

Voters to decide on 13 constitutional propositions

September 24, 2006

By John Hill

jhillbr@gannett.com

BATON ROUGE "" If recent history is a guide, anywhere from 13 percent to 26 percent of registered voters will determine the fate of 13 constitutional propositions on the statewide Sept. 30 primary ballot.

There are 13 constitutional proposals, including one with flawed language, that are up for voter ratification.

Here's a look at this election's propositions, with comment from the Public Affairs Research Council:

Amendment No. 1: Coastal Protection and Restoration Fund

Legal authority: Act 69 (2005 1st Special Session)

Ballot language: To change the name from the Wetlands Conservation and Restoration Fund to the Coastal Protection and Restoration Fund; to provide that the eligible federal revenues received by the state generated from Outer Continental Shelf oil and gas activity shall be credited to the Coastal Protection and Restoration Fund and used only for purposes of coastal wetlands conservation, coastal restoration, hurricane protection, and infrastructure directly impacted by coastal wetland losses.

(Amends Article VII, Sections 10(D)(2)(e), 10.2, and 10.5(B) and (C))

What it means: The Legislature wouldn't be able to spend any offshore oil revenue the federal government shares with Louisiana on anything other than coastal protection and restoration.

PAR comment: Proponents say the amendment would help Louisiana's members of congress negotiate with the colleagues for a share of the \$5 billion a year in oil production off the state's coast.

Critics says coastal erosion is a geologic inevitability and money would be better spent moving New Orleans and other coastal communities inland.

Amendment No. 2: Consolidation of Coastal Funds

Legal authority: Act 854 (2006 Regular Session)

Ballot language: Requires 20 percent of the proceeds of tobacco securitization to be deposited in the Coastal Protection and Restoration Fund, with a portion to be used for barrier island stabilization and preservation, and repeals the Louisiana Coastal Restoration Fund.

(Adds Article VII, Section 10.2(F); Repeals Article VII, Section 10.11)

What it means: All the cookies would be put in one jar, called the Coastal Protection and Restoration Fund, which basically allows the money to be spent on hurricane protection and not just restoring wetlands. In addition, should the state sell off the rest of its annual tobacco lawsuit settlement funds, one-fifth of the estimated \$900 million to \$1.1 billion proceeds would go into this fund.

PAR comment: Proponents argue it makes sense to consolidate the two funds and, by dedicating the tobacco funds, demonstrates to Washington that we're serious about coastal issues.

Critics say tobacco funds are supposed to be directed at health and education issues related to tobacco.

Amendment No. 3: Regional Flood Protection Authorities

Legal authority: Act 43 (2006 1st Extra Session)

Ballot language: To authorize the Legislature to establish regional flood protection authorities and provide for its governing authority, powers, duties, and functions, for the governing authority of levee districts within the territorial jurisdiction of the regional authority, and authorizing ad valorem taxes subject to voter approval.

(Amends Article VI, Sections 38(A)(1) and 39 and adds Article VI, Section 38.1)

What it means: This consolidates multiple New Orleans area levee boards into two: one for the east bank of the Mississippi, which includes most of New Orleans and Metairie that drains into Lake Pontchartrain, and the other on the Westbank that drains into Barataria Bay. The real deal is getting rid of the Orleans Levee Board, widely criticized post-Katrina.

This proposition also establishes professional qualifications for members and removes control of the Legislature in naming members.

PAR comment: Proponents say the one-board levee system for each of the two drainage basins would help hurricane and flood protection, uniting the boards by geographic challenges rather than parish political boundaries. The professional requirements would also improve caliber of board members.

Opponents question regional flood protection and argue that most existing levee boards have been successful.

Amendment No. 4: Hurricane Protection Liability

Legal authority: Act 853 (2006 Regular Session)

Ballot language: To provide that compensation paid for the taking of, or loss or damage to, property rights affected by the construction, enlargement, improvement, or modification of hurricane protection projects, including mitigation related thereto, shall be limited to the compensation required by the Fifth Amendment of the United States Constitution; to provide an exception for the taking of buildings or structures destroyed or damaged by an event for which a presidential declaration of major disaster or emergency was issued, if the taking occurs within three years of such event; and to authorize the legislature by law to provide

procedures and definitions for these requirements.

(Amends Article VI, Section 42(A); Adds Article I, Section 4(G))

What it means: When expropriating private property for hurricane protects, owners must now be compensated "to the full extent of their loss" based on the "highest and best use," so landowners of vacant land could argue they were due more because the land could be development commercially or residentially. The amendment would limit payment to actual fair market value. This is important because it is estimated that 75 percent of the state's coastal zone is privately owned.

