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Survey of 1954 Louisiana Legislation

Foreword

Paul M. Hebert* and Carlos E. Lazarus†

This survey is divided into two parts. Part I consists of commentaries on selected portions of the legislative enactments by various authors. Part II is an Index-Digest which sets forth an abbreviated summary of those statutes deemed of sufficient general interest to warrant inclusion in the survey. In this manner the Review seeks to continue the service to the legal profession of providing a biennial review of the work of the Louisiana legislature.

When the 1954 legislature adjourned *sine die* on July 8, 1954,¹ it had considered or otherwise disposed of 1658 bills.² Of this number 783 passed both houses and were sent to the Governor for his approval. In addition, 31 joint resolutions were adopted proposing constitutional amendments to be voted upon at the next general election. Thus, 814 bills in all, or approximately one-half of the total number of measures introduced received the approval of the legislature.

Of the 783 bills sent to the Governor for his approval, 734 were approved, 47 were vetoed³ and 2 became law by limitation. In the main the vetoes were directed at special appropriation

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1. With the exception of 33 measures which were certified as emergency legislation, all other bills enacted into law became effective on July 28, 1954. LA. CONST. Art. III, § 27.

2. There were 1298 House Bills of which 686 passed the House (659 passing the Senate), 265 were withdrawn, 35 failed to pass, 68 remained on the calendar at adjournment, 52 were reported out by substitute and 192 were unreported by committees. Of the 360 bills introduced in the Senate, 186 were passed (158 passed the House), 83 were withdrawn, 14 were defeated on the floor, 5 remained on the calendar at adjournment, 2 were reported out by substitute, and 70 were unreported by committee. LEGISLATIVE COUNCIL FINAL REPORT ON DISPOSITION OF BILLS AT THE 1954 REGULAR SESSION (Mimeo., 1954).

3. This figure includes 40 House Bills and 7 Senate Bills. The bills are digested in LOUISIANA LEGISLATIVE COUNCIL, RESUMÉ OF ACTS, JOINT RESOLUTIONS, VETOED BILLS AND SELECTED RESOLUTIONS ADOPTED AT THE 1954 REGULAR SESSION OF THE LOUISIANA LEGISLATURE (Mimeo., Aug. 6, 1954).

measures,⁴ but in at least nine instances the Governor stated in his veto message or notation that the reason for the veto was to avoid duplication or conflicts in legislation.⁵ Also vetoed were House Bills 525, 646, 668 and 987, each of which sought to create additional judgeships in the Tenth, Twenty-Third, Twenty-Fourth and Twenty-Fifth Judicial Districts.⁶ To students of judicial administration these vetoes are encouraging in suggesting a policy of closest scrutiny of actual need before making further piecemeal additions to the judicial structure. Of interest also is the veto of House Bill 22 which would have amended R.S. 13:4232 to prohibit expressly the application of the Declaratory Judgments Law to "suits arising out of claims for damages for personal injuries or damage to property." By its terms, the purpose of the Declaratory Judgments Statute is to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations respecting contracts, statutes or municipal ordinances,⁷ and although wide discretion is granted to the court to entertain suit for declaration of rights, the dearth of jurisprudence involving tort actions is indicative that the statute was not intended to apply to a suit for damages for personal injury or for damages to property. Though it could

4. Nineteen special appropriation measures were vetoed. In addition appropriations appended to other bills were also disapproved. See La. Acts 1954, No. 590, creating a trade school at Natchitoches, and La. Acts 1954, No. 591, adding La. R.S. 17:2751-2753 (Supp. 1954), authorizing the State Board of Education to inaugurate telecasts for educational purposes.

Among the vetoed bills which are of interest to the legal profession is House Bill 1007. This bill provided for the creation of the Commission on International Conferences on Civil Law to commemorate the 150th anniversary of the adoption of the French Civil Code of 1804. The legislature had approved an appropriation of \$50,000 for this commission.

5. Nevertheless duplicate amendments occurred. See, for example, La. Acts 1954, Nos. 355, 584, both amending La. R.S. 56:115 (1950); La. Acts 1954, Nos. 571, 712, enacting similar provisions regulating the leasing of lands to and from political subdivisions, La. R.S. 41:1291-1294 (Supp. 1954); La. Acts 1954, Nos. 392, 666, both amending La. R.S. 56:323 (1950); and La. Acts 1954, Nos. 24, 42, both amending La. R.S. 12:756 (1950) relative to the office hours for clerks of court in particular parishes.

