The 1956 Proposals To Amend the Louisiana Constitution

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Apparently determined not to be outdone by its predecessors, the 1956 Louisiana Legislature served up a record-breaking forty-eight proposals to amend the Constitution. These propositions will be considered by the harried voter as he goes to the polls on November 6, already preoccupied with the task of selecting a president and various congressional representatives, passing his judgment upon whether a constitutional convention should be held, and choosing delegates for that convention to serve in the event it is held.

While the writer strongly supports the movement to hold a constitutional convention, he does not share the view expressed by some of its advocates — that the forty-eight amendment proposals demonstrate the need for constitutional reform. Indeed, it might be urged, quite to the contrary, that they seem to show that Louisiana's present and inordinately prolix Constitution is not long enough. Actually, the writer submits, the presentation of these forty-eight propositions supports neither thesis; it is, rather, a manifestation of the amending habit to which we Louisianians have become addicted over the course of the years, in the pursuit of which we add more and more legislative material to our basic document of state government.¹ Neither the adoption nor rejection of a new constitution will break this addiction. If a modern day Moses could descend from Mt. Sinai to present Louisianans with a new constitution that would be universally acclaimed as the perfect instrument for the purpose, our penchant for amendment, unless restrained, would make a shambles of the document before ten years had elapsed.

Turning more closely to the purpose of this article — to outline the principal features of the forty-eight proposals — the

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* This article was written before the November 6 election.
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author has, for purposes of organization, arranged the proposals into classifications which are admittedly arbitrary, with some overlapping. These classifications are as follows: State Agencies, Taxation, Legislature, Courts and Judicial Procedure, Elections and Voting, Veterans, Mineral Rights, Education, and Municipalities and Local Political Subdivisions. The proposed amendments will be discussed in the order of this topical arrangement.

STATE AGENCIES

Seven of the proposals fall into this classification, at least four of which portend significant changes in structure and operation of state agencies by repealing the so-called "blue ribbon boards" proposed by the prior administration, and adopted as constitutional amendments by the voters at the election of 1952. These boards are described in some detail in Professor Owen's article, "1952 Amendments to the Louisiana Constitution," in a previous issue of the Review.² Acts 609 to 612, inclusive, propose the repeal of the Board of Public Welfare (article XVIII, section 7(4)), Board of Institutions (article VI, section 30), Board of Highways (article VI, section 19.1), and the Wild Life and Fisheries Commission (article VI, section 1(A)), respectively. To replace the boards, the Legislature enacted four separate acts reconstituting these agencies in substantially the same form as they existed prior to the 1952 amendments, each of which will become effective if and when the proposed repealers are adopted.³

Act 619 (as amended by Act 3 of the Extraordinary Session) proposes to amend sections 3 and 8 of article VI by enlarging the Public Service Commission from three to five members and redistricting the state into five districts for this purpose instead of three as at present. It is further provided that the commissioners in office when this proposal becomes effective shall represent the first, third, and fifth districts, as reconstituted, with power in the Governor to appoint commissioners for the second and fourth districts who shall serve until 1960 and 1958, respectively, when successors shall be elected for the regular six year terms.

² Owen, 1952 Amendments to the Louisiana Constitution, 13 LOUISIANA LAW REVIEW 219, 221 et seq. (1953).
³ Act 45 re-establishes the Board of Public Welfare; Act 93 re-establishes the Board of Institutions; Act 39 re-establishes the Board of Highways; Act 130 re-establishes the Department of Wild Life and Fisheries.
Act 590 proposed to amend article VI, section 11, to increase the membership of the State Board of Health from eight to eleven members. As presently constituted, the Board of eight consists of five members who are physicians, the qualifications of the other three being fixed by the Legislature. The amendment proposes that the three new vacancies created shall be added to the group whose qualifications are prescribed by the Legislature.