PAR comment: Proponents say the state needs to prevent excessive compensation claims because hurricane protection efforts could involve the purchase of about \$3 billion in property. They also argue that this is another way to reassure Washington that federal offshore oil revenue sharing funds will not be used to pay excessive compensation to landowners.

Opponents argue the amendment is in response to a single landowner's claim for \$7 million when the state estimated the St. Charles Parish property was worth \$72,000. The single case shouldn't lead to changing the constitution.

Amendment No. 5: Limits on Expropriation of Private Property

Legal authority: Act 851 (2006 Regular Session)

Ballot language: To prohibit the expropriation of property by the state or a political subdivision of the state for predominant use by or transfer to a private person or entity under certain circumstances; to define "public purposes" relative to the expropriation of property; to provide exceptions for the operation of public ports and airports and for the expropriation of property for industrial development purposes; and to provide for items included in just compensation to be paid to the owner of the expropriated property.

(Amends Article I, Section 4(B) and Article VI, Section 21(A); Adds Article VI, Section 21(D))

What it means: Local governments could not use their expropriation power to seize property for economic development projects. It is in response to a controversial 2005 U.S. Supreme Court decision in *Kelo v. City of New London*. By a 5-4 vote, the court decided economic development was a valid public purpose for expropriation. The amendment would also require governments to compensate landowners for "the highest and best use," a much more expensive threshold.

PAR comment: Proponents say government's role in economic development should be confined to infrastructure and that tax incentives already in the constitution are sufficient inducements.

Opponents argue that government's rarely use their expropriation power. Hurricane-damaged New Orleans could be hindered in redeveloping damaged areas. Industry might be dissuaded from coming to Louisiana. Mississippi, for example, did not pass limits on expropriation.

Amendment No. 6: Procedures to Transfer Expropriated Private Property

Legal authority: Act 859 (2006 Regular Session)

Ballot language: To prohibit, except in limited instances, the transfer or lease of property expropriated by the state or its political subdivisions to any person without first offering the property to the original owner; to provide that unused expropriated property be declared surplus property to be first offered to the original owner prior to sale to the general public by competitive bid.

(Adds Article I, Section 4(G))

What it means: This proposal would replace many, but not all, of the rules governing when a public or private entity, such as utilities, telephone, toll road authority, pipeline company, must offer unused expropriated property to its original owner. The property would have to be offered at fair market value within two years after completion of a property. After three years, the property could be sold by competitive bid.

PAR comment: Proponents say the proposition would create a more uniform process.

Opponents say it threatens redevelopment efforts, particularly in hurricane-affected areas.

Amendment No. 7: Medicaid Trust Fund Investment

Legal authority: Act 857 (2006 Regular Session)

Ballot language: To authorize the investment in equities of up to 35percent of the Medicaid Trust Fund for the Elderly.

(Amends Article VII, Section 14(B))

What it means: The trust fund was created in 2000 for the proceeds of several windfall payments to the state by the federal government. It now totals \$830 million and earnings can be spent for healthcare programs for the elderly. It can be invested only in low-risk, low-yield securities and corporate notes and bonds. The amendment would allow the state treasurer's office to invest 35 percent in stocks through outside investment managers.

PAR comment: The state treasurer already has the authority to invest portions of other trust funds, such as the 8-G Trust Fund, the Millennium Trust Fund or the Rockefeller Wildlife Refuge Fund. Proponents argue that investment in stocks allows more potential to earn more revenue.

Opponents worry that short-term losses could affect the amount of money available to pay for health care for the elderly.

Amendment No. 8: Homestead Exemption and Special Assessments for Damaged Homes

Legal authority: Act 70 (2005 1st Extra Session)

Ballot language: To authorize the continuation of the homestead exemption and the special assessment level where the homestead has been destroyed or is uninhabitable due to a declared disaster or emergency.

(Adds Article VII, Sections 18(G)(5) and 20(A)(10))

What it means: If your home was destroyed in one of the hurricanes or in any future officially declared disaster, the first \$75,000 value of the property remains free of parish property taxes for five years, as long as you sign an affidavit saying you intend to return.

PAR comment: Proponents say the amendment would ease the financial burden of those who lost homes in Katrina and Rita and intend to rebuild.

Opponents say a provision concerning the elderly could allow them to rebuild much larger and more expensive homes without undergoing reassessment.

Amendment No. 9: State Mandates on School Spending

Legal authority: Act 855 (2006 Regular Session)

Ballot language: To provide that no law, unless enacted by two-thirds of the elected members of each house of the Legislature, requiring increased expenditures for any purpose shall be applicable to any city, parish, or other local public school board until approved by school board resolution or until, and as long as, the Legislature appropriates funds to the school board for the purpose and only to the extent and amount of such funds or until a law provides for a local source of revenue to the school board for the purpose and the school board is authorized to levy and collect such revenue and only to the extent and amount of such revenue; and to provide for exceptions to such prohibition on increasing the financial burden of city, parish, and other local public school boards.