6. House Bill 668 providing for one additional district judge in the 10th district; House Bill 646 adding a district judge in the 23rd district; House Bill 525 and House Bill 987 creating additional judgeships in the 24th and 26th districts, respectively. Senate Bill 38, however, providing for an additional district judge in the 16th judicial district composed of the parishes of Iberia, St. Mary and St. Martin, was approved. La. Acts 1954, No. 445, adding La. R.S. 13:621.1 (Supp. 1954).

7. "Any person interested under a deed, will, written contract or other writings constituting a contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status or other legal relations thereunder." (Italics supplied.) La. R.S. 13:4232 (1950).

be argued that, under the Louisiana statute, a declaration could be had as to the liability of a defendant in a tort action, it would appear clear that the quantum of damages could not be inquired into in such a suit. It is interesting to note that the federal courts have held that the Federal Declaratory Judgments Act cannot be invoked by a plaintiff seeking to adjudicate a defendant liable in tort⁸ or by a prospective defendant in a negligence suit seeking to obtain a declaration of his nonliability.⁹ It has been held, however, that the extent of an insurer's responsibility under an insurance contract constitutes a right which can be determined by a suit for a declaratory judgment.¹⁰ Under the broad language of the proposed bill, the right of an insurer to sue for a declaration of noncoverage, for example, or for a limitation of liability under its contract, might well have been curtailed.¹¹

The enacted legislation ranged over a wide variety of subjects, a detailed consideration of which would be impossible in the space here allotted. Eliminated from this survey, therefore, are some 125 special appropriation measures¹² and some 112 acts of local interest only, including 35 special acts authorizing suits against the state.¹³

Four measures of a special nature will be of particular

8. "No action may be entertained for a declaratory judgment adjudicating that the defendant is guilty of a tort." *Aktiebolaget Bofors v. United States*, 93 F. Supp. 131, 134 (D.D.C. 1950).

9. "Therefore, although there appears to be no case directly in point on the problem, it would seem that the rule is that a declaratory judgment action should not be entertained when it is initiated by a prospective or actual defendant in a tort action." *Sun Oil Co. v. Transcontinental Gas Pipe Line Corp.*, 108 F. Supp. 280, 282 (E.D. Pa. 1952), *aff'd*, 203 F.2d 957 (3d Cir. 1953).

10. *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227 (1937) (disability provisions of life insurance policy); *Traders & General Ins. Co. v. Rudco Oil & Gas Co.*, 129 F.2d 621, 142 A.L.R. 799 (10th Cir. 1942); *Malley v. American Indem. Corp.*, 297 Pa. 216, 146 Atl. 571, 81 A.L.R. 1322 (1929) (automobile indemnity); *Trinity Universal Ins. Co. v. Willrich*, 13 Wash.2d 263, 124 P.2d 950, 142 A.L.R. 1 (1942) (automobile liability). See also *Caddo Contracting Co. v. Johnson*, 222 La. 796, 64 So.2d 177 (1953), 14 LOUISIANA LAW REVIEW 281.

11. *Cf. Veto Message of the Governor*, OFFICIAL JOURNAL OF THE PROCEEDINGS OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF LOUISIANA AT THE SEVENTEENTH REGULAR SESSION OF THE LEGISLATURE 880 (1954).

12. Close to 53 million dollars were appropriated in special measures for such purposes as parish fairs and festivals, public buildings at state colleges, universities and hospitals, conservation of natural resources, highway maintenance and repair, payment of judgments rendered against the state, etc.