A new charity hospital, to be located in Baton Rouge, is proposed by Act 617, which would add a new section 13 to article XVIII. Construction would be financed by bonds issued against future revenues of the three-fourths mill and ad valorem tax authorized by section 3 of article XVIII. Although the proposal states that the new hospital shall be administered by the Board of Institutions, it is to be noted that as a result of the adoption of Act 207, effecting a consolidation of functions, all control which the Board previously exercised over hospitals has been transferred to the new State Department of Hospitals.

Act 622 proposes several changes in the procedures to be followed in cases involving demotions, dismissals or discrimination against civil service personnel. The proposal would change the language of article XIV, section 15(N)(1), in two respects: first, to require that the injured employee be granted a hearing, and, second, by deleting the provision in the present section which provides that "the burden of proof on appeal, as to the facts, shall be on the employee."

**TAXATION**

Seven of the proposed amendments touch upon revenue and taxation. They cover a wide range of subjects. Added tax support for public schools is suggested by two of the proposals, which affect three of the present provisions of the Constitution. Act 629 would raise the present five mill ceiling to seven mills both in the case of ad valorem taxes which may be levied for maintenance by local authorities without a vote of the people (article XII, section 15, Fourth) as well as the additional taxes for the same purpose which may be imposed after a favorable vote of the people (article XII, section 15, Fifth). Act 615 would confer added tax benefits upon the public schools by amending the provisions of article X, section 22, relative to tax
exemptions for new industries so as to make the exemption in-applicable to school taxes.

Act 624 proposes to repeal the language of article X, section 4, paragraph 8, which authorizes municipalities to levy ad valorem taxes on automobiles.

Several of the proposed amendments contemplate the expansion of various tax exemptions. Act 596 would amend article X, section 4, paragraph 3, to exempt farm implements, equipment, and machinery from ad valorem taxation entirely, rather than to the extent of $500.00 of valuation as presently provided. Act 589 proposes to extend from 1959 to 1964 the special veterans homestead exemption (of $5,000.00 valuation) from ad valorem taxation, granted by article X, section 4, paragraph 9(b). Finally, in this category, Act 598 proposes to amend the provisions of article X, section 7, relative to exemptions from inheritance and gift taxes, by extending the exemption of gifts and legacies to religious and educational institutions located in any state or territory of the United States on a reciprocity basis, rather than restricting it to institutions located only within the state.

One of the most significant measures in terms of state revenue is Act 591 proposing to add a new section 22.1 to article VI which would grant a refund to retail gasoline dealers in the amount of two percent of the taxes they collect on the sales of gasoline and motor fuel to cover losses in handling due to shrinkage, spillage, and evaporation. The latest published report of the Department of Revenue (for fiscal year 1954-1955) shows the net yield from this tax to be in excess of forty-seven million dollars, indicating that the total reduction in revenue to be anticipated in the event the refund provision is adopted would approach one million dollars.

The Legislature

Three of the proposed amendments affect the procedure and constituency of the Legislature. Typical of the ebb and flow of Louisiana's political tides is Act 593 which proposes to repeal the amendment adopted in 1954 providing for annual sessions with the session convening in odd numbered years limited to thirty days and devoted to budgetary and fiscal matters. The proposal would return the language of article III, section 8, to
the form in which it appeared prior to the 1954 amendment. Proponents of the 1954 proposal had argued that annual sessions would assure greater legislative control over the spending policies of the state, thereby effecting economies in government. Advocates of repeal charge that the only session held under this measure thus far (in 1955) was a wild "spending spree" in which the Legislature viewed an unanticipated surplus in the general fund with a melon-splitting eye and proceeded to dispense funds with a complete disregard for economical government.

