992 by exempting them from its definition of gambling. The state supreme court upheld the Legislature’s right to make that determination.

Also exempt from the Legislature’s definition of gambling are wagering on horse racing; gambling on cruiseships entering the Port of New Orleans from outside the continental U.S.; and forms of gambling generally referred to as charitable gambling (raffles, bingo, keno, and “casino” or “Las Vegas” nights sponsored by nonprofit organizations).

Local voter approval is not now required for a parish to have new forms of gambling or additional riverboat casinos.

Although some 45* parishes adjoin riverboat casino-authorized waterways, only six parishes actually have riverboat casinos in operation. The law allows up to 15 riverboat casino licenses statewide, with no more than six in any one parish. Thirteen riverboat casinos are now operating with a fourteenth expected to open soon.

Other gambling in the state includes Native-American-operated casinos in Marksville, Kinder and Charenton. These casinos are regulated by tribal compacts with the state and federal governments.

Native-American casinos are allowed to offer any form of gambling that is legal in the state, regardless of whether it is allowed in the parish.

The constitution prohibits the Legislature from enacting local or special laws for the “holding and conducting of elections.” In 1994, the state supreme court struck down a law that would have granted Calcasieu and Ouachita parishes the right to vote on riverboat casinos. The law also would have allowed voters in those parishes to petition for an election at any time in the future on whether to retain riverboat gambling. The court found the law to be a local law that provided for the holding and conducting of elections and therefore, unconstitutional.

Proposed Change: The amendment would require the approval of voters parishwide:

(1) before any new type of gambling authorized by the Legislature in the future could be conducted in the parish,

(2) before any type of gambling already authorized by state law but not now conducted in the parish could be conducted,

(3) before a new riverboat casino could operate within a parish that already has a riverboat casino, and

(4) before a riverboat casino could relocate to or within a parish.

The proposal also grants the Legislature authority to provide, by local or special law, for local elections on propositions related to allowing or prohibiting gambling

authorized by legislative act. In addition, it states that the Legislature may at any time repeal statutes authorizing gambling.

Comment: Proponents say that the amendment provides a procedure for giving voters a local veto of gambling. Without the amendment, the Legislature and Gaming Control Board would continue to make decisions without a requirement or procedure for local voter approval.

Opponents of the proposal believe no additional language regarding gambling should be added to the constitution. They have also raised a number of legal questions that can only ultimately be settled by the courts. Their major contention is that the amendment would allow for an unlimited number of elections on gambling called by local governments. The bill’s author said that was not the intent of the legislation. Opponents have also raised the question of whether the proposed amendment has two objects (purposes): (1) requiring local elections on gambling in certain cases and (2) allowing the Legislature, by local or special law, to call local option elections on gambling. The constitution requires that amendments have only one object. Again, this is something that only the courts can definitely determine.

If the amendment passes, the courts may also be asked to decide whether the November 5 referendum on gambling would fulfill the local election requirement in this amendment in certain cases or whether still another local election would be required.

The proposed amendment specifically states that the Legislature may at any time repeal statutes authorizing gambling. Generally, such a provision is not needed because the only limitation on the Legislature’s ability to repeal any law at any time is the requirement that regular sessions in even-numbered years address only

fiscal topics. The provision may allow the Legislature to repeal the gambling laws during a fiscal session. In addition, some say it may be an attempt to protect the state from suits by license holders if gambling is repealed.

The proposed amendment, in itself, would not eliminate any

existing gambling. Voters will decide on whether to keep existing gambling in a November parish-by-parish election.

Legal Citation: Act 98 (Representative Windhorst) of the 1996 First Extraordinary Session, adding Article XII, Section 6(C).

No. 2 Intangible Property Exemption

Current Situation: Typically, a business has certain intangible assets such as reputation, goodwill, client lists and trained workforce which are part of its total value as a going concern. Historically, Louisiana’s parish assessors have only placed the value of tangible assets (such as land, buildings, inventory and equipment) on the tax rolls.

Some property is assessed at the state level by the Louisiana Tax Commission. This includes several specific types of intangibles (bank stocks and credit assessments on certain insurance, loan and finance companies). Also, in assessing public service properties (such as utility companies), the tax commission sometimes may include intangibles in valuing the business as a whole.

The constitution lists specific exemptions from the property tax and states that “no other [property] shall be exempt.” Except for cash, stocks and bonds, intangible property is not specifically exempted. According to a recent attorney general opinion, intangible property can only be exempted by the constitution and not by legislative action alone.

In a recent court case, a company protested a unique method of assessment applied by two parish assessors. The assessment, based in

part on the value of business intangibles (subscriber lists), substantially increased the company’s property taxes. A state court of appeal ruled that the unique method could not be used, but only because there were no uniform assessment procedures applicable to all businesses. The ruling made it clear that intangible property could be legally taxed in the future if uniform, statewide assessment procedures were established.