13. It has been suggested that the volume of legislative proposals could be considerably reduced if the state were willing to waive its immunity to suit. The number of individual petitions for relief entails much waste of time and effort on the part of legislators who, in recommending or disapproving such claims, do in effect discharge quasi-judicial functions. *Louisiana Legislation of 1946*, 7 LOUISIANA LAW REVIEW 23, 52-53 (1946).

interest to the bar. Act 409 of 1954¹⁴ places the State Law Library, presently located in the civil courts building in the City of New Orleans, under the direct control and supervision of the Supreme Court. This legislation creates an advisory library commission consisting of representatives of the judiciary, the Attorney General and the Presidents of the Louisiana State and New Orleans Bar Associations and of the Louisiana State Law Institute. The construction of a new building in New Orleans for the Louisiana Supreme Court, which is badly in need of more adequate physical facilities, was authorized by Act 13 of 1954¹⁵ through an allocation of five million dollars from the proceeds of a bond issue for public buildings. Legislation was enacted increasing by four the membership in the Council of the Louisiana State Law Institute from among the members of the bar.¹⁶

Another significant measure deserving mention is the request made by the legislature that the Louisiana State Bar Association and local bar associations throughout the state undertake a complete study and survey of salaries and allowable expenses paid to judges, the attorney general, the district attorneys, the clerks of court and all other employees of the courts. The findings are to be presented to the 1956 legislature for consideration. Such a comprehensive survey should result in action fixing salaries and allowances of judges and officers of the courts at a proper level, which would avert the continued necessity of presenting these matters to the legislature at each biennial session.¹⁷

Although sixty days is a very short time indeed to afford legislators an opportunity for detailed consideration of the bulk of legislative proposals, both houses spared neither time nor labor in the consideration and enactment of such highly controversial measures as the "right to work" bill,¹⁸ the "stock law,"¹⁹

14. LA. R.S. 25:91-95 (Supp. 1954).

15. LA. R.S. 38:2432-2437 (Supp. 1954).

16. La. Acts 1954, No. 53, amending LA. R.S. 24:202 (1950).

17. For a consideration of these problems in the federal judiciary, see Mitchell, *The Judicial Salary Crisis: An Increase is Urgently Needed*, 39 A.B.A.J. 197 (1953); Mooney, *Federal Judges Compensation—Proposed Legislation*, 27 N.Y.U.L. REV. 457 (1952); *Hearings Before the Commission on Judicial and Congressional Salaries*, SEN. DOC. No. 104, 83d Cong., 2d Sess. (1953); See also SEN. DOC. No. 97, 83d Cong., 2d Sess. (1954).

18. Senate Bill 127, La. Acts 1954, No. 252, LA. R.S. 23:881-888 (Supp. 1954). See page 66 *infra*.

19. There were four proposals introduced, *viz.*: House Bills 98, 162, 427 and Senate Bill 55. Finally adopted was House Bill 427, La. Acts 1954, No. 202, LA. R.S. 3:2801-2806 (Supp. 1954). See page 122 *infra*. In addition the legislature also adopted Act 187 of 1954 appropriating the sum of \$200,000 for each year of the plennium to defray the expenses of fencing property adjacent to the highways involved. See LA. R.S. 3:2807-2809 (Supp. 1954).

the "segregation statutes"²⁰ and the bill authorizing the issuance of bonds in the amount of fifty million dollars for highway construction and maintenance.²¹ In bond issues and appropriations combined the 1954 legislature spent more money than any in Louisiana history.

Noteworthy among the proposals rejected was House Bill 86, prepared and sponsored by the Louisiana State Bar Association after much deliberation and study, calling for a constitutional convention.²² This bill proposed a convention consisting of 120 delegates apportioned on the basis of population, convening in Baton Rouge on January 5, 1955. The convention would have the authority to frame and adopt a new constitution without popular approval, but would also have had the authority to submit it, or any part thereof, to the people for ratification.²³

20. House Bill 1138, La. Acts 1954, No. 556; House Bill 1136, La. Acts 1954, No. 752, which proposes an amendment to Section 1 of Article XII of the Constitution to provide for separate operation of white and Negro schools. See page 93 *infra*. Thus, Louisiana became the first state to enact legislation expressly designed to avoid the effect of the decision of the United States Supreme Court in *Brown v. Board of Educ. of Topeka*, 74 Sup. Ct. 686(1954), 15 LOUISIANA LAW REVIEW 204, holding that segregation in public schools is unconstitutional. While it is generally considered that such measures cannot be constitutionally effective, it has been recognized that they will delay compliance with the mandate of the Supreme Court. See passage in Davis, *The School Segregation Decision: A Legal Analysis*, 3 J. PUB. L. 83, 88 (1954): "It may be safe to say here that some of the evasion attempts will prolong segregation in the schools for a good many years, and that all of them will be fecund breeders of lawsuits. The NAACP appears ready to litigate by day and think about litigation by night. Able attorneys in the other camp are just as ready. The law's procedural delays and the actual provability of state action or racial discrimination in fact will be the Negroes' main nonpecuniary obstacles." See also Leflar & Davis, *Segregation in the Public Schools—1953*, 67 HARV. L. REV. 377 (1954); Lenoir & Lenoir, *Compulsory Legal Segregation in the Public Schools, With Special Reference to Georgia*, 5 MERCER L. REV. 211 (1954).