The other two measures relating to the Legislature would affect changes in the constituency of the two houses. Act 618 proposes an amendment to article III, section 2, to increase the membership of the House of Representatives from 101 to 102 members. The additional member would be assigned to the Parish of East Baton Rouge, thereby increasing its representation in the body from two to three.4 The change in the Senate does not affect the number of senators. Act 599 creates a new senatorial district, the Thirty-Fifth, to consist of Acadia Parish. Under the present provision of article III, section 4, Acadia and St. Landry constitute the Sixteenth District which elects two senators. The effect of the amendment is to split the present district into two districts, the Sixteenth, which will consist solely of St. Landry, and the Thirty-Fifth, with each entitled to elect a single senator. The language of the proposal provides that, to become effective, it must receive the favorable vote of the electors of the state as a whole, as well as that of both of the parishes affected.

COURTS AND JUDICIAL PROCEDURE

A total of seven measures propose to make changes in the structure, organization, and procedure of the courts. These amendment proposals, together with a large number of legislative acts on the same subject, are considered in separate articles published elsewhere in this issue5 and the reader is referred to those articles for a more detailed analysis of the changes which would be affected by the adoption of these proposals.

The problems that arise to plague the legislative draftsman are well illustrated by two of the proposals, both of which propose to amend article VII, section 31, by creating a new judicial

5. Page 30 supra.
One of these measures, Act 628, provides that the new district shall consist of Livingston Parish, and removes that parish from the Twenty-First District, as presently constituted, leaving it to consist of the parishes of Tangipahoa and St. Helena, and making no other changes in the remaining districts throughout the state. The other measure, Act 595, declares that the newly created Thirty-Second District shall consist of the Parish of LaFourche, removes that parish from the Seventeenth District as presently constituted, leaving it to consist of the Parish of Terrebonne, and makes no other changes in the remaining districts throughout the state. In the case of Act 628 the draftsman apparently foresaw the possibility of what occurred and took steps to deal with it in part— but only in part. Included in the proposal is the provision: “The Parish of Livingston shall compose the Thirty-Second District, or such other consecutively numbered district as the Secretary of State shall designate in the event that additional judicial districts are created simultaneously.” Assuming that this delegation of authority to the Secretary of State is valid, and that he exercises it in the manner which the proposal directs, the question will remain whether, as a matter of law, the two new districts have actually been created. Assuming the passage of both proposals, there is the difficulty that while each directs the splitting of one existing district and the creation of another, each also ignores a similar splitting and creating by the other, leaving the parish which the one desires to be designated as a new district to be but a part of the old district as provided under the present constitutional provision. This will pose a difficult problem of interpretation which may ultimately have to be resolved by litigation in the event a dissenting taxpayer wishes to make an issue of the matter.

Act 588, proposing an amendment to article VII, section 8, relating to judges’ retirement, authorizes the Supreme Court to assign retired judges to serve as judges of any court of record of the state. The provision, which is inapplicable to those who have retired for reasons of physical disability, requires the consent of the retired judge in order to make the Supreme Court's assignment effective. As compensation for his services, the retired judge will receive an amount, which, together with his retirement pay, will equal the regular compensation paid the
judges of the court on which he sits, to be paid entirely by the state.

One of the amendments touches upon judicial procedure. Act 613 proposes to add a new section 26 to article XIX to declare that numerous educational and recreational bodies shall be special agencies of the state, against which suits may not be filed without the consent of the state. The provision, which is declared to be retroactive to affect existing suits, is expressly made inapplicable to suits on contracts which these agencies have or may hereafter enter into. The measure, which was one of the so-called "segregation bills," is obviously designed to provide a further bulwark against litigation involving educational and recreational agencies in attempted implementation of United States Supreme Court decisions forbidding segregated facilities of this kind. The provisions and probable validity of this proposal are discussed in the separate article devoted to the segregation bills appearing elsewhere in this issue.6

