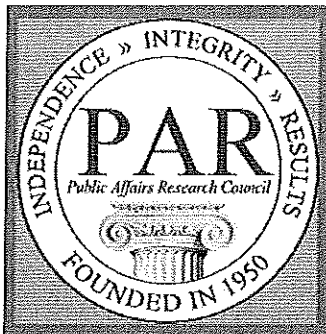

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Guide to the Constitutional Amendments

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Introduction

Voters passed both of the two proposed amendments to the Louisiana Constitution on the October ballot. They now must make decisions on 10 more proposed amendments in November. In order to make informed decisions, voters will have to familiarize themselves with a wide variety of state and local government issues, some of which are complex and technical. The topics on the Nov. 2 ballot include property taxes, property rights, severance taxes, elected officials' pay, public pension benefits, workers' compensation claims and criminal trial procedure.

Amendment No. 7 is a clear example of the extreme obscurity and complexity that often confront Louisiana voters in constitutional amendment elections. The proposal would add only 39 new words and delete three words, yet to understand what those few changes would do requires knowledge of property rights law and public auction processes and a nuanced understanding of the relationship between constitutional and statutory law.

Louisiana has a long history of frequent constitutional changes. The state leads the nation in the number of constitutions adopted and has been among the most prolific in adopting amendments.

Voter Checklist

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Louisiana's previous Constitution initially contained 49,200 words when it was adopted in 1921 but, with 536 amendments, grew to 255,500 words. Voters finally rebelled in 1970, defeating all 53 amendment proposals on the ballot that year.

The newly revised Constitution of 1974 was a brief 35,000 words after much of the excessive constitutional detail was moved to the statutes. Since then, another 223 amendments (excluding the November 2010 proposals) have been proposed, of which 155 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 adopted. In the past five election years, only nine of 45 proposed amendments have been defeated by voters.

Typically, constitutional amendments are proposed to deal with emerging issues, authorize new programs or policies, ensure that reforms are not easily undone by future legislation, seek exceptions or protections for special interests or correct errors in existing provisions. Unfortunately, as more detail is placed in the Constitution, even more amendments may be required when conditions change or problems arise with the earlier provisions.

Too frequently, amendments are drafted for a specific situation rather than setting a guiding principle and leaving the Legislature to fill in the details by statute. In some cases very rigid principles are set, but then numerous exceptions are added by amendment. Occasionally, the Legislature approves amendment proposals hurriedly without considering all the potential costs or ramifications, requiring subsequent amendments to undo the unintended consequences. In addition, special interests and the general public frequently demand constitutional protection for favored programs to avoid future legislative interference, resulting in numerous detailed revenue dedications and trust fund provisions. The concept of the Constitution as a relatively permanent statement of basic law for governing the state fades with the adoption of many amendments.

While the idea of seeking voter approval for a wide range of policy issues may appear ideally democratic, low participation rates indicate that voters generally do not want that level of responsibility or involvement in lawmaking. Even in elections where there is a high voter turnout, many of those voting for candidates fail to vote on proposed amendments. Over the life of the current Constitution (excluding the 2010 elections), the percentage of registered voters who have voted on proposed amendments has ranged from a low of 18 percent to a high of 55 percent.

Constitution vs. Statute

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

Amendment Process

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

Thus a proposed amendment has never needed more than the votes of 28 percent of the registered voters, and as few as 9 percent, to pass.

In order for voters to develop informed opinions about each amendment, they must evaluate each one carefully and make a decision based on its merits. One important consideration should always be whether the proposed language belongs in the Constitution.

To reduce the burden on voters, PAR has suggested in the past that it might be useful to evaluate ways to improve the process of proposing amendments. Some states make the process more difficult and thoughtful by requiring a three-fourths super-majority vote of the legislature (Louisiana requires a two-thirds), limiting the number of amendments that can be put on a single ballot, requiring passage in two sessions or even requiring adoption by a certain percentage of registered voters. However, the Constitution would have to be amended to impose any of those limits.

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1 Timing of Salary Increases for Elected Officials

You Decide

- ❑ A vote **for** would require that an increase in the salary of statewide elected officials, public service commissioners or legislators could not take effect until the beginning of the next term after the increase was approved.
- ❑ A vote **against** would continue to allow an increase in the salary of statewide elected officials, public service commissioners or legislators to take effect at any time, including during the term of the legislator who voted for the increase.

Current Situation

Louisiana's Legislature is responsible for determining the salaries for statewide elected officials, members of the state Public Service Commission and members of the Legislature. There are no restrictions on salary increases for any of these positions. The Legislature may set any amount of pay for these officials and changes to pay may become effective immediately after the governor's signature.

Proposed Change

This amendment would provide that any increase in the salary of statewide elected officials, public service commissioners or legislators could not take effect until the beginning of the next term following the one in which the raise was approved.

Comment

Pay for legislators and certain elected officials is set by statute, and changes to salary amounts can take effect immediately. In 2008, legislators granted themselves the equivalent of a 123 percent pay raise that would have taken effect in July 2008. After widespread public protest, the governor vetoed the legislative pay increase.

Proponents argue that requiring a delayed start date for pay increases would reduce the incentive for legislators to pass pay raises for themselves since they could not benefit personally from the pay raise unless they were elected for another term. Additionally, proponents assert that the amendment would reduce the potential for political "quid pro quo" — that is, legislators couldn't pass salary increases for friends in other elected positions since there would be no way to know who would hold the position when the increase took effect.

Opponents argue that such a restriction would be more appropriately created in statute rather than by changing the language of the Constitution.

Legal Citation

Act 539 (Sen. McPherson) of the 2009 Regular Session, amending Article IV, Section 4 and adding Articles III, Section 4(G) and IV, Section 21(F).

2 Severance Tax Allocations

You Decide

❑ A vote **for** would dedicate additional state severance tax revenue to parishes of origin, restrict the use of a portion of these funds and dedicate a portion of severance taxes collected on state lands to the Atchafalaya Basin Conservation Fund.

❑ A vote **against** would maintain the limit on severance tax revenue that must be paid by the state to parishes at $850,000 per year, adjusted annually for inflation.

