



*Public Affairs Research
Council of Louisiana, Inc.*

Guide to the Proposed Constitutional Amendments October 20, 2007

Introduction

On October 20, 2007, Louisiana voters will be asked to make decisions on four proposed constitutional amendments. Those amendments would:

- Further protect the state's supplemental pay program for certain law enforcement officers and firefighters from budget cuts;
- Expand the state's supplemental pay program to include additional law enforcement officers and firefighters;
- Revise the funding requirements for future benefits to members of state retirement systems;
- Provide a property tax exemption for jewelry held on consignment.

The Constitution is considered the fundamental law of the state. Its purpose is to address the rights of the citizens and the authority of the government. The concept of the Constitution as a relatively permanent statement of basic law, however, fades with the adoption of each new amendment.

As more detail is placed in the Constitution, even more amendments may be required as conditions change or problems arise with earlier provisions. For example, in 2006 voters passed an amendment that exempted artwork held on consignment from property tax assessment. On the current ballot, voters will be asked to expand the definition of artwork to include jewelry.

Louisiana leads the nation in the number of constitutions and has been among the most prolific in adopting amendments. The state's most recent Constitution of 1974 was a brief 35,000 words. To date, however, 210 amendments have been proposed and 148 (70 percent) of those have been adopted. In 2006 alone, voters had to decide on 21 amendments, the largest number of proposed changes in a calendar year since the 1974 Constitution was

Voter Checklist

October 20, 2007

Proposed Amendments

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adopted. Since 2003, no proposed constitutional amendment has been defeated by voters.

Some states make the amendment process more difficult by requiring a three-fourths super-majority vote of the Legislature, limiting the number of amendments that can be put on a single ballot, requiring passage in two consecutive legislative sessions or even requiring adoption by a certain percentage of the voters. Louisiana only requires a two-thirds vote of the Legislature and a majority vote of the people for a constitutional amendment to be adopted.

Typically, constitutional amendments are proposed to deal with emerging issues, authorize new programs or policies, ensure that reforms are not easily undone by future legislation or seek exception or protections for special interests. Ideally amendments to the Constitution should be reserved only for significant policy changes.

In reality, voters often are asked to decide numerous issues that are highly complex, specialized, applicable to a single place or time or extremely minor. Regardless of the number, complexity or length of amendments on the ballot, however, voters must evaluate each proposal carefully and make a decision based on its merits. In evaluating each proposal, voters should consider not only whether the proposal is a sound concept but also whether the proposed language belongs in the Constitution or if the suggested change should be statutory in nature.

1

Supplemental Pay Protection

CURRENT SITUATION: In 1956, the Legislature created a program that gave local police officers a state-funded, monthly supplement in addition to their local pay. Over the years, supplemental pay has been expanded to include local firefighters, constables,

marshals and deputy sheriffs. Only full-time, commissioned personnel who have completed one year of service are eligible to receive supplemental pay. Law enforcement officers hired after March 31, 1986, also are required to have obtained Louisiana Peace Officer Standards and Training (POST) certification in order to receive supplemental pay.

The state appropriation for supplemental pay has risen from just under \$1 million in 1956 to more than \$98 million for the 2007-2008 fiscal year, which represents a \$90 million increase in real dollars adjusted for inflation.

Prior to 2002, the supplemental pay program often was treated as a lower priority funding item. Some years the program was not fully funded and participants received reduced payments. Other years the program was marked for elimination or made contingent upon the renewal of taxes or additional revenues. The uncertainty of funding for supplemental pay drew criticism and was seen as a pressure tactic to encourage legislative renewal of expiring taxes or approval of new taxes.

In 2002, the Legislature and voters responded by constitutionally protecting a minimum payment by the state to each full-time local police officer and firefighter, constable, marshal and deputy sheriff who was eligible for the program. The amendment effectively moved the supplemental pay program to the “uncuttable” portion of the state budget and prohibited reduction or elimination of the appropriation, absent a two-

#1 You Decide

- A vote **for** would constitutionally protect current and future statutory supplemental pay levels, regardless of amount, for full-time local law enforcement officers and firefighters.
- A vote **against** would continue constitutional protection for the \$300 monthly supplemental pay amount for full-time local law enforcement officers and firefighters, as it was set by statute on July 1, 2001.

thirds vote of both chambers of the Legislature and signature of the governor.