The four remaining proposals in this category relate to specific local courts and contemplate changes in personnel, jurisdiction, and names of the various courts involved. Thus, for example, Act 604 (amending article VII, section 96) would change the name of the "Juvenile Court for the Parish of Orleans" to "Juvenile and Family Court for the Parish of Orleans," enlarge the court from two to three judges, increase their salaries from seven to ten thousand dollars per year payable by the state, plus an additional sum of five thousand dollars per annum payable by the City of New Orleans, and make changes in the court's jurisdiction to enable it to try persons charged with contributing to the neglect or delinquency of children under the age of seventeen years. Act 592 proposes to amend article VII, section 53(A), to make certain changes in the jurisdiction of the Family Court for East Baton Rouge Parish. Most of the changes are designed to cure defects in the original language of this provision which created the court in 1954, including most significantly the express grant of jurisdiction to issue the writ of habeas corpus which the court was held not to possess in the case of Kelly v. Kelly.7 Acts 606 and 607 are both concerned with the City Court of the City of Shreveport. Act 606 proposes to amend article VII, section 51, to extend the court's criminal jurisdiction to those

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portions of Bossier Parish which are or may hereafter be taken into the city limits of Shreveport. Act 607 proposes to amend article VII, section 36, to provide that the appellate jurisdiction of the District Court for the First Judicial District in criminal matters shall embrace all such cases decided by the City Court for the City of Shreveport.

ELECTIONS AND VOTING

Two rather controversial propositions affecting voting registration are submitted for the voter's consideration by Acts 601 and 616.

Act 601, proposing an amendment to article VIII, section 1(a), would reduce the period of residence in the state required for voting from two years to one. Proponents of the measure point to the substantial influx of new citizens into the state as a consequence of our recent industrial development and argue that it is unfair to compel these new citizens to be denied the franchise for two years — a period which has now been reduced to one year by the vast majority of states. Opponents of the measure, on the other hand, contend that until a person has resided in the state for a period of two years he does not have a sufficient appreciation of local problems and candidates to enable him to cast an informed ballot. The provisions of section 31 of Title 18 of the Louisiana Revised Statutes of 1950 prescribing the qualifications of registrants track the language of the present constitutional provision and impose a requirement of residence in the state for two years. The Legislature passed a bill amending this section to conform to the new proposal, conditioned for its effectiveness upon the amendment's passage, but the bill was vetoed by the Governor. If the proposed amendment is adopted the statute will be in conflict therewith, and presumably would be held invalid.

Act 616 proposes to change the procedure (established in article VIII, section 5) by which a person who is denied the right to register may seek redress. The provision, as presently written, permits him to apply directly to the district court of the parish in which the refusal occurs. The new proposal would require him to exhaust a series of administrative appeals prior to seeking judicial relief as follows: to the parish board of supervisors of elections (within five days) which must reach a de-
cision in the case within thirty days; to the police jury for the parish within five days following the decision of the board of supervisors, with the requirement that the police jury reach a decision within sixty days. It is also provided that in the event the board of supervisors overrules the registrar, the latter shall have the same right of appeal to the police jury that is otherwise afforded the applicant for registration. The adoption of this amendment would obviously deter and delay the registration process, and might be used to prevent substantial segments of the electorate from participating in elections.

VETERANS

Reference has already been made to the proposition that would extend the veterans' homestead exemption for an additional five years. In addition, two of the amendment proposals would provide bonuses for veterans or their dependents, one relating to veterans of the Korean conflict, and the other, to veterans of World War I, Spanish American War, Boxer Rebellion, and the Philippine Insurrection. Act 614 amends the Korean veterans bonus set forth in article XVIII, section 12, to make two million dollars of the revenue from the beer tax (Act 8 of 1948) available to complete the payment of the bonus.

Act 620 adds a new paragraph to article XVIII, section 12, pursuant to which sixteen million dollars of beer tax revenue would be made available to the veterans of the other military engagements mentioned and their relatives to be paid in accordance with a graduated table based upon degree of affinity and period of the veteran's service.