(Amends Article VI, Section 14)

What it means: This one is hard to translate. It is intended to prohibit the state Legislature from mandating expenses on local school boards until either the Legislature provided the funds or provided a local revenue source. But in drafting the word "until" was left out. That drafting error makes it unclear how the prohibition would affect mandates when the state puts up the money. In fact, the drafting error may contradict its intended purpose. The state puts up 48 percent of the money to operate local schools already.

PAR comment: Proponents argue that despite the drafting error, the intent of the amendment is clear, and that the amendment could be corrected in the future. Backers also say the amendment would force the Legislature to consider costs of future mandates and would give the school boards the same protection against unfunded mandates that cities and other local governing authorities enjoy.

Opponents argue the flawed language would cause problems, and there is no clear definition or determination of what mandates are unfunded. Also, they argue the state's school aid program, the Minimum Foundation Program, is excluded. Since the MFP allows school boards the flexibility in how they spend the MFP, the passage of the amendment could mean mandates could be included in the MFP.

Amendment No. 10: Higher Education Investments

Legal authority: Act 856 (2006 Regular Session)

Ballot language: To authorize the investment in stocks of up to 35 percent of the state-funded permanently endowed funds of public or private colleges and universities.

(Amends Article VII, Section 14(B))

What it means: Exactly what it says: Universities could invest up to 35 percent of their endowment funds in stocks.

PAR comment: Nationally, nearly 59 percent of university endowments are invested in stocks. LSU estimates it could earn \$1.6 million more annually on its endowments. The 35 percent cap is relatively conservative compared with other universities' investment practices. It is permissive, not mandatory.

Amendment No. 11: Homestead Exemption for Homes in Revocable Trusts

Legal authority: Act 852 (2006 Regular Session)

Ballot language: To extend the homestead exemption to property owned by a revocable trust, in addition to the existing application to property owned by an irrevocable trust.

(Amends Article VII, Section 20(A)(3) and (5))

What it means: Those who put title of their homes in revocable trusts, an estate management tool to designate who gets the property, would retain the \$75,000 homestead exemption. Under current law, a home must be owned and occupied by the same person to be eligible.

PAR comment: A 2004 amendment granted the property tax break to those who put their homes into irrevocable trusts, but not revocable trusts. Proponents say the amendment extends the same property tax benefit to those who put their homes into revocable trusts.

Opponents believe that would result in removing some property from tax roles and other taxpayers would have to make up for the difference.

Amendment No. 12: Vacancy in Statewide Elected Offices

Legal authority: Act 858 (2006 Regular Session)

Ballot language: To provide for the filling of vacancies in the lieutenant governor's office and other statewide elective offices; to provide that if more than one year remains in the term, the person nominated by the governor and confirmed by the legislature to serve as lieutenant governor or the first assistant in other statewide elected offices, shall fill the vacancy only until the office can be filled at the next regular statewide or congressional election or until the governor is required to call a special election.

(Amends Article IV, Sections 15 and 16)

What it means: A special election would be required to fill the unexpired term of a lieutenant governor, just like the other statewide elected officials, whenever a vacancy occurs with more than a year left in the term. Under current constitutional law, there is no such election requirement for the lieutenant governor. The constitutional line of succession is the elected lieutenant governor, the elected secretary of state, the elected attorney general, the elected treasurer, the presiding officer of the state House of Representatives and the presiding officer of the Senate.

PAR comment: Because only elected officials can succeed a governor, a lieutenant governor would be passed over should a vacancy occur in the governor's office. Proponents say it would bring uniformity to filling vacancies. Opponents argue that a statewide special election

costs about \$3 million.

Amendment No. 13: Judge's Qualifications

Legal authority: Act 860 (2006 Regular Session)

Ballot language: To provide that a person shall have been admitted to the practice of law for 10 years preceding election to the supreme court or a court of appeals and for eight years preceding election to a district court, family court, parish court, or court having solely juvenile jurisdiction; and to decrease the requirement that a person be domiciled in the respective district, circuit, or parish from two years to one year preceding election. Effective Jan. 1, 2008, and applicable to any person who is elected to the office of judge on and after Jan. 1, 2008.

(Amends Article V, Section 24)

What it means: Candidates for the Louisiana Supreme Court and the courts of appeal would have to have been licensed lawyers for 10 years, up from five. Candidates for judges in other courts would have to have been a lawyer for at least eight years. Those candidates would have to have lived in the district for only one year instead of two.

PAR comment: Proponents argue that Louisiana has the lowest qualifications for judges and the proposition would mean they would have more life experiences.

Opponents argue that it places undue restrictions on democratic participation.