Current Situation

The Constitution requires the state to give parish governments a portion of the severance taxes collected in each parish. It requires that 20 percent of the state severance tax on all natural resources, other than sulfur, lignite or timber, be shared with the parishes of origin. But, the amount each parish can receive is capped at $850,000, adjusted annually for inflation. The cap for 2009 was $907,534 for the calendar year.

Local governments are prohibited from levying a severance tax. The sharing of state severance tax revenue, which goes back to at least the 1921 Constitution, is intended to help compensate parishes for wear and tear on roads and bridges by oil and gas drilling equipment and other related traffic. The present cap has been in place since 2007, when it was increased from $750,000.

In 2009, the state collected $672 million in severance taxes and remitted nearly 5 percent back to the parishes where the tax was generated. Oil and natural gas collections accounted for more than 99 percent of all severance tax collections that year. Parishes would have received $134 million in 2009 if the full 20 percent had been distributed, but the per-parish cap limited the actual distribution to about $32 million. All but one of the state's 64 parishes received some severance tax revenue (one received only $6), and 28 received the maximum amount of $907,534.

Atchafalaya Basin Program

Programs to protect and restore the Atchafalaya Basin are funded by annual appropriations designated for Atchafalaya Basin master plan projects identified in Act 920 of the 1999 Regular Legislative Session. That law scheduled $85 million in appropriations from FY 2000 through FY 2014, but did not establish a permanent funding source or guarantee the appropriations.

Proposed Change

Severance Tax Revenue

The amendment would increase the amount of severance tax revenue the state is required to share with the parishes in which the severance tax was generated. The increase would be phased in over two fiscal years. The maximum amount that would have to be shared with each parish would be increased from $850,000 per year (2007 dollars) to $1.85 million for the first fiscal year (a 104 percent increase over the 2009 level) and $2.85 million (a 214 percent increase over the 2009 level) thereafter. The higher cap would be adjusted annually upward for inflation.

The initial cap increase would only take effect when the state's official revenue forecast projects severance tax collections to exceed the amount collected in FY 2009. The first possible year this could occur is FY 2012. However, the current official forecast does not project that collections will exceed the FY 2009 levels at least until FY 2013 (if royalties are included in calculation).

Any amount of severance tax revenue a parish receives above its FY 2012 level would be designated "excess severance tax." The amendment would dedicate 50 percent of the excess severance tax revenue to transportation projects eligible to receive funds from the Parish Transportation Fund.

Atchafalaya Basin Program

The amendment also would create the Atchafalaya Basin Conservation Fund, which would be used exclusively for Atchafalaya Basin projects approved by an advisory or approval board created in law. A new dedication of 50 percent of severance tax revenue collected on state lands in the Atchafalaya Basin – up to $10 million annually – would be directed to the

fund. Further restrictions on how much of the fund could be spent for specific types of projects and administrative costs are outlined in the amendment. Legislative approval is required for each year's spending plan.

Comment

In 2006 and 2008 voters were asked to accept or reject other constitutional amendments that would affect the severance tax cap. A 2006 constitutional amendment increased the cap in question from $750,000 to $850,000 and added an annual adjustment for inflation to prevent having to present this question to voters once again. But, in 2008 voters were again asked to reconsider the severance tax revenue sharing arrangement. Voters rejected that amendment in the election on Nov. 4, 2008. The 2008 proposal would have raised the cap by the same amounts as are being proposed in this amendment.

Supporters of the current proposal say the ballot language in the 2008 proposal made it seem to some voters as if a tax increase rather than a tax shift was being proposed. The new ballot language presents the change as a decrease in the amount of taxes the state retains rather than as an increase in the amount of taxes the parishes receive.

The implementation date in the current proposal is delayed so that the impact on the state general fund would occur only after the current state fiscal crisis passes (FY 2012 at the earliest). If the cap is increased as proposed, the parish-level transfers would decrease state general fund revenue by $25 million in the first year and $50 million in subsequent years (excluding the Basin Fund reallocation). The total decrease to the general fund, including the $10 million to the Basin Fund, likely would be $60 million in the second year of implementation. Approximately 28 parishes would receive additional severance tax revenue in the first year. The remaining parishes do not generate enough severance tax revenue to benefit from the cap increase. Twenty-two parishes would get the maximum at the new low cap and 15 parishes would get the maximum at the new high cap. See Table 1.

Natural resource and mineral production create maintenance expenses for local infrastructure, and the severance tax distributions to parishes help to offset the losses. The 50 percent dedication of the additional revenue to the parish transportation programs would yield approximately $25 million more in revenue for local road and bridge projects. Parishes are not currently limited in how the severance tax revenue is spent.

Proponents argue that boosting the cap above the rate of inflation is justified, because as prices and production rise, parishes should get a greater share of the windfall. Moreover, even if the new cap goes into effect, the state will continue to receive its 80 percent portion of severance taxes plus a majority of the parishes' 20 percent "fair share."

Opponents of the proposal question the need for the state to give up more revenue to benefit parishes that already receive other revenue from the economic activity associated with severance operations, like jobs and sales taxes. If mineral resources are considered assets of the state as a whole, then the dedication prevents the state from using its revenue where most needed, they argue.

Legal Citation

Act 541 (Rep. Gallot) of the 2009 Regular Session, adding Article VII, Section 4(D)(4).

Table 1. Proposed Changes to Severance Tax Allocations

	Current (FY 2009*)	Proposed	
		1st Year (FY 2012 or later)	2nd Year
Maximum Transfer per Parish (cap)	$850,000	$1.85 million	$2.85 million
Reduction to State General Fund	N/A	$35 million	$60 million
# Parishes that would receive maximum (est.)	28	22	15

*FY 2009 data are the most recent available.

3 Homestead Exemption for Disabled Veterans

You Decide

☐ A vote **for** would give each parish governing authority the option to call an election on whether to double the homestead exemption available to veterans with a service-connected disability rating of 100 percent and certain surviving spouses.

☐ A vote **against** would maintain the current homestead exemption ($7,500 of assessed value) for all homeowners and provide no additional exemption for veterans.