21. House Bill 76, La. Acts 1954, No. 5, LA. R.S. 48:27-34 (Supp. 1954). See page 121 *infra*.

22. This was not the first time this proposal was before the legislature. In 1946, House Bill 724 provided for the submission to the electorate of a proposition for holding a convention to frame and adopt a new constitution. Though the bill was rejected at that time, it was again introduced in 1950 and enacted into law as La. Acts 1950, No. 25, p. 34, of that year. This act was subsequently amended by La. Acts 1950(2 E.S.), No. 2, p. 7, and ultimately suspended by La. Acts 1950(3 E.S.), No. 1, p. 3. The legislature nevertheless authorized and instructed the Louisiana State Law Institute to draft a projet for a new constitution to be submitted to the legislature of 1948. This projet was prepared in due course and accompanying studies and other pertinent information have been prepared and their distribution and sale authorized by La. Acts 1954, No. 50, LA. R.S. 24:206-208 (Supp. 1954).

23. See Hardy, *Remarks by Judge Hardy on the Louisiana Constitution Draft of Call Adopted by Constitutional Committee*, 1 LA. B.J., No. 2, p. 23 (1953); Leigh, *The Need and Basis for Constitutional Revision*, 1 LA. B.J., No. 2, p. 13 (1953); 14 LOUISIANA LAW REVIEW 247 (1953). See also *Call for Constitutional Convention, Proposed by Constitutional Convention Committee*, 1 LA. B.J., No. 2, p. 24 (1953).

Also rejected were: a bill which would have abolished the right of direct action against the insurer, unless the insured were also made a party defendant in the same action;²⁴ a bill which would have amended the Code of Practice so as to permit the successful litigant, whether plaintiff or defendant, to recover attorney fees as costs, not to exceed twenty percent of the amount in controversy;²⁵ a bill which would have limited the jurisdiction of the courts of appeal to questions of law in suits for damages for personal injuries when tried before a jury;²⁶ a bill authorizing the filing of motions for a directed verdict in the trial of personal injury cases;²⁷ and last, but not least, the chiropractors' bill²⁸ proposing to legalize chiropractics, without which no session of the Louisiana legislature would be complete.

The report of the Employers' Liability Revision Commission proposing amendments to Louisiana's Workmen's Compensation Act was embodied in a bill which died in the House Committee on Labor and Capital.²⁹ House Concurrent Resolution 48 creates a new commission of five members to be appointed by the Governor with direction to report proposed amendments to the 1956 legislature.

Realizing the need for a correlating body to prepare studies of important legislative problems and to lighten the burden of its individual members during the session, the legislature of 1952 established the Louisiana Legislative Council, giving it authority to conduct hearings and present studies on such fields as public education, highways and government expenditures in order to assist the legislature in formulating policy respecting such matters.³⁰ It is estimated that during the 1954 session, fully sixty percent of the bills enacted into law received the attention of the research staff of the Council, and a great majority of the legislators took advantage of the bill-drafting facilities it offers. In addition the Council prepared a daily digest of all bills introduced in both houses, indicating the purposes each bill was

24. House Bill 600, proposing an amendment to LA. R.S. 22:655 (1950).

25. Senate Bill 58, proposing an amendment to Art. 552, LA. CODE OF PRACTICE of 1870.

26. Senate Bill 125, proposing an amendment to LA. CONST. Art. VII, § 29.

27. Senate Bill 200. This bill was to become effective only if Senate Bill 125 was adopted.

28. Senate Bill 85 and House Bill 111. Senate Bill 296 creating a commission to make a two-year study and report on chiropractics also failed.

29. House Bill 1045 by Mr. Radovich proposing amendments to LA. R.S. 23:1021-1351 (1950) relative to workmen's compensation.