The *Louisiana Civil Code* refers to intangible property as “incorporeals” which it defines as things that have no body and differentiates between incorporeal moveables and incorporeal immovables.

Proposed Change: The amendment would exempt from property taxation all incorporeal movables, as defined in the *Louisiana Civil Code*, except public service properties, bank stocks, and credit assessments on certain insurance, loan and finance companies.

Comment: The amendment is intended to maintain the status quo regarding the taxation of intangibles. Intangibles that are not taxed now would be legally exempt, and those intangibles traditionally taxed would continue to be taxed.

Proponents argue that Louisiana’s property tax is intended primarily as a tax on tangible property and that intangibles that add to the value of a business are already taxed indirectly through corporation franchise, corporation income and occupational license taxes. They also argue that the amendment would not change the current method of assessing and taxing property. Exempting only “incorporeal moveables,” they suggest, would ensure that assessors could continue to use factors such as “location” in determining the market value of an immovable property. They fear that failing to legally exempt intangibles might lead to an imposition of new taxes on businesses.

Opposing the amendment are some parish assessors who argue that exempting intangibles might limit the assessment methods they could use. They also argue the exemption might give public service companies a basis for challenging the equity of taxes on their intangibles when those of other businesses would be exempt.

Legal Citation: Act 47 (Senator Greene) of the 1996 Regular Session, adding Article VII, Section 21(C)(18).

* When this publication went to press, the Secretary of State’s office still had not finalized the exact number of parishes that will vote on riverboat casinos; and it is estimated at 45.

November 5, 1996 Ballot

No. 1 Part-Time Officials' Retirement

Current Situation: Presently, public officials in a variety of part-time state and local positions are eligible or even required to join public retirement systems. These include legislators and members of parish, municipal and school district governing bodies.

Except for elected officials, public retirement systems typically exclude part-time employees and persons paid only on a per diem basis. Few, if any, appointed members of boards or commissions are currently eligible to join public systems.

The state constitution requires the Legislature to enact laws providing for retirement of officials and employees of the state, its agencies and political subdivisions. The constitution does not distinguish between full- and part-time service. Participation in a retirement system is considered a contractual relationship and accrued benefits cannot be taken away.

Proposed Change: The amendment would prohibit participation in a public retirement system based on part-time service by legislators, aldermen, constables and members of school boards, police juries, parish councils, city councils, city-parish councils and town councils. The prohibition would apply only to persons elected or appointed after January 1, 1997. The amendment would not affect participation in the Louisiana Public Employees' Deferred Compensation Plan.

Members of state and local boards or commissions would also be covered by the prohibition unless authorized by a two-thirds vote of the

Legislature. The Legislature could, by two-thirds vote, include other part-time positions and offices in the prohibition.

Companion legislation (Act 59 of the First Extraordinary Session of 1996), to implement the proposal, would take effect only upon voter approval of the amendment.

Comment: The amendment would apply mostly to members of legislative or policymaking bodies. While the responsibilities of these positions differ greatly, most require little more than regular attendance at meetings and many involve only nominal compensation. Mayors and parish council presidents would be considered full-time officials and not affected by this amendment. Current part-time officials would be grandfathered into their retirement plans.

Over time, the state, local governments and school boards would see some savings in their retirement contributions as the current part-time officials quit or retire. For example, the state's \$330,000 current annual retirement contribution for legislators would eventually disappear. However, those governments would have to begin paying social security on these part-time positions, in some cases at a rate nearly as high as that for retirement. Social security payments could be avoided only if the legislator or other official contributed a minimum of 7.5% of compensation to the deferred compensation plan.

Proponents of the amendment argue that: part-time positions should

not be considered a career but a public service; retirement is an expensive benefit that may be abused by part-time officials who take full-time jobs in their last three years to greatly increase the average compensation upon which their benefits are based; legislators, as retirement system participants themselves, have been willing in the past to grant liberal benefits, particularly for themselves; and some part-time officials are already well compensated compared to those in other states. It is also argued the amendment might discourage officials from remaining in office for long periods simply for the retirement benefits.

Opponents include some members of state, parish and municipal governing bodies who argue that they are constantly on call from constituents and therefore are not strictly part-time. Some legislators argue their jobs are full-time for several months a year leaving them unable to draw regular pay or contribute to their own retirement plans during the session. Some also suggest that such benefits are needed to enable lower income persons to serve.

Some municipal councilmen also argue they are often very poorly compensated but can take back their retirement contributions upon leaving office after short service. Under the proposal, they would have to pay social security which would not be refunded.

Legal Citation: Act 99 (Representative Thompson) of the 1996 First Extraordinary Session, adding Article X, Section 29.1.