Current Situation

The Constitution lists all eligible exemptions from property taxes. It exempts from most property taxes up to $7,500 of the assessed value of a homestead. In order to qualify for the homestead exemption, the owner must both own and occupy the property. Because homes are assessed at 10 percent of fair market value, the first $75,000 in market value is exempt. The exemption does not apply to municipal taxes, except in Orleans Parish, and the state does not levy a property tax.

The Constitution also requires that local millage rates be adjusted following reassessment, which happens at least once every four years, to keep total tax collections stable when they would otherwise rise or fall due to changes in homestead exemption levels or property values. This mandatory adjustment is called a millage roll-up or roll-back. Typically, this mandatory rate adjustment yields lower millages – a roll-back. But, it is possible that a sharp rise in homestead exemptions could prompt a mandatory increase in millage rates – a roll-up – for taxing authorities to remain revenue neutral.

Proposed Change

This amendment would give each parish government the option to allow voters to decide whether to grant an additional homestead exemption of $7,500 for disabled veterans with a service-connected disability rating of 100 percent. This would double the existing exemption available to them. Spouses of deceased veterans would also be eligible to continue claiming the higher exemption if it were in effect before the death of the veteran.

The proposed amendment would prohibit mandatory roll-ups due to any loss of total tax revenue resulting from the exemptions on the second $7,500. Specific language requires that the tax loss be absorbed by the taxing body and not result in higher taxes on other taxpayers.

The additional homestead exemption would only apply in parishes where an election is called by the local governing authority and a majority of voters approve the change.

Comment

If this amendment passes a vote statewide, parish officials would then have to decide whether to call an election to ask for local voter approval of the new exemption. In parishes where the exemption is also approved by local voters, only those veterans who live in homes valued above $75,000 would benefit. Those whose homes are worth less than $150,000 would pay no property taxes on most millages. The homestead exemption does not apply to municipal taxes except in Orleans Parish where several types of municipal taxes are subject to the homestead exemption.

As the total value of homestead exemptions in a parish rises, the total value of taxable property falls. All else being equal, higher homestead exemptions for some taxpayers would normally lead to higher millages/taxes for all other taxpayers. These higher rates would be triggered by the mandatory millage adjustment (roll-up), which effectively transfers any revenue gain or loss from the taxing authority to taxpayers. This proposed amendment would treat the veterans' exemption differently by prohibiting a mandatory roll-up to result from it. Specific language would require the taxing body to absorb the tax loss.

Disabled veterans currently may qualify for a property tax assessment freeze that keeps their property taxes from rising due to increases in property values. Seniors (age 65 or older), those permanently and totally disabled, and certain members of the military and their surviving spouses are eligible for a "special assessment

level," subject to certain income restrictions. Their property tax assessments are fixed at the assessed value of the property when it first qualified for the benefit. This tax break is aimed at people on a fixed income who would have trouble affording normal property tax growth due to increasing property values.

Opponents object to expanding the homestead exemption, because it would further erode the local tax base in districts that opt to extend the benefit.

Proponents argue that the impact on local taxing bodies would be minimal and that voters in each parish should be given the option to extend this benefit to disabled veterans in their districts. It is estimated that there are around 2,000 homeowner/occupants in Louisiana who would be eligible for the benefit. The estimated statewide impact if all parishes offered the new exemption is $2 million in lost annual local revenues, less than one-tenth of 1 percent of total property taxes collected statewide.

Legal Citation

Act 1049 (Rep. Pope) of the 2010 Regular Session, adding Article VII, Section 21(K).

4 Property Millage Rate Increases by Non-elected Bodies

You Decide

❑ A vote **for** would limit the property tax millage increase (roll-up) that certain taxing bodies, whose members are not all elected, could impose following a mandatory millage decrease (roll-back) due to reassessment. The millage adjustment could not increase taxes more than 2.5 percent above the amount collected the previous year.

❑ A vote **against** would continue to allow all local taxing bodies to roll a millage back up to the previous maximum authorized rate, following a mandatory reassessment roll-back.

Current Situation

Property taxes are levied in millages applied to the assessed value of the property. One mill is equal to one-tenth of 1 percent of assessed value, or $1 on each $1,000 assessment.

The Constitution requires all property to be reappraised at least every four years. In practice, assessors only reassess real property every four years (unless ordered to do so by the Tax Commission). The Constitution also requires that millages be adjusted (rolled up or rolled back) following reassessment so that tax collections do not exceed or fall below those of the previous year due to changes in property values or homestead exemptions. However, taxing bodies are allowed to partially or fully restore rolled-back millages by enacting a millage roll-up, limited to the prior year's "maximum authorized millage rate." The millage roll-up must be approved by a two-thirds vote of the members of the taxing body following a public hearing and does not require further voter approval.

After each quadrennial reassessment, new maximum authorized millage rates are calculated for each millage. These maximum rates remain in effect until the next reassessment. A taxing body may enact a partial roll-up in each or any year prior to the next reassessment as long as it does not exceed the established maximum rate. There is no limitation on the amount of additional total tax collections a roll-up can generate.

These millage adjustment provisions do not apply to millages assessed to repay bonds, which make up a significant share of the taxes levied. Bond millages are automatically adjusted each year to provide only the fixed dollar amount needed for debt payments, and when assessments rise, they are reduced.

Proposed Change

This amendment would limit the amount of additional taxes that could be collected due to a millage roll-up enacted by certain taxing bodies whose membership is not entirely elected, such as recreation, lighting, garbage, sewer, drainage, library and hospital districts. In any year in which the roll-up option is exercised, the taxing body would be limited to a 2.5 percent increase above the total taxes collected the previous year. The amendment would not apply to taxing authorities that are:

- special fire protection or fire department districts;
- port, port harbor and terminal districts; or
- levee districts created prior to Jan. 1, 2006.

Taxing authorities with an entirely elected membership would still be limited only by the maximum authorized millage rate no matter the dollar amount of additional taxes it would yield.

Comment

The millage roll-back and roll-up provisions were placed in the Constitution to prevent local taxing bodies from automatically receiving revenue increases due to rising property values and reassessment. The roll-up option recognizes that inflation affects the cost of local government services as well as the value of the property being served and offers a way for the taxing body to benefit from those rising property values. Most but not all local taxing bodies find it necessary to enact partial or full roll-ups following quadrennial reassessments. Few can sustain four years of cost inflation while their tax base remains stagnant.

