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The Proposed Constitutional Amendments*

Kimbrough Owen†

The adoption of the thirty-one amendments proposed by the 1954 session of the legislature will probably result in the most important changes in the governmental structure of the state since the adoption of the Constitution of 1921. The amendment providing for annual sessions of the legislature combined with limitations on the use of special sessions will deeply affect the existing pattern of relationships between the Governor and the legislature. The provision for the incurrence of debt by referendum rather than by constitutional amendment may pave the way for a shorter constitution. The provision for absentee registration for eighteen-year old members of the armed services appears to be a step toward reducing the voting age requirement. The amendment establishing segregation on the basis of the police power changes significantly the power of the legislature over education. The thirty-one amendments affect legislative sessions; legislative power; revenue, finance, and taxation; the judiciary; education; zoning; special districts; particular localities; and certain miscellaneous subjects of general state concern.

Legislative Sessions

The interest expressed by the 1952 legislature in improving the legislative process and reflected in the establishment of the Legislative Council was responsible for some of the most significant constitutional changes proposed by the 1954 session. Act 762 proposing an amendment to Article III, Section 8, of the Constitution represents an outgrowth of the studies of the Legislative Council, particularly its publication *The Legislative Process in Louisiana*¹ and of the extensive hearings held by the special committee of the Council. The amendment provides for an annual session of the legislature, with the sessions in the even numbered years limited to sixty days, as at present,

* This article was written before the November 2 election.

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1. THE LEGISLATIVE PROCESS IN LOUISIANA, LOUISIANA LEGISLATIVE COUNCIL RESEARCH STUDY No. 1 (Feb. 1953).

and with sessions in the odd numbered years limited to thirty days. These thirty-day sessions would be limited to "budgetary or fiscal matters," but measures levying new taxes or increasing existing taxes may not be introduced in these sessions. With the consent of three-fourths of the elected members the budget session might be extended to "matters other than those enumerated." It is not clear from this provision whether new taxes or increases in existing taxes could be passed by a three-fourths vote at a thirty-day session. The amendment also prohibits special sessions within thirty days of the convening or the adjournment of a budget session except with the consent of three-fourths of the elected members.

An amendment to Article V, Section 14, proposed in Act 746 attempts to solve one of the problems of special sessions by requiring the Governor to give five days notice to the members of the legislature of the date for convening the session.² Exceptions are made for "such occasions as epidemics, attacks by the enemy, or public catastrophe."

A third amendment affecting legislative procedure is proposed by Act 761 to Article XIX, Section 25. It would require the publication, thirty days in advance of the convening of the legislature, of notice of intention to change any legislative or constitutional provision on any retirement system of the state. The fifty-five bills on this subject introduced in the 1954 session of the legislature indicate the justification for such a requirement.³

Legislative Power

Two of the most significant amendments proposed would affect substantially the powers of the legislature. Act 758 amending Article IV, Section 2, would prohibit the incurrence of debt by the legislature on behalf of the state, its agencies, or departments unless approved by the electorate. It attempts to eliminate the present practice of authorizing state agencies to incur debt by mere legislative act. Although this restriction was the purpose of the amendment as introduced, a provision validating bond issues for highways and institutions of approximately

2. See PUBLIC AFFAIRS RESEARCH COUNCIL, SPECIAL SESSION OF JULY 6-17, 1953: AN ANALYSIS OF THE PROBLEM (Oct. 30, 1953); THE LEGISLATIVE PROCESS IN LOUISIANA, LOUISIANA LEGISLATIVE COUNCIL RESEARCH STUDY No. 1, p. 11 (Feb. 1953).

3. Cf. PUBLIC AFFAIRS RESEARCH COUNCIL, VOTERS GUIDE TO THE 1954 AMENDMENTS (Oct. 1954).

\$92,000,000 was added after the introduction of the bill.⁴ An important prohibition on legislative power was omitted entirely from the amended provision, namely, that against the legislature's alienation of the fee of the bed of any navigable stream except for purposes of reclamation and the requirement for the reservation of mineral rights on property sold by the state.