MINERAL RIGHTS

Act 603 proposes an alteration of the language of article IV, section 2, relative to the alienation of the mineral interests in land held by the state. At present, such rights may be released by the state only as an incident to the redemption of land by a taxpayer after it has been sold to or adjudicated to the state for nonpayment of taxes. The new provision (which is retroactive) would permit the owner under a state patent to participate in the royalties to the extent of one half thereof after he had held the land subject to tax assessment for a period of ten years. The other half of the mineral interest is to be retained by the state.
EDUCATION

Act 2 of the Extraordinary Session proposes an amendment to article XII, section 14. This section, as presently constituted, designates the sources of funds to be apportioned for the support of public schools and consists of five numbered paragraphs. The amendment proposes to add a new paragraph to be designated "Sixth," creating a new fund into which will be paid up to thirty-five percent of any surplus in the general revenue fund at the end of each fiscal year, to be used to pay the increases in salaries for teachers and other public school employees, authorized by Act 3 of 1956, if funds in sufficient amounts for this purpose are not otherwise appropriated by the Legislature.

MUNICIPALITIES AND LOCAL POLITICAL SUBDIVISIONS

Sixteen of the amendments relate to matters of local government, and are, therefore, primarily of importance only to the locality affected. Six of these proposals relate to ports, harbors and waterways, two involve retirement systems for local political subdivisions, and the remainder cover a wide range of subjects.

Turning first to the amendments relating to ports, harbors and waterways, and taking them in their numerical order, Act 587 proposes to enlarge the powers which the Legislature may confer upon ports, harbors, and terminal districts as set forth in article XIV, section 31. This section as presently written empowers the Legislature to authorize such districts, inter alia, to acquire land "necessary for the business of such districts," and to lease their lands and buildings for terms not to exceed twenty-five years. The amendment proposes to expand the purposes for which property may be acquired to include "land . . . necessary for the . . . industrial development of such districts," and to increase the maximum period of permissible leasing to ninety-nine years.

The Greater Baton Rouge Port Commission, created by article VI, section 29, would be substantially expanded under the provisions of Act 597. This measure proposes to increase the authorized bonded indebtedness of the Commission from fifteen to fifty million dollars, and to extend the Commission's jurisdiction to include the Parish of Ascension. A new commissioner would be appointed by the Governor from a panel of three names submitted by the Police Jury of Ascension Parish to represent it
in the management of the affairs of the Commission, thereby increasing the membership of the Commission from nine to ten.

Act 600 proposes the creation of the Greater Ouachita Port Commission to consist of seven persons appointed by the Governor (one without restriction, one from a panel of three names submitted by the governing authority of Ouachita Parish, two from a panel of six names submitted by the governing authority of the Town of West Monroe, and three from a panel of nine names submitted by the governing authority of the City of Monroe). A ceiling on bonded indebtedness of fifteen million is imposed. Otherwise, the Commission is patterned substantially along the same lines as the Baton Rouge Port Commission.

Act 605 proposes to authorize the Legislature to create the Overton-Red River Waterway and Port District, for the purpose of establishing and maintaining (in cooperation with the Federal Government) a navigable waterway system from the confluence of the Red, Old, and Atchafalaya rivers northwestward in the Red River Valley to the state boundary. The district is to consist of the area contained in the Parishes of Avoyelles, Rapides, Natchitoches, Red River, DeSoto, Bossier, and Caddo, and all the property within the district may be subjected to an annual levy to be imposed by the governing authority of the district, of one and one-half mills for capital outlay (which may be bonded), plus an additional levy of one-half mill for maintenance. The district is to have the power of eminent domain to acquire the property necessary for the accomplishment of its purpose, and may establish ports and port sub-districts within the district. In a companion act, to become effective if the proposal is adopted, discussed *infra,* the Legislature made detailed provisions for the creation and operation of the district.

Act 630, like Act 587 already discussed above, proposes to amend article XIV, section 31, relative to the powers of port, harbor and terminal districts. It will be recalled that Act 587 expands the powers of these agencies to acquire land for industrial development, and increases the permissible period for which they may lease their properties from 25 to 99 years. Act 630 