Examples of the taxing authorities that would be affected by the new limitation are recreation, lighting, garbage, sewer, drainage, library and hospital districts. Other examples include authorities that serve special populations and industries such as councils on aging.

Proponents of the proposed amendment argue that taxing bodies with non-elected members are inherently less accountable to the people and should be limited in their ability to raise taxes without a vote of the people. They argue the new limitation would provide greater accountability while allowing reasonable flexibility for the targeted taxing bodies to enact some increases. The 2.5 percent annual growth limit, they suggest, would have provided reasonable protection against cost increases in recent years.

Opponents argue that discriminating against select local taxing authorities while specifically exempting numerous districts with similar non-elected board members is unjustified and unfair. They point out that the millages of the targeted taxing bodies were initially approved by voters, who should expect their tax bills to rise when the value of their property increases. The amendment, in effect, would work over time to lower the existing voter-approved millage rates.

Opponents argue that this amendment would restrict necessary growth in property tax collections for many affected taxing authorities. Particularly in rapid growth areas, costs may rise more rapidly than the 2.5 percent increase. The existing restrictions on millage roll-ups are sufficient to prohibit unreasonable increases in millage rates and should continue to be applied equitably to all taxing districts. Moreover, the public notice and hearing requirements ensure millage roll-ups are made openly and with citizen participation. They argue that there is nothing inherent about taxing bodies with non-elected membership that should warrant the proposed restrictions.

Legal Citation

Act 542 (Rep. Arnold) of the 2009 Regular Session, amending Article VII, Section 23(C). Related legislation is Act 528 (Rep. Arnold) of the 2009 Regular Session.

5 Post-Disaster Occupancy Grace Period

You Decide

☐ A vote **for** would allow homeowners displaced by disaster to apply for a second five-year extension on their special assessment levels and homestead exemptions if they are unable to reoccupy their homes due to a pending appeal on damage claims.

☐ A vote **against** would continue to allow a single five-year period in which homeowners displaced by a disaster could reoccupy their homes before they lose their special assessment levels and homestead exemptions.

Current Situation

The Constitution lists all eligible exemptions from property taxes. It exempts from most property taxes up to $7,500 of the assessed value of a

homestead. In order to qualify for the homestead exemption, the owner must both own and occupy the property. Because homes are assessed at 10 percent of fair market value, the first $75,000 in market value is exempt.

The Constitution also gives a special property tax break for the owner-occupied homes of seniors (age 65 or older), those permanently and totally disabled, and certain members of the military and their surviving spouses. The property tax assessment is frozen at a special assessment level, which is the assessed value of the property when it first qualifies for the freeze. The assessment remains the same as long as (1) the property value does not increase more than 25 percent due to construction or reconstruction or (2) the property is not sold. The benefit is lost if the applicant's combined adjusted gross income for federal income tax purposes exceeds $50,000, adjusted annually for inflation.

Hurricanes Katrina and Rita severely destroyed or damaged 123,000 Louisiana homes in 2005. Shortages of supplies and labor, contractor fraud and the collapse of the housing finance market have slowed rebuilding efforts and prevented some homeowners from reoccupying their homes. Road Home homeowner grant data show that more than 117,000 applicants accepted a grant and stated their intention to reoccupy their homes following reconstruction. Some of those homeowners had damage levels that enabled them to reoccupy fairly quickly. As of July 2010, state officials estimate that around 14,000 Road Home grant program applicants have not yet completed rebuilding their homes.

A 2006 constitutional amendment allows certain homeowners to be excused from the occupancy requirements for two types of property tax breaks if they claimed them prior to a governor-declared disaster or emergency. Homeowners can maintain their homestead exemptions if they file an annual affidavit with the assessor stating their intention to reoccupy within five years of the end of the calendar year following the disaster. It also allows the special assessment level to be kept for the same five-year grace period, which ends after 2011 for those affected by Hurricanes Katrina and Rita. If the homeowner receives another homestead exemption on a different property, both the homestead exemption and the special assessment level are forfeited.

Proposed Change

This amendment would extend the home-occupancy grace period from five years to as many as 10 years for homeowners who have damage claims filed and pending with either public grant programs or private insurers. Those in the grace period would be allowed to keep claiming any special assessment level or homestead exemption that was on the property prior to the disaster or emergency that rendered their home unlivable.

Following an initial five-year grace period (which follows the first full year following the disaster), homeowners who are still unable to reoccupy their homes could apply to the assessor in their parish for additional extensions. Two additional extensions would be established with this amendment – a two-year extension that assessors would have to grant pending receipt of proper documentation and three additional one-year extensions that could be granted on a case-by-case basis at the discretion of the assessor.

- Eligibility for the initial extensions would require that either:
- The homeowner's damage claim is filed and pending in a formal appeal process with a federal, state or local government agency or program offering grants or assistance for repairing damaged homes as a result of disaster; or
- The homeowner has a damage claim filed and pending against the insurer of the property.

To keep the special assessment level, homeowners only would have to provide proof of their status in the claims process. To keep the homestead exemption, they also would have to file with the assessor an annual affidavit of intent to return and reoccupy the homestead.

After the two-year extension period ends, up to three additional one-year extensions could be granted on a case-by-case basis. The additional extensions would not require that the homeowner's claim still be pending. Companion legislation would require that the three one-year extensions only be granted to homeowners who can demonstrate with documentation that they have made a good faith effort to secure a contractor or builder to complete the repairs to

the home but have been unsuccessful due to uncontrollable contractor or builder delays.

Comment

As of late June 2010, there were fewer than 150 Road Home applicants who had formal appeals pending. There are no reliable estimates of the number of homeowners with claims against private insurers.

This proposal potentially would extend the post-Katrina grace period through 2016, at which time owners of destroyed homes who have not reoccupied those homes would have to begin paying higher property taxes based on the full current assessed value.