30. La. Acts 1952, No. 51, p. 135, LA. R.S. 24:401-409 (Supp. 1954).

designed to accomplish, thus greatly assisting the individual members in keeping abreast of the proposals without having to read the entire bill. The work of the Council has done much to lessen the labors of the legislature, which, in the short time available during the session, has been hard pressed to give proper consideration to the majority of the proposals submitted to it.

More extensive use of the bill-drafting facilities and research services provided by the Council will certainly make for more uniformity in legislation, which, whenever possible, should be prepared for integration into the Revised Statutes; and if such services are availed of well in advance of the session, a great deal will have been accomplished toward eliminating not only the bulk of the legislation proposed, but also the number of conflicting and often repetitious legislative measures.³¹

The legislature of 1954, in a further effort to improve the legislative process, enacted Act 625,³² providing for voluntary orientation conferences for the legislators to be conducted by the Louisiana State University in conjunction with the Legislative Council. These conferences are to be held prior to the regular sessions of the legislature, and will extend over a three-day period. In addition, the streamlining of the Senate committees by reducing their number from 20 to 15³³ (with the House resolving to follow suit at the next session of the legislature) was an important step in expediting the legislative process. With a

31. Compare, for example, the acts of 1946 where there are four statutes amending the same section of the insurance act of 1938, resulting in four different versions thereof (La. Acts 1946, No. 81, p. 254, No. 82, p. 258, No. 84, p. 263, No. 99, p. 287) and four acts all amending the tax law of 1934 unnecessarily duplicating identical provisions (La. Acts 1946, No. 191, p. 524, No. 195, p. 538, No. 200, p. 578, No. 203, p. 603). See also La. Acts 1950, No. 96, p. 195, No. 98, p. 197, both amending LA. R.S. 1:55 (1950); La. Acts 1950, No. 356, p. 596, No. 411, p. 695, amending LA. R.S. 13:692 (1950) resulting in much confusion; La. Acts 1950, No. 137, p. 302, No. 348, p. 580, both amending LA. R.S. 17:722 (1950) in different respects; La. Acts 1950, No. 192, p. 369, No. 525, p. 951, both amending LA. R.S. 33:3306 (1950), and three amendments to LA. R.S. 33:3688 (1950) by La. Acts 1950, No. 71, p. 121, No. 156, p. 320, No. 316, p. 513, creating irreconcilable conflicts. See also La. Acts 1952, No. 158, p. 376, No. 303, p. 809, amending LA. R.S. 15:179 (1950) and LA. R.S. 15:180 (1950) which were the bases for the suit in *State v. St. Julian*, 221 La. 1018, 61 So.2d 464 (1952) wherein the court decided that the last act in point of time governed in case of conflict between two acts passed at the same session of the legislature. For other conflicts and duplications in the legislation of 1950 and 1952, see LAZARUS, CONTINUOUS STATUTORY REVISION (Reports to the Council of the Louisiana State Law Institute, Mimeo., December 1950 and November 1952).

32. Tentatively incorporated in the Revised Statutes of 1950 as LA. R.S. 24:34.

33. Among the committees abolished are the committees on Aeronautics, Federal Relations, Militia and Military Affairs, Organization, Pensions, Printing, Penitentiary, Libraries, Elections, and Joint Judiciary.

lesser number of committees, legislative proposals are assured of better correlation and of more detailed consideration, while permitting better attendance by the membership of all committee hearings. By concurrent resolution, the Legislative Council was directed to study needs for facilities for the meetings and hearings of the legislature, as well as the need for facilities for research and clerical staffs aiding the legislature.³⁴

There is, therefore, much evidence that the legislature, as a body, is interested in constructive measures which will improve its efficiency in coping with the numerous bills presented at each session. Anyone surveying the total of the legislative product cannot fail to be impressed with the large number of relatively trivial matters upon which the legislature is compelled to expend time during each session. This is necessarily a serious obstacle to providing adequate time for more important matters which merit extended consideration. If the proposed constitutional amendment providing for annual sessions and restricting the limited thirty-day sessions in the odd-numbered years to budgetary and fiscal matters is adopted, the legislature should be provided with substantial relief in the discharge of the almost impossible task which it now faces in the sixty-day biennial sessions.

34. House Concurrent Resolution 39 by Mr. Koorie was adopted by both houses.