The second amendment affecting legislative power would amend Article XII, Section 1, on the public school system.⁵ This amendment would make it mandatory for the legislature to provide for a public educational system of the state and "enact laws on all matters regarding the terms and qualifications for admission to the public schools." It authorizes the legislature to call special elections for the amendment of Article XII and, after declaring that separate schools are to be maintained for white and colored children in the exercise of the police power and not because of race, the amendment directs the legislature to enforce the state police power in this regard. No reference is made by the amendment to Section 6 of Article XII which provides that "the State Board of Education shall have supervision and control of all free public schools."

Two minor amendments affecting the power of the legislature are proposed by Acts 745 and 757. The former, amending Article VI, Section 22(g) (4), would remove from the legislature the power to change the method of appointment of members of any bridge or ferry authority, organized under Act 7 of 1952 and in existence on January 1, 1955, except with the consent of the governing authorities of the parishes constituting the authority. Act 757⁶ would remove from the legislature its present power over the fixing of water rates charged by the Sewerage and Water Board of New Orleans.

Revenue, Finance, and Taxation

In addition to the prohibition against incurring debt by legislative act and the validation of the \$92,000,000 bond issue, three

4. La. Acts 1954, No. 5, adding LA. R.S. 48:13 *et seq.* (Supp. 1954); La. Acts 1954, No. 13, amending LA. R.S. 38:2432 *et seq.* (1950). See page 94 *infra*.

5. La. Acts 1954, No. 752. See discussion at page 112 *infra* for La. Acts 1954, No. 555, adding LA. R.S. 17:331-334 (Supp. 1954); La. Acts 1954, No. 556, adding LA. R.S. 17:81.1 (Supp. 1954).

6. Amending Art. XIV, § 23.3. Section 23 of the Article XIV provides ". . . that the rates charged private consumers shall never exceed the total rates charged private consumers by the Sewerage and Water Board, in force November 1, 1913, unless otherwise authorized by the Legislature. . . ." The amendment would require approval of rate changes by the Board of Liquidation of the City Debt after public hearings and also establishes criteria for the determination of the rates.

other amendments affect the state's finances. Act 759, proposing an amendment to Article X, Section 1, would make important changes in the taxes on timber. The amendment would limit the tax on timber in the future to a severance tax, the rates of which are provided in the amendment in terms of current "average stumpage market value" at the time of severance. Timber lands would continue to be subject to property taxes, but no value could be added to the assessment because of the value of the timber. The distribution of the proceeds is also changed.

Act 742, amending Article VI, Section 22(g) (3), specifies the type of highway to be built from the proceeds of the vehicle license taxes collected in six parishes and constituting Highway Fund No. 2. From this source \$300,000 annually was dedicated by a 1952 constitutional amendment "for the construction, or relocation of and improvements to U. S. Highway No. 51."⁷ The 1954 amendment proposes that this work on Highway 51 be done by constructing a four-lane highway from Osyka, Mississippi, to a point just north of the Bonnet Carré Spillway.

Act 748, amending Article XVIII, Section 11, authorizes a \$10,000,000 bond issue to provide veterans of the Korean conflict and their dependents the same bonus granted World War II Veterans and their dependents.⁸ The Board of Liquidation is authorized to borrow the necessary funds and the beer tax is pledged to its repayment. Bonus payments range from \$50 for veterans who did not leave the United States to \$1000 to dependents of veterans who died while serving in the armed forces or as a result of service-connected injuries or diseases.

The Judiciary

Of the four amendments affecting the judiciary one increases the number of district judges in Jefferson Parish from two to three.⁹ A second amendment provides a Family Court for the Parish of East Baton Rouge.¹⁰ This amendment offers an alternative approach to the existing juvenile courts as a solution to the problem of overcrowding and the demand for specialized judicial treatment for cases of this type. The court is given the

7. La. Acts 1952, No. 90, p. 239, amending LA. CONST. Art. VI, § 22(g).

8. La. Acts 1948, No. 530, p. 1476, adding LA. CONST. Art. XVIII, § 10.

9. La. Acts 1954, No. 765, amending LA. CONST. Art. VII, § 31.

10. La. Acts 1954, No. 738, adding LA. CONST. Art. VII, § 53.

jurisdiction of the juvenile courts established under Article VII, Section 52, and in addition jurisdiction in