Keeping the special assessment level means the value of the land and buildings would not be increased above the value assigned immediately prior to the disaster, no matter what the value of the property is after rebuilding. In 2006, this raised concerns by some that the amendment would give an unfair advantage to those homeowners. For example, a home valued at $100,000 before the damage would keep the frozen assessment even if rebuilt as a $300,000 home. For property that is not affected by disaster, special assessment levels are forfeited if the value of a property increases more than 25 percent because of construction.

Proponents argue that this change is necessary and deserved for homeowners who have faced extreme hardship since the hurricanes of 2005. Because this would provide an extension of benefits already granted, there would be no noticeable fiscal impact.

Legal Citation

Act 1050 (Sen. Murray) of the 2010 Regular Session, amending Article VII, Sections 18(G)(5) and 20(A)(10). Companion legislation is ACT 865 (Rep. Murray) of the 2010 Regular Session.

6 Legislative Votes for Retirement Benefit Changes

You Decide

- ❑ A vote **for** would require simple-majority legislative approval for changes to benefit provisions of *any* public retirement system subject to legislative authority, and would require two-thirds legislative approval when the proposed change has an actuarial cost.

- ❑ A vote **against** would continue to allow *certain* retirement systems to change benefit provisions for their members without legislative approval, and would continue to allow the Legislature to increase the benefits for members of state and statewide public retirement systems with a simple majority vote.

Current Situation

Louisiana has four "state" retirement systems and nine "statewide" retirement systems (see Table 2). State and statewide retirement systems have defined benefit plans for their members that promise a certain percentage of final average compensation for each year of service. The Constitution provides that benefit provisions of state and statewide retirement systems may be altered only by an act of the Legislature. Approval by a simple majority of the Legislature is sufficient to pass such legislative acts.

Also, there are numerous "other" public retirement systems created either in statute or by local charter. Examples of these systems include Harbor Police, New Orleans Sewerage and Water Board and City of Alexandria employees. The law does not specify which "other" retirement systems (if any) are subject to legislative authority. That is, it is unclear whether those systems must seek legislative approval prior to making changes in benefit provisions for their members. However, many routinely appear in front of the Legislature to enact changes to their benefit provisions.

Current law allows statewide and local retirement systems to grant cost-of-living increases (COLAs)

to retirees without action by the Legislature. These are granted through administrative processes that do not require a legislative vote. Legislative approval is required to grant permanent benefit increases (PBIs) to members of state retirement systems.

Proposed Change

This amendment would make two changes to existing law. First, the amendment would require that benefit provisions for members of *any* public retirement system subject to legislative authority (not just state and statewide systems) could only be altered by legislative act. Second, for proposed changes that have an actuarial cost, two-thirds of the Legislature would have to approve the change instead of a simple majority. Changes that would produce no cost or a savings still could be passed with a simple majority vote.

This amendment would not change the retirement systems' ability to grant COLAs or PBIs without legislative involvement.

Comment

In 2007, voters approved a constitutional amendment that provided that no benefit provision for state retirement systems could be approved by the Legislature unless sufficient funding was identified to pay the cost of the benefit within 10 years.

Proponents of the proposed amendment assert that it—like the 2007 amendment—would be a step toward reining in public pension costs. Proponents assert that requiring legislative enactment of changes to benefits of *all* public retirement systems subject to legislative authority (not just state and statewide systems) would provide more open debate and transparency around such changes. Additionally, by requiring approval of two-thirds of the Legislature (instead of a simple majority) for changes that have actuarial costs, proponents would hope to deepen the debate and make it harder to incur additional costs associated with public retirement systems. The overall objective would be to force more thought and discussion prior to such changes being passed, as well as to decrease the number of retirement bills with fiscal impact that make it through the legislative process.

Opponents argue that requiring legislative enactment for changes in benefits of *any* public retirement system subject to legislative authority may stifle the flexibility of systems that normally would have made changes without a vote of the Legislature. Opponents remind voters that the law does not specify which public retirement systems are subject to legislative authority, so this amendment could cause more confusion than clarification. Additionally, opponents assert that requiring a two-thirds vote for certain changes (those with actuarial costs) would hinder opportunities to pass some necessary benefit increases and would make the process more political as bartering for votes would be more plentiful.

Table 2. State and Statewide Retirement Systems in Louisiana

State Retirement Systems	Statewide Retirement Systems
School employees (LSERS)	Assessors (ASSR)
State employees (LASERS)	Clerks of court (CCRS)
State police (STPOL)	District attorneys (DARS)
Teachers (TRSL)	Firefighters (FRS)
	Municipal employees (MERSA/MERSB)
	Municipal police (MPERS)
	Parish employees (PERSA/PERSB)
	Registrars of voters (RVRS)
	Sheriffs (SPRF)

Legal Citation

Act 1048 (Rep. Pearson) of the 2010 Regular Session, amending Article X, Section 29(E)(5) and adding Section 29(F).

7 Tax Sales for Delinquent Property Taxes

You Decide

- ❑ A vote **for** would change the bidding rules for tax sale auctions and would allow tax collectors to charge additional penalties for the nonpayment of property taxes.
- ❑ A vote **against** would maintain the current bidding process and would continue to exclude certain charges from the list of delinquent amounts that can be recovered through a tax sale.

Current Situation

The Constitution establishes rules governing tax sales where taxpayers' property is auctioned off to recover delinquent property taxes and other charges related to efforts to collect those taxes. Immovable and movable property are treated differently as to the timetable for transfer of property rights and the charges recovered through the tax sale.

For immovable property, immediate forfeiture of property for nonpayment of property taxes is prohibited by the Constitution. Instead, buyers at tax sales purchase limited ownership rights that mature after a redemption period. Delinquent taxpayers may reclaim/redeem their property during the redemption period – usually three years – by reimbursing the tax sale purchaser for taxes and other charges paid plus a 5 percent redemption penalty plus interest.

During the redemption period, the delinquent taxpayer can continue to use the property the same as before. Tax sale purchasers must pay taxes on the property during the redemption period and also certain other costs as necessary (e.g., maintenance to correct a code violation).