No. 2 Donation of Abandoned Housing

Current Situation: A city or parish can take possession of blighted or abandoned properties by purchase, expropriation or, more commonly, by adjudication. Property is adjudicated to the city or parish when the original owners fail to pay property taxes and no one purchases the property at a tax sale.

Except for certain specified purposes, the state constitution prohibits the donation of public funds or property to any person or organization, public or private. This prohibition prevents a parish or municipal government, except for the City of New Orleans, from donating blighted housing that it owns. With no buyers and no way to give it away, the government is often left holding deteriorating property.

In 1995, voters approved a constitutional amendment allowing the City of New Orleans to donate abandoned housing to nonprofit organizations that would renovate it. The city has been developing regulations governing the donation procedure which will be applied to adjudicated properties. The city program, designed to provide homes for needy families, should begin operation this year.

Proposed Change: The amendment would expand the current exception to the constitutional prohibition against the donation of public funds or property. This would allow, in addition to the City of New Orleans, any parish or municipality to donate abandoned or blighted housing property it owns to a nonprofit organization that agrees to renovate and maintain the property until selling it to another owner.

The proposed amendment would not change expropriation powers.

Comment: Local governments have become the owner of many abandoned or blighted properties. New Orleans and Baton Rouge alone hold about 6,000 such properties each. Without renovation, these properties will deteriorate further, lower surrounding property values and create health and safety hazards.

Local governments are attempting to get these properties into private hands, renovated and back on the tax rolls. Except in New Orleans, the only way to do this is through a sale or trade. Proponents of the amendment argue that allowing the property to be donated would make it more

feasible for nonprofit groups to undertake these renovation projects.

Except in New Orleans, the original owners would still have three years to redeem property adjudicated to the local government by paying back taxes and other charges. A 1995 constitutional amendment lowered the redemption period to 18 months in New Orleans only.

A question has been raised as to whether local governments actually "own" adjudicated property during the period in which it may still be redeemed. A successful court challenge could limit the property available for donation.

Local regulations will have to be enacted to ensure that nonprofit groups properly carry out the renovation and sale of the property. Some have voiced concern that inadequate local regulations could result in improper use of the donations. They suggest that legislative guidelines might be useful.

Legal Citation: Act 97 (Senator Robichaux) of the 1996 First Extraordinary Session, amending Article VII, Section 14(B).

No. 3 Sales Tax Exemptions—Local, State or Both

Current Situation: By custom, the Legislature has enacted some sales tax exemptions that apply only to state taxes. The Legislature's assumed authority to do so is reflected in a 1978 act stating that any new exemption would apply only to state taxes unless the law also specifically applied it to local taxes.

Since 1986, the Legislature has also suspended certain state sales tax exemptions for one year at a time by

resolution but more commonly, for two-year periods by statute. The Legislature did not intend for these suspensions to affect exemptions on local taxes.

The constitutionality of this custom of treating exemptions differently at the state and local level was recently challenged. The relevant constitutional provision is one authorizing the Legislature to "uniformly" exempt or exclude items from sales

taxes levied by local governmental subdivisions, school boards and the state. In this case, a parish attempted to tax items for which state exemptions were suspended arguing that the state's suspension of the exemptions had to apply uniformly to local taxes as well.

Ultimately the supreme court ruled that the uniformity requirement did not apply if exemptions were suspended by *resolution*. Thus, an

exempt item would remain exempt from local taxes even though the exemption was suspended at the state level by resolution.

The court did not address how local exemptions would be affected when a state sales tax exemption is suspended by a statute rather than by resolution. The legislative practice in recent years of suspending, by statute, exemptions for state taxes only appears to conflict with the uniformity requirement.

Proposed Change: The amendment would allow different sales and use tax exemptions to exist at different levels of government. It would authorize the Legislature to provide for the uniform exemption or exclusion of goods, tangible personal property or services from sales or use taxes as applied to: 1) taxes of local taxing authorities, 2) state level taxes or 3) taxes of all taxing authorities in the state.

Comment: Proponents argue the amendment is needed to legitimize the ongoing legislative custom of providing for different sales tax exemptions at the state and local levels. Otherwise, the constitutional uniformity requirement might be interpreted to allow local governments to tax items normally exempt simply because the state has suspended the exemptions from state sales tax. If local tax exemptions are to be granted or suspended, they argue, the Legislature should have to consciously enact the changes.

There was no significant opposition to this proposal in the Legislature.

Legal Citation: Act 46 (Senator Hainkel) of the 1996 Regular Session, amending Article VI, Section 29(D).

STATEWIDE PROPOSITION: GAMBLING—LOCAL OPTION ELECTION (Not a Constitutional Amendment)

Current Situation: Legalized forms of gambling now include video poker, riverboat casinos and a land-based casino in New Orleans.