The amount of supplemental pay that the Legislature was required to fund was defined by law as of July 1, 2001—\$300 per month for each eligible employee.

PROPOSED CHANGE: This amendment would constitutionally prohibit the reduction of supplemental pay, regardless of amount, for eligible local law enforcement and fire protection officers. The amendment would require full funding be provided in order to meet the amount set by law.

With the passage of this amendment, future legislative increases in supplemental pay would be protected automatically and could not be reduced by statute except with a two-thirds vote of both chambers of the Legislature and signature of the governor.

COMMENT: Constitutionally mandating full funding of supplemental pay in 2002 made it one of the highest spending priorities in the state. During the most recent legislative session, the supplemental pay amount was increased from \$300 to \$425 per month for each member of the program.

Proponents assert that the new amendment is needed so the existing constitutional protection of supplemental pay will apply automatically to any dollar amount the Legislature designates in the future.

State government has little control over the growth in supplemental pay costs, as the number of eligible personnel is determined by local government employers. Critics argue that since local governments determine pay scales for the persons they employ, the responsibility should fall to local taxpayers to fund their full salaries. Additionally, critics are concerned that reducing state budget flexibility to fund local services could jeopardize funding for state services in the future.

LEGAL CITATION: Act 483 (Senator Fontenot) of the 2007 Regular Session, amending Article VII, Section 10(D).

2

Supplemental Pay Expansion

CURRENT SITUATION: The state-funded supplemental pay program, originally created in 1956 for full-time local police officers, has been expanded over time to include full-time local firefighters, constables, marshals and deputy sheriffs. State law enforcement officers, however, are not eligible for supplemental pay.

In 1999, the Legislature passed a law that expanded supplemental pay to state law enforcement officers in municipalities with a population of more than 450,000. The passage of this legislation allowed officers of the Port of New Orleans Harbor Police Department, Crescent City Connection Police Department and Orleans Levee District Police Department to receive supplemental pay. The Port of New Orleans Harbor Police Department applied for, and received, supplemental pay.

That same year, however, voters rejected a constitutional amendment that would have authorized the Legislature to expand supplemental pay to state law enforcement officers who patrol levees, bridges, waterways and riverfronts. In 2004, the Louisiana Supreme Court ruled that the 1999 legislation was unconstitutional based on the Legislature's lack of authority to expand supplemental pay without the passage of a constitutional amendment authorizing such an expansion.

#2 You Decide

- A vote **for** would authorize the Legislature to provide state-funded supplemental pay to full-time, commissioned state law enforcement officers who patrol waterways and riverfront areas and port authority firefighters.
- A vote **against** would continue to exclude state law enforcement officers and firefighters from the supplemental pay program.

PROPOSED CHANGE: This amendment would authorize the Legislature to expand supplemental pay to full-time, commissioned state law enforcement officers and firefighters who are employed by a port authority and patrol waterways and riverfront areas. Companion legislation passed in 2007 grants supplemental pay to those same officers and firefighters whose employing agency is headquartered in a municipality with a population of more than 450,000 according to the latest full federal census.

With the passage of this amendment, a total of 44 full-time law enforcement officers employed by the Port of New Orleans Harbor Police Department and 10 firefighters employed by the Port of New Orleans would be eligible to receive supplemental pay, costing the state approximately \$275,400 in 2007-2008. Only full-time, commissioned personnel who had completed one year of service would be eligible. Law enforcement officers hired after March 31, 1986, would still have to be POST certified, and firefighters would have to pass designated certification standards as well.

COMMENT: This amendment combined with the 2007 companion legislation would expand supplemental pay to only those state law enforcement officers of the Port of New Orleans Harbor Police Department and firefighters of the Port of New Orleans. New Orleans is the only municipality in the state that had a population above 450,000 the last time a full federal census was taken in 2000.

The next federal census will be done in 2010. Due to post-Katrina population shifts, it is unclear whether the Port of New Orleans firefighters and Port of New Orleans Harbor Police Department officers would continue to be eligible for supplemental pay. The most recent population estimate for Orleans Parish was 273,600 as of July 2007. Should the New

Orleans population fail to increase sufficiently by 2010, the Port of New Orleans firefighters and Port of New Orleans Harbor Police Department officers could lose their eligibility for the supplemental pay program unless the companion legislation is amended.