For immovable property, the tax collector must sell enough of the property to cover taxes, interest and costs due. The Constitution does not authorize tax collectors to impose any penalties other than the 5 percent redemption penalty owed to the tax sale purchaser if the property is reclaimed. A 2008 Louisiana Supreme Court case (Fransen v. City of New Orleans) has ruled that pre-sale penalties are unconstitutional.

Prior to a tax sale, the Constitution allows the taxpayer to identify sufficient property to be sold, if the property is divisible. If the property is indivisible or if the taxpayer fails identify the piece to be sold, the tax collector must sell only the "least quantity of" the property that any bidder will buy for a fixed price. For indivisible property, the least quantity is the smallest percentage of ownership interest a buyer is willing to take for the asking price.

Bidding Down Ownership Interest

At tax sale auctions for immovable property, the price is fixed (taxes due, plus interest and costs), and tax sale purchasers bid on the percentage of ownership interest they would receive at the end of the redemption period if the property is not redeemed. The lowest bidder wins.

This system is designed to protect property owners from losing their entire property for a past-due bill that might be a fraction of the worth of the entire property. With bidding starting at 100 percent ownership interest, the winning bidder might "buy" an ownership interest as low as 1 percent. If the property is redeemed, the winning bidder would be paid the 5 percent penalty, plus any property taxes paid during the redemption period plus interest. Interest accrues at a rate of 1 percent per month. Some tax sale purchasers consider these deals to be less like purchases and more like micro-loans to delinquent taxpayers.

For movable property, the constitutional rules are simpler. When taxes are delinquent, any sufficient movable property belonging to the taxpayer must be seized and auctioned off for full ownership rights with no opportunity for the taxpayer to redeem the property. The property sold does not have to be the same as that for which taxes are due. Enough property to cover the taxes due – but not the interest and costs – must be seized and sold.

These provisions only apply to commercial and industrial movable property (e.g., some equipment and inventory). Personal movable property is exempt from property taxes.

Statutory law conflicts with the Constitution and allows for collection of taxes, interest, costs and pre-sale penalties for both movable and immovable property. Penalties were added in 2009 by legislation passed in anticipation of voters approving this amendment.

Proposed Change

The amendment would:

- Authorize tax collectors to charge additional penalties for unpaid property taxes;
- Require that additional charges be included in the auction price;
- Eliminate the requirement that tax sale auctions offer ownership interest as a bidding variable; and
- Add a new variable to bid negotiations.

Charges Included in Auction Price

The amendment would make the list of charges included in the tax sale price the same for both types of property (see Table 3). It would add (pre-sale) penalties to the list of charges that must be recovered through a tax sale for both movable and immovable property. For movable property, it would also add interest and costs to the list of charges.

By adding penalties to the list of charges that must be included in the tax sale price, the amendment would effectively authorize tax collectors to impose pre-sale penalties, which were ruled unconstitutional by the Louisiana Supreme Court in a 2008 case.

New Bidding Variable

Specifically for immovable property, this amendment would allow the 5 percent redemption penalties to be "bid down" by competing bidders in increments of 0.1 percent. Related legislation has also granted this specific right to bid down the penalties.

Table 3. Proposed Change to Auction Price

	Current Constitution		If Amendment Passes	
Charge Included in Auction Price	Movable Property	Immovable Property	Movable Property	Immovable Property
Taxes due	Yes	Yes	Yes	Yes
Costs	No	Yes	Yes	Yes
Interest	No	Yes	Yes	Yes
(Pre-sale) Penalties	No	No	Yes	Yes

The amendment also would remove the requirement that the amount of immovable property sold at a tax sale be the "least quantity" that any bidder will buy to cover the taxes and other charges being recovered. Ownership interest would be one optional bidding variable, and the redemption penalty percentage would be the other. Debtors would still have the right to point out the portion of divisible property to be sold at a tax sale. Related legislation passed in 2009 made similar changes, and also preserves the right for bidders to bid down the ownership interest.

Comment

Proponents and opponents agree that both tax collectors and tax sale purchasers would benefit financially if this amendment passes. They disagree on how the changes would affect delinquent taxpayers.

Private companies are often involved in the tax sale process either as purchasers or as contractors to local governments that pay them to administer the tax sales and maximize revenue collection. Tax sale deals enable the taxing authority to collect overdue revenue immediately from the tax sale purchaser; and upon redemption, the tax sale purchaser collects from the taxpayer the purchase price plus a 5 percent penalty plus interest. The goal of most tax sale purchases is not to take ownership of the property in the long term, but rather to profit from the transaction in which the taxpayer reclaims the property. The majority of property sold at tax sales is reclaimed before the redemption period expires.

Proponents of this amendment argue that changing the rules as proposed would make tax sales in Louisiana more attractive to bidders, would increase the revenue that is ultimately recovered by tax collectors, and would lead to better outcomes for delinquent taxpayers. The current system leads to undesirable outcomes for both the taxpayer and the tax sale purchaser, they

argue, because some deals result in ownership being shared between the tax sale purchaser and the delinquent taxpayer if the property is not reclaimed.

By allowing the bidding down of penalties, tax sales would be more attractive to investors who are not willing to risk being stuck with partial ownership interest in a property. They would prefer to take less profit from the deal – lower penalties – rather than risk winding up with a less-than-100-percent ownership interest if the property is not redeemed. This additional competition would result in lower redemption penalties for taxpayers who redeem their property, proponents say. Also, including the same set of charges in tax sale prices for both types of property would simplify the rules.

In contrast, opponents say that costs to delinquent taxpayers would rise because of the newly authorized pre-sale penalties. There would be no constitutional limits on the value of pre-sale penalties that local governments could impose. Every charge that increases the auction price also increases the 5 percent redemption penalty and related interest charges, which are based on the auction price. As the costs to taxpayers who redeem their property rise, profits for tax sale purchasers also rise. This amendment is little more than a tool to increase profits for private companies involved with tax sales and would lead to excessive punishment for delinquent taxpayers, opponents argue.

Property rights advocates who oppose the amendment argue that removing the phrase "least quantity of" significantly weakens protections designed to help debtors preserve as much ownership interest in their property as possible when they cannot afford to pay their property taxes. Homeowners who are not be able to redeem their property because of the high cost of the newly authorized penalties would have their property taken completely in cases where the penalty is bid down instead of the ownership interest. Proponents of the amendment argue that the removal of the phrase would not open the system to abuse, because the bidding down of ownership interest still would be allowed – just no longer required.