“. . . actions for divorce, separation from bed and board, annulment of marriages, and disavowal of paternity as well as of all incidental matters connected therewith including, but not restricted to, matters relative to alimony pendente lite and permanent alimony, custody of children, and injunctive relief or proceedings for the preservation of the community, jurisdiction of which has heretofore vested in the Civil District Court for the Parish of East Baton Rouge.”¹¹

The term of office, salary, and qualifications are the same as for the district judges of the district. The first judge is to be appointed by the Governor.

A third amendment to Article VII requires that newly created district judgeships be filled by election rather than appointment by the Governor and would add to the qualifications of district judges that they be members in good standing of the State Bar Association.¹²

Another amendment affecting judicial procedure is proposed by Act 739 which liberalizes the restrictions on the granting of bail in the Bill of Rights.¹³

Education

Six amendments concern education. Article XII, Section 1, would be amended by Act 747 to authorize local school boards to establish the policy that only children attaining the age of five before December 31 of any year could enter kindergarten at the beginning of the term and that only children attaining the age of six before December 31 could enter the first grade at the beginning of the term. This would permit a uniform policy among the school boards.

The increase of school revenues was the objective of five amendments. Article XIV, Section 14(f), would be amended by Act 764 to increase the authorized ratio of debt for capital improvements to assessed valuation from twenty to twenty-five

11. LA. CONST. Art. VII, § 53A(5), as amended, La. Acts 1954, No. 738. However, the district court for East Baton Rouge Parish is to retain jurisdiction of all proceedings involving the liquidation and partition of the community after a judgment of divorce or separation has been rendered by the family court.

12. La. Acts 1954, No. 754, amending LA. CONST. Art. VII, § 33.

13. La. Acts 1954, No. 739, amending LA. CONST. Art. I, § 12. For a discussion of the criminal procedure amendments in accordance with this amendment, see page 61 *supra*.

percent.¹⁴ Article XII, Section 18, would be amended by Act 743 to provide a more equitable method of distributing revenues from sixteenth-section school lands, to include revenues from the sale of timber and from mineral leases, contracts, royalties and other revenues from such lands, and to broaden the purposes for which such revenues could be used. The distribution of the revenues would be on the basis of the percentage of the township in the school district, rather than on the basis of giving all revenues to the district in which a major portion of the township lies. Greater school revenues for Orleans Parish without an increase in total taxation would be accomplished by companion Acts 751 and 756. The former, amending Article XII, Section 16, would increase the maximum Orleans school tax rate from ten mills to eleven and one-half mills from 1955 through 1959, and to 13 mills thereafter. The companion act, 756, amending Article XVI, Section 2, would reduce the permissive tax rate of the Orleans Levee Board by an amount equal to the increase granted to the school board.

Act 741, amending Article XII, Section 15(10) would extend the authority of the school board of the City of Bogalusa to include the entire area of the fourth ward outside the city limits of Bogalusa.

Zoning

Two of the amendments affect the zoning powers of parishes. Act 737, amending Article XIV, Section 29(b), confers zoning authority on the Parish of East Baton Rouge. This amendment is interesting for two reasons. In the first place it contains one of the more flagrant errors of the thirty-one amendments. The omission of the word "not" from the following clause may raise problems of interpretation, ". . . provided, however, that any tract of land consisting of ten (10) acres or more which was acquired or used for industrial purposes prior to any zoning of an area hereunder shall [not] be placed in a commercial or residential district or restricted as to use without the consent of the owner thereof. . . ." The amendment follows the pattern set by the Jefferson Parish zoning amendment of 1946¹⁵ in requiring at property taxpayers' elections approval of the establishment of the industrial, commercial, and residential districts. By another zoning amendment passed by the 1954 legislature, however, Act

14. The amendment would also exempt bonds issued under the Royalty Road Fund from the 10% parish debt limitation.

15. La. Acts 1946, No. 404, p. 1286, adding LA. CONST. Art. XIV, § 29(a).

763, amending Article XIV, Section 29(a), this pattern is abandoned for Jefferson Parish. The approval at an election of the property taxpayers is deleted, presumably on the basis of the eight years' experience.