Although some 45* parishes adjoin riverboat casino-authorized waterways, only six of those parishes actually have riverboat casinos in operation. The law allows up to 15 riverboat-casino licenses statewide, with no more than six in any one parish. Thirteen riverboat casinos are now operating with a fourteenth expected to open soon.

The New Orleans land-based casino filed for bankruptcy last year and is still in bankruptcy court. A temporary casino had been operating while the permanent one was under construction. However, since the bankruptcy filing, the temporary casino closed and construction was halted on the permanent casino.

Video poker is legal statewide and is conducted in all parishes except West Carroll.

Ballot Proposition: The November ballot will vary from parish to parish depending on the types of gambling allowed. A proposition will appear on the ballot in every parish asking voters if they want to retain the gambling now *authorized* in their parish. A type of gambling may be legislatively authorized in a parish but it may not be occurring there. Voters will vote separately on each type of gambling.

Video poker will be on the ballot in all parishes. The riverboat casino question will be on the ballot in the 45* parishes that adjoin riverboat-authorized bodies of water. The land-based casino will be on the ballot in Orleans Parish.

If voters reject riverboats in their parish, the riverboats must leave when their current licenses and permits expire or when they are revoked, suspended, or returned if that were to happen first.

Video poker licenses, however, may be renewed twice following the election, so mid-1999 would be the earliest video poker could end in a parish.

If Orleans Parish voters reject the land-based casino, its authorization to operate ends immediately.

Comment: The basic question voters face is whether they want to retain each of the forms of gambling now authorized in their parish.

Proponents of gambling argue that it creates jobs; serves as a form of economic development and entertainment; is a voluntary activity and one in which minors cannot participate; and provides revenues for the state and local governments in a more palatable way than taxes or fees because it is voluntary. Proponents of video poker argue that many small businesses may not have otherwise been able to survive or grow without video poker machines. They also argue that it is the only form of gambling to which many small businesses are closely linked because they offer the game to their customers and directly benefit from the revenues. Proponents of riverboat casinos argue that the boats have created jobs and contributed to the economic development and tourism of their cities. They also argue that they have been good corporate citizens by becoming involved in their communities.

Opponents argue that gambling is not economic development because it shifts spending from one sector of the economy to another; it promotes negative social behavior; poorer people tend to spend a larger share of their income on it; and it is more prone to corruption than other industries because of the large sums of cash it involves. They also argue that gambling is morally wrong and that there are social costs associated with it: problem gamblers must receive rehabilitation; it negatively affects the families of chronic gamblers; and it increases the demand for social services. They also argue that using local option to determine who will have gambling essentially pits parishes against each other.

Gambling may also be viewed as a revenue issue. In fiscal year 1995-96, about 8% of the state's general purpose revenues came from gambling. Video poker revenue available to the state totaled about \$170 million in fiscal 1995-96. Of the \$170 million, about \$30 million went to sheriffs and \$5 million to district attorneys. About \$114 million was available for state general fund spending.

The state received about \$210 million from riverboat casinos in fiscal year 1995-96. The state had expected \$89 million in fiscal 1995-96 from the temporary casino. However, because it filed for bankruptcy, it paid the state only \$13.4 million.

From an economic development perspective, gambling has created a large number of direct and indirect jobs. However, some of the job creation has occurred at the expense of other sectors of the economy. If most spending on gambling in a community is done by local residents, other local businesses will suffer losses.

Some have questioned whether the November election will be legal if the September amendment authorizing the Legislature to call elections on gambling by local or special law fails. Since the November ballot will differ from parish to parish, they feel it may violate the current constitutional prohibition against local or special laws to call elections. However, the bill's author argues that because the November elections will occur in all parishes, the law is a statewide law rather than a local one. This is a legal issue the courts may be asked to decide.

It may be that only the courts can settle two other questions regarding the November vote. Riverboat casinos are authorized in some 45* parishes that adjoin the waterways designated by law. However, 39* of those parishes do not have riverboats operating. If any of those 39* vote in favor of riverboat casinos, it is unclear whether further legislative action or another local vote would be required before riverboat casinos could operate there. The same question arises in the case of video poker in West Carroll Parish because it is authorized but not conducted.

Legal Citation: Act 57 (Representative Windhorst) of the 1996 First Extraordinary Session, enacting Chapter 6-D of Title 18 of the Louisiana Revised Statutes of 1950 to be comprised of R.S. 18:1300.21.

* When this publication went to press, the Secretary of State's office still had not finalized the exact number of parishes that will vote on riverboat casinos; and it is estimated at 45.

Voting on Louisiana Proposed Constitutional Amendments

	Number of Amendments		Average Percent of Registrants Voting
	Proposed	Approved	
1921 Constitution	802	536	-
1974 Constitution			
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
TOTAL	112	72	

SOURCE: Official Promulgation, Secretary of State.