Legal Citation

Act 540 (Rep. Leger) of the 2009 Regular Session, amending Article VII, Section 25(A)(1) and (E). Related legislation, Act 507 (Rep. Henry) of the 2009 Regular Session and Act 511 (Rep. Burrell) of the 2009 Regular Session.

8 Sale of Expropriated Property

You Decide

❑ A vote **for** would remove the requirement that public authorities first offer expropriated property for re-sale to its prior owner before the property can be sold to a third party if the property was taken to remove a threat to public health or safety and was held for 30 years or less.

❑ A vote **against** would continue to grant the right of first refusal to former owners of property taken to remove a threat to public health or safety when it has been held for 30 years or less.

Current Situation

Both the Constitution and statutory law allow many state and local governmental entities to force the sale (or "expropriation") of private property without the consent of the owner. One of the public purposes for which private property can be expropriated is to remove a threat to public health or safety. In the past, property taken for this purpose was sometimes cleaned up and sold back to third-party private interests for redevelopment. Local authorities in the state's hurricane-affected communities have expressed an interest in using expropriation to implement large-scale redevelopment plans where property is taken, cleaned up and sold back to third-party private interests. Plans sometimes call for sites to be cleared and sold in large tracts to specific buyers for specific development projects.

A 2006 constitutional amendment inserted new rules regarding the re-sale of expropriated property. The current Constitution requires that if expropriated property has been held for 30 years or less, most governmental entities first must offer it for purchase at the current fair market

value to parties with the right of first refusal, including the owner at the time of expropriation, any heirs, or if no heir, the successor in title. If the parties do not want to purchase the property, it then may be sold only by competitive bidding to the general public.

Property that has been held for more than 30 years does not have to be offered first to these parties and may be sold or transferred according to other state laws, which in many cases require competitive bidding open to the general public.

Proposed Change

The proposed change to the property rights section of the Constitution would eliminate the prior owner's right of first refusal on property expropriated to remove a threat to public health or safety. Property expropriated for other purposes would remain subject to the right-of-first-refusal requirement and still would have to be offered to the original owner, any heirs, or a successor-in-interest if no longer needed for a public purpose. The proposed change also would eliminate the requirement that property taken for health and safety reasons be sold only by competitive bid to the general public.

Comment

Redevelopment officials contend that a 2006 constitutional amendment has hampered the sale and redevelopment of blighted property by imposing too many onerous restrictions on its re-sale to private interests. Supporters of the 2006 change argued then that it protected private property rights by preventing government from essentially taking property from one citizen and selling it to another under the guise of economic development. The right-of-first-refusal and public bid requirements were created by that change.

In 2008, voters rejected a constitutional amendment similar to the current proposal. That amendment was broader, however, and also would have changed the rules regarding how expropriated property is determined to be surplus and when and how it must be offered to its former owner. Supporters of the 2008 proposal said it was a fix to some of the problems created by the 2006 amendment.

This year's proposal is also supported as a fix to those problems, but with a more narrow focus than the 2008 proposal rejected by voters.

Supporters argue that the current expropriation requirements have hampered the work of redevelopment authorities. The right of first refusal and the public bid requirements interfere with the authorities' ability to repackage individual properties for sale as a larger unit to a specific developer.

Properties that are taken for health and safety reasons are often considered blighted. It is estimated that there are tens of thousands of blighted properties in New Orleans alone. The proposed amendment would eliminate the constitutional requirement that such property be re-sold through a public bid process, leaving the re-sale method to be determined by the expropriating authority in accordance with statute.

Proponents of the amendment, including officials representing storm-affected parishes, argue that these changes are necessary for recovery. Opponents counter that property rights are fundamental and that the Constitution should continue to require the government to give the original owner and others an opportunity to repurchase their property– no matter why it originally was taken. Excluding blighted property from this protection has the potential to unfairly impact lower-income property owners, who cannot afford to hire an attorney to help them navigate the process.

Opponents also raise concerns that the proposed change could lead to overuse of blight as a reason for expropriation and that removing the current constitutional restrictions would allow future legislatures to broaden the statutory definition of blight simply by passage of new statute.

Legal Citation

Act 1052 (Rep. Leger) of the 2010 Regular Session, amending Article I, Section 4(H)(1).

9 Judgment of Workers' Compensation Claims

You Decide

☐ A vote **for** would require that, under certain circumstances, workers' compensation cases be reargued before a panel of five or more appellate judges prior to the reversal or modification of an administrative agency's decision.

☐ A vote **against** would continue to allow administrative agency decisions in workers' compensation claims to be reversed or modified with only a majority vote of a panel of three appellate judges.

Current Situation

Louisiana has 40 district (trial) courts, five courts of appeal and one state Supreme Court. The five courts of appeal vary in size from eight to 12 judges. Louisiana's Constitution requires that each court of appeal must sit in panels of at least three judges when hearing cases.

In civil cases, when a trial court's decision is to be modified or reversed by an appellate court and one appellate judge on the panel dissents (disagrees) with the majority of the panel's ruling, the Constitution requires that the case be reargued in front of a larger panel of at least five appellate judges and that a majority of the larger panel must concur (agree) in order to render judgment.

Currently, workers' compensation decisions—rendered by administrative hearing officers—are treated differently than other civil matters. Although the decisions may be appealed to a state court of appeal, if a majority of the appellate panel votes to modify or reverse the agency decision, it is done. Unlike other civil cases, there is no rehearing requirement before the agency decision can be reversed or modified.

Proposed Change

This amendment would apply current appellate procedure for civil law cases to administrative agency decisions in workers' compensation claims as well. Specifically, when an agency's decision in a workers' compensation claim was to be modified or reversed by an appellate court and one appellate judge on the panel dissented (disagreed) with the majority of the panel's ruling, the amendment would require that the workers' compensation case be reargued in front of a panel of at least five appellate judges and that a majority of that group concur (agree) before a judgment could be rendered.