Special Districts

Act 740, amending Article XIV, Section 14 (d-4),¹⁶ authorizes the police juries to create recreation districts. These districts are authorized to levy a tax of up to five mills subject to the overall tax limitations in Article X, Section 10, and to incur debt for the purposes of providing recreational facilities. The legislature has attempted to remove one of the principal incentives for the creation of such districts, namely, participation in the property tax relief fund. Act 167¹⁷ would limit payments from the property tax relief fund to parish-wide taxes and district taxes for schools, drainage, levees, toll-free roads, and to taxes authorized before the effective date of the act.¹⁸

Particular Localities

Four amendments affect individual local governments. One, Act 750, amending Article XIV, Section 39, requires a bond of \$5000 for the secretary-treasurer of each Community Center and Playground District in Calcasieu Parish. A second, Act 744, adding Article XIV, Section 31.5, authorizes the City of New Orleans to issue up to three million dollars in revenue bonds for airport construction, development and maintenance. A third, Act 766, amending Article VIII, Section 16, prevents the registrar of

16. See page 138 *infra*, for a discussion of the enabling act, La. Acts 1954, No. 542, adding LA. R.S. 33:4562-4569 (Supp. 1954).

17. La. Acts 1954, No. 167, amending LA. R.S. 39:253 (1950).

18. There may be some question as to the constitutionality of this act in view of the requirement of the Constitution in Art. X, § 4(9), which provides: ". . . the State Treasurer shall be authorized and is directed to reimburse the general or special funds of the State and any of its political subdivisions, police juries, boards, commissions, or offices and the City of New Orleans, for any sums which may be lost to the State, its general or special funds and any of its political subdivisions, police juries, boards, commissions, offices and the City of New Orleans, occasioned by reason of the homestead tax exemption herein provided for, out of funds which shall be established and provided for by the Legislature in the Property Tax Relief Fund, said reimbursement to be made pro rata out of said Fund. Provided, that homesteads shall not be exempt from taxes, state, parish, local or special, or from taxes of the City of New Orleans, to an amount greater than the necessary funds available in the Property Tax Relief Fund to make the reimbursement herein provided. . . ." It would appear that if there are insufficient funds available in the Relief Fund that the amount of the homestead exemption granted would be reduced for all taxes, and that the legislature's authority to exclude certain subdivisions from the benefits would be at best questionable.

voters of Orleans Parish from making changes of addresses between the first and second primary. The fourth, Act 753, adding Article XIV, Section 44, gives to the City of Lake Charles extensive authority over certain portions of Lake Charles for public reclamation and development.

Miscellaneous

Four amendments of general concern affect absentee voting, intergovernmental relations, the appointment of members of the Board of Commissioners of the Port of New Orleans, and water conservation. Act 767, amending Article VIII, Section 22, would authorize the legislature to provide for absentee registration of those subject to be called, or who already have been called, into the armed forces. The registration may be made by mail or by person, or by a member of the applicant's family as proxy. It would apply to those eighteen or over but under twenty-one, as well as to those of voting age, and the privilege would be extended to the spouse of any person included in the provision. The provisions of the Constitution without this amendment require initial application for registration in person and the signature of the individual is regarded as one of the checks against fraud in the system of permanent registration.

Act 755 would amend Article IV, Section 12, to authorize donation of property to the federal government by state and local governments for "postal and other buildings." It would authorize lease-purchase agreements with the federal government and authorize the issuance of revenue bonds to finance such buildings.¹⁹

The qualification of members of the Board of Commissioners of the Port of New Orleans and the method of their nomination would be changed by Act 760, amending Article VI, Section 17. This proposal would add two additional organizations to the five which now submit names to the board for nomination in the event of a vacancy. Under the amendment the presidents of these organizations would constitute a nominating council and submit to the Governor three names for each vacancy. The amendment also requires that one member of the board be a resident of the West Side of the River.