Officers with the Crescent City Connection Police Department and Orleans Levee District Police Department would not be eligible for supplemental pay with the passage of this amendment. The 2007 companion legislation that was passed restricted the program only to firefighters employed by a port authority and officers who patrol waterways and riverfronts. Law enforcement officers who patrol bridges or levees were specifically excluded from the program.

Proponents of this amendment point out that local police officers and firefighters are already eligible for supplemental pay. They assert that the amendment is needed to level the playing field and offer similar pay to port officers and firefighters in an effort to address increasing recruitment and retention problems.

Critics argue that state law enforcement agencies already have the ability to pay their officers up to the maximum amount of existing pay scales but do not do so due to budgetary constraints. Critics assert that such agencies should negotiate for more money from the Legislature for their budgets, rather than place their officers in the supplemental pay program.

LEGAL CITATION

Act 485 (Senator Heitmeier) of the 2007 Regular Session, amending Article X, Section 10(A). Companion legislation is Act 275 (Senator Heitmeier) of the 2007 Regular Session.

3

Funding of State Retirement Systems

CURRENT SITUATION: Louisiana has four “state” retirement systems and nine “statewide” retirement systems. (See Table 1.) The Constitution provides that benefits for members of those systems can be altered only

Louisiana adheres to an annual payment schedule in order to retire the debt as required. Portions of the existing payment schedule are back-loaded, with payments set to balloon over time as the 2029 payoff date nears.

PROPOSED CHANGE: This amendment would apply to benefits for members of the four state retirement systems only, which specifically

Table 1. Louisiana Public Retirement Systems

<u>State Systems</u> <i>Covered by the amendment</i>	<u>Statewide Systems</u> <i>Not covered by the amendment</i>
State employees (LASERS) Teachers (TRSL) State police (STPOL) School employees (LSERS)	Assessors (ASSR) Clerks of court (CCRS) District attorneys (DARS) Firefighters (FRS) Municipal employees (MERSA/MERSB) Municipal police Parish employees (PERSA/PERSB) Registrars of voters (RVRS) Sheriffs (SPRF)

by legislative enactment. As the Legislature provides new retirement benefits or increases existing ones, a higher level of contribution is required from the state general fund in order to satisfy those benefits. No specific funding source must be identified. Employer contributions are the funding source by default.

Prior to 1988, the state failed to ensure that appropriate employer contributions kept pace with benefits, resulting in an “unfunded accrued liability” (UAL), which is the debt owed by the state to fully fund its retirement systems. UAL also can be created in other ways, such as investment losses, large pay raises or increased longevity of retirement system members.

The UAL can be divided into two groups. The “initial” UAL, which is the amount of debt that was in existence as of June 30, 1988, is constitutionally mandated to be paid off by 2029. The “new” UAL, created after June 30, 1988, is generally amortized over 30 years.

include teachers, school employees and state employees including state troopers. The amendment would prohibit changes in future benefit provisions unless certain conditions are met.

The amendment makes two changes to current procedure. New or additional funding (from the state general fund or elsewhere) for benefits would have to be identified at the time the benefits are created. Further, the funding for those benefits would have to be capable of retiring the corresponding UAL within 10 years.

#3 You Decide

- A vote **for** would forbid the approval of future benefit increases for public employees in the state retirement systems unless funding was identified and sufficient to pay the cost of the benefit within 10 years.
- A vote **against** would allow the continued approval of benefit increases for public employees in the state retirement systems, as long as the cost of the benefit could be paid within 30 years.

COMMENT: Louisiana’s total UAL now exceeds \$12 billion. Similar to a mortgage that is paid over time, longer payment terms mean more interest paid.

Proponents argue that it is fiscally irresponsible to increase the state’s UAL with new benefits that are not tied to funding sufficient to retire the corresponding UAL within 10 years. Long-term implications could be that the state would have to cut future budgets in essential areas, such as education and health care, in order to retire the debt as provided by the Constitution.

Opponents argue that shortening the payoff time to 10 years may create new problems. Although interest will be saved, short-term payments will be higher. Additionally, there is fear that this requirement will reduce the Legislature’s willingness to grant benefits in the future due to legislative concerns about the 10-year payoff requirement.

Further, some critics of the amendment are concerned about the resulting lack of budgetary flexibility this would create. For instance, if a future hurricane demanded that UAL payments be reduced long enough to satisfy immediate needs, the Legislature no longer would have the flexibility to do so without incurring larger payments in the remaining years of the payment schedule.

LEGAL CITATION: Act 484 (Senator Boasso) of the 2007 Regular Session, amending Article X, Section 29(E).

4 Property Tax Exemption for Consigned Jewelry

CURRENT SITUATION: The Constitution exempts certain types of property from property taxes. Prior to 2007, some districts in the state levied a property tax on art held on consignment. Consignment is the practice of placing items with dealers who then sell

the property for a commission. State sales taxes also are charged on consigned art upon sale. Critics of the property tax argued that it discouraged artists from placing their art on consignment and created an unfriendly business climate for artists in Louisiana, resulting in potential sales tax losses for the state.

In 2006, voters passed a constitutional amendment that exempted from property tax artwork placed on consignment with an art dealer. Artwork was defined as any item that would be considered the material result of a creative endeavor, including sculptures, glass works, paintings, drawings, certain posters, photographs, mixed media and collages. Jewelry was not specifically listed in the definition of artwork.

PROPOSED CHANGE: This amendment would add “jewelry” to the definition of artwork. It also would expand the property tax exemption on artwork placed on consignment to include that which is held by a jewelry dealer as of January 2008.

COMMENT: Passage of this amendment could result in a minimal decrease of property tax revenue for local government entities, according to the legislative fiscal office. The value of the tax break would fluctuate from year to year, although it is unclear whether property tax on consigned jewelry has ever been assessed by local entities. Data are unavailable to determine the amount of revenue, if any, the tax on consigned jewelry has generated in the past.

Proponents point out that tax on consigned jewelry may depress sales tax revenue by discouraging artists from placing their pieces on

#4 You Decide

- A vote **for** would grant a property tax exemption for jewelry placed on consignment with art and jewelry dealers.
- A vote **against** would maintain the current property tax exemption for consigned artwork, which does not include jewelry.

consignment and that the potential sales tax loss is greater than the potential property tax gain.

Opponents argue this amendment provides yet another exemption to property taxes, which ultimately hinders the ability of local governments to raise their own revenues and meet their own needs.

LEGAL CITATION: Act 486 (Representative Jack Smith) of the 2007 Regular Session, amending Article VII, Section 21(C).

Voting on Louisiana Proposed Constitutional Amendments (1921-2006)

	Number of Amendments		Average Percent of Registrants Voting
	Proposed	Approved	
1921 Constitution	802	536	--
1974 Constitution (Total)	210	148	--
November 7, 1978	1	1	29.9
October 27, 1979	3	3	37.5
November 4, 1980	4	4	55.7
September 11, 1982	8	4	24.9
October 22, 1983	3	3	44.2
November 6, 1984	5	0	53.7
September 27, 1986	7	2	39.3
November 21, 1987	5	5	32.3
October 1, 1988	1	0	27.5
April 29, 1989	1	0	46.8
October 7, 1989	13	5	28.3
October 6, 1990	15	14	46.9
October 19, 1991	8	5	47.1
October 3, 1992	5	2	29.4
November 3, 1992	7	0	53.7
October 16, 1993	6	6	18.1
October 1, 1994	4	4	30.9
October 21, 1995	15	13	46.9
November 18, 1995	1	1	53.2
September 21, 1996	2	2	36.1
November 5, 1996	3	3	54.4
October 3, 1998	18	15	19.6
November 3, 1998	2	2	26.4
October 23, 1999	10	5	31.9
November 20, 1999	6	6	23.1
November 7, 2000	4	0	51.0
November 5, 2002	12	6	35.7
October 4, 2003	15	11	38.1
September 18, 2004	1	1	27.8
November 2, 2004	4	4	50.6
September 30, 2006	13	13	22.3
November 7, 2006	8	8	28.7

SOURCE: Official Promulgation, Secretary of State

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