Comment

Prior to 1990, the Louisiana Constitution provided that district courts had "original jurisdiction over all civil and criminal matters." Since workers' compensation disputes are civil matters, unresolved disputes between workers with job-related injuries and the Office of Workers' Compensation were tried in district courts like other civil matters.

In 1988, the Legislature statutorily removed workers' compensation cases from the jurisdiction of district courts and created an administrative hearing system so that disputed claims would instead be decided by administrative hearing officers. The constitutionality of this change was challenged by certain workers' compensation claimants in 1989. In 1990 the Louisiana Supreme Court ruled that the Legislature's actions violated the Constitution since it did not have authority to divest the judicial branch of its constitutionally provided jurisdiction.

However, prior to the Supreme Court's decision, the Legislature proposed a constitutional amendment for the October 1990 ballot that exempted workers' compensation cases from the jurisdiction of district courts. The amendment passed (59 percent to 41 percent); because voters agreed to make the change within the Constitution, whether the Legislature's original actions were constitutional became a moot point.

Today, workers' compensation claims are decided by administrative hearing officers. This amendment would not change that system. However, the proposed amendment would provide that appeals of workers' compensation decisions (made by administrative hearing officers) be treated similarly to other civil appeals.

Proponents argue that workers' compensation cases deserve to be treated like other civil matters on appeal—that when there is

disagreement among appellate panel judges about modifying or reversing an agency decision, the case should be reargued in front of a larger appellate panel like any other civil issue. Opponents argue that requiring a rehearing in such instances would result in a slower and more burdensome appellate process for workers' compensation disputes.

Legal Citation

Act 1051 (Sen. Murray) of the 2010 Regular Session, amending Article V, Section 8(B).

Waivers of Jury Trials for Criminal Defendants

You Decide

❑ A vote **for** would allow criminal defendants to waive their right to a jury trial in non-capital cases only if the waiver was made at least 45 days prior to the beginning of trial and would provide that once the waiver was made, it could not be revoked.

❑ A vote **against** would continue to allow criminal defendants to waive their right to a jury trial in non-capital cases without any time restriction and would remain silent as to whether such a waiver could later be revoked.

Current Situation

Louisiana's Constitution allows a criminal defendant to knowingly and intelligently waive his or her right to a trial by jury, except in a capital case. A capital case is one that carries the possibility of a death sentence if the defendant is convicted. When a jury trial is waived, the case is heard in front of a judge instead of a jury and the judge alone decides guilt or innocence based on the facts of the trial.

Currently, there are no restrictions as to when a defendant can waive his or her right to a jury trial. Defendants can waive their right to a jury trial immediately prior to the beginning of trial. Louisiana courts have ruled that a defendant's right to waive a jury trial may be denied only when it is shown that to allow such a waiver would "substantially delay justice."

Current constitutional language is silent as to whether a defendant may later revoke his or her waiver request. Louisiana courts have held that whether a defendant is allowed to revoke his waiver of a jury trial should be decided on a case-by-case basis and generally left to the discretion of the trial court.

Proposed Change

This amendment would change current law in two ways: (1) defendants who currently are allowed to waive their right to a trial by jury would be allowed to do so only up to 45 days prior to the beginning of trial; and (2) once the waiver is granted, it could not be revoked.

Comment

A majority of states and the federal court system place some type of limitation on the defendant's right to waive a trial by jury—whether it be restrictions on how the waiver is made, timing of the waiver in relation to trial, and/or requiring the defendant to have the consent of the court or prosecutor before the waiver can be granted.

Trials are set to begin on a particular date, at which point jury selection starts, unless the right to a jury trial has been waived. In Louisiana, defendants may waive their right to a jury trial at any time prior to the beginning of trial. Typically, a defendant will choose to waive his or her right to a jury once he or she learns which judge will hear the case or once the defendant and his or her attorney have reviewed the list of potential jurors. Defendants may waive their right to a jury trial for any reason, including:

- The belief that a judge may understand a case better than a jury (if the subject matter is complex or requires specific understanding of certain legal provisions);
- The belief that a judge will be better able to focus on the legal aspect of a case instead of the emotion of the case (if the subject matter is extraordinarily upsetting); and
- The belief that a particular pool of potential jurors would be less likely to deliver a

fair judgment based on the profiles of the jurors themselves. Although not required by law, lists of potential jurors routinely are published in newspapers, allowing the prosecution and defense to research those individuals if they choose.

Proponents of this amendment assert that the issue is one of victims' rights. Proponents contend that current law frequently results in defendants exercising their right to waive a jury trial immediately prior to trial simply as a means of delaying the beginning of trial. Proponents argue that requiring the defendant to exercise his right to waive at least 45 days prior to trial would keep him from using the waiver as a last-minute tactic to delay the victim's day in court. Opponents counter that even a last-minute waiver from a defendant should not (in practice) delay the victim's day in court, as the only outcome of the waiver is that the jury selection process is passed over and a trial on the merits of the case can begin immediately.

Opponents argue that when the Louisiana Constitution of 1974 was drafted, a great deal of thought and consideration went into the language that exists today—that is, Louisiana delegates made a conscious choice to provide the accused with an unfettered right to waive a trial by jury. Opponents reiterate that accused persons are presumed to be innocent until proven otherwise, and that instituting a "45-day prior to trial" requirement for exercising a waiver may negatively affect an innocent person's defense. For example, a list of potential jurors typically is not published until 30 days prior to trial. In that instance, a defendant would be required to make a decision whether to be tried by a jury or a judge prior to having all of the relevant information.

Legal Citation

Act 1053 (Rep. Montoucet) of the 2010 Regular Session, amending Article I, Section 17(A).

Table 4. Voting Results for Louisiana's Proposed Constitutional Amendments (1921-2010)

	Number of Amendments		Average Percent of Registrants Voting
	Proposed	Approved	
1921 Constitution	**802**	**536**	--
1974 Constitution	**223**	**155**	--
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	14	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
October 20, 2007	4	3	46.6
November 4, 2008	7	3	53.5
October 2, 2010	2	2	N/A

SOURCE: Louisiana Secretary of State; N/A = not available

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