Extensive powers over water resources would be granted by Act 749, amending Article XV, Section 4, and setting up the

19. See discussion of enabling act at page 140 *infra*. La. Acts 1954, No. 571, adding La. R.S. 41:1291-1294 (Supp. 1954).

Southwest Louisiana Water Conservation District. The district would consist of all of eleven parishes and part of a twelfth in Southwest Louisiana. The purposes of the district are, among others, to furnish fresh water to the district, to preserve, control, conserve, utilize, and distribute the waters of the rivers and streams of Louisiana, and to prevent stream pollution and salt water contamination. An annual tax not to exceed three and one-half mills is authorized without the requirement of an election and additional taxes may be levied if approved by popular election. The district is also granted power to incur debt based on its taxes and revenues.

Reflections on the Amending Process

The thirty-one amendments proposed by the 1954 session of the legislature illustrate once again the difficulties faced by the conscientious Louisiana voter. A wise decision on thirteen of the amendments would require extensive knowledge of the needs of a particular municipality or parish that the ordinary citizen cannot be expected to have.²⁰ The voter is expected to decide not only on the desirability of zoning in Jefferson and East Baton Rouge Parishes, but also on a particular method of zoning. He is expected to decide not only whether an additional specialized court is needed in East Baton Rouge but also to decide upon the jurisdiction and organization of the court. He is expected to decide whether \$5000 is adequate bond for the secretary-treasurer of the Community Center and Playground Districts of Calcasieu Parish, and whether the authority of the school board of the City of Bogalusa should extend over the entire area of the fourth ward. He is expected to decide whether the allowable millage of the Orleans Levee Board should be reduced and the allowable millage of the Orleans School Board correspondingly increased.

Even in the amendments of a less local nature the voter is confronted with questions involving rather complex and technical questions. Should the improvement of Highway 51, for which funds were dedicated by previous constitutional amendment, consist of a four-lane highway and should the highway be constructed along the route specified in the present amendment?

The practice of presenting lengthy amendments forces the voter to determine whether the general advantages of the amendment are sufficient to outweigh the objections he may have to

20. Amendments proposed by La. Acts 1954, Nos. 737, 738, 741, 744, 745, 750, 751, 753, 756, 757, 763, 765, 766.

some of the provisions. The voter may approve of the establishment of the Southwest Louisiana Water Conservation District, the payment of a Korean veterans bonus, and the establishment of recreation districts, but he may not approve of the method provided for incurring debt or the specific tax rates involved. The amendment to Article IV, Section 2,²¹ provides the best example of the multiple choices involved in a single amendment. This amendment combines three different proposals: First, should the legislature be prohibited from incurring debt by legislative act? Second, should the present prohibition against the alienation of the fee of the bed of a navigable stream and transfer of mineral rights on state lands be deleted from the Constitution? Third, should the bond issues authorized by two acts of the legislature at the 1954 session be validated? To vote for a validation of the bond issues would be to vote for the deletion of an important protection from the Constitution and for a change in the present method of incurring debt. To vote against the amendment and thus preserve an important protection of the state's mineral and property rights would be to vote against the validation of the two bond issues.²²

The 1954 amendments warrant certain conclusions about the problems of the legislative process. The Constitution requires approval of proposals to amend the Constitution by two-thirds of the elected members of each house, yet there are reasons to believe that proposed amendments sometimes receive less careful consideration than proposed statutes. This situation is due to both constitutional arrangements and to traditional practices. The deadline for introducing proposed statutes is the twenty-first day of the session. The deadline for introducing constitutional amendments is the thirtieth day. No single committee has the responsibility of considering all constitutional amendments with regard to their necessity and their effect on other provisions of the Constitution. Legislators may feel less concerned about constitutional amendments because they can be defeated after the session by the electorate. The Governor can strike down by his veto defective statutes, but he has no veto over constitutional amendments.

21. See page 92 *supra*.

22. Another example of multiple choice is represented by the amendment to Art. XIV, § 14(f), La. Acts 1954, No. 764, which increases the ratio of debt for certain school purposes from 20 to 25% of assessed value and also excludes bonds based on the Royalty Road Fund from the 10% general parish debt limit. Here the voter must vote for or against two quite different proposals in the same amendment.

An examination of the 1954 amendments shows the necessity of more careful consideration of proposed constitutional amendments in the drafting stage and in their passage through the legislature. Errors in the amendments are for most part trivial, the misspelling of words,²³ the repetition of words,²⁴ the use of singular where the plural is intended,²⁵ omissions of words where the meaning is nevertheless clear.²⁶ There are also examples of a certain carelessness of style, such as the use of "1" in a series without a "2,"²⁷ and the introduction of a completely different style of headings²⁸ from those presently used in the Constitution.

Other errors are more significant. The amendment providing for annual sessions of the legislature deletes the provision of the present Constitution specifying that the legislature meet at twelve o'clock noon on its first day of regular session.²⁹ This may raise the possibility of uncertainty as to the time when the legislature is to convene. Its omission appears to have been an oversight.

The most important errors such as the omission of the word "not" from the East Baton Rouge Parish zoning amendment and the omission of the provision on the fee of navigable streams and the mineral rights of state lands have been mentioned before.³⁰ The latter error, which is by far the more important, illustrates the danger of the amending process. The paragraph of Article IV, Section 2, being amended contains two disparate prohibitions, one against the incurrence of debt and the other against the alienation of the fee of navigable waters. The para-

23. "Thiry days" for thirty days in La. Acts 1954, No. 762. "Nothering" for nothing in La. Acts 1954, No. 744, § 31.5(A)(k)(d). "Iniative" for initiative in La. Acts 1954, No. 746, § 1. "Iterest" for interest in La. Acts 1954, No. 748, § 11. "Fourth" for four in La. Acts 1954, No. 752. "Nor" for now in La. Acts 1954, No. 755. "Aggragate" for aggregate in La. Acts 1954, No. 753. "Exceeding" for exceeding in La. Acts 1954, No. 749. "Apecial" for special in La. Acts 1954, No. 764.

24. La. Acts 1954, No. 742, for example, contains the following phrase ". . . in said paragraph so so long as any of said bonds. . . ."

25. La. Acts 1954, No. 760, contains the following: "Nominee to the Governor for appointment to the said Board shall be selected and named by the Nominating Organizations in the following manner. . . ."

26. La. Acts 1954, No. 739, contains the phrase: ". . . so that the same may be made thereafter read as follows:" La. Acts 1954, No. 741, refers to ratification by a majority in number and amount of the qualified taxpayers, omitting the word "property."

27. La. Acts 1954, No. 739, amending LA. CONST. Art. I, § 12.

28. La. Acts 1954, No. 760, amending LA. CONST. Art VI, § 17: "Section 17. Members of Board of Commissioners of Port of New Orleans—Appointment—Qualifications—Term of Office—Organization of Board—Vacancies, Notice of— . . ."

29. La. Acts 1954, No. 762, amending LA. CONST. Art. III, § 8.

30. See pages 24 and 100 *supra*.

graph also contains the requirement of the reservation of mineral rights on property sold by the state. In concentrating on the question of debt it would be easy for the other matters involved in the paragraph to be forgotten.

A second problem concerning the legislature's role in the amending process involves the amendments which could have been passed as statutes. The amount of bond of the secretary-treasurer of the Community Center and Playground District represents a change by constitutional amendment of a 1948 act.³¹ The provisions for an additional judgeship for Jefferson Parish could have been accomplished by statute. Article VII, Section 34, authorizes the legislature by a two-thirds vote to increase or decrease the number of judges in any district. The decision involved in the construction of a four-lane highway on U.S. Highway 51 could have been incorporated in a statute.

In view of the fact that a new constitution does not appear imminent it might be well to consider possible procedures in the legislative process for securing more careful drafting of proposed amendments, more critical examination during passage, and the diversion to statutes of many questions now submitted in the form of constitutional amendments.

31. La. Acts 1948, No. 82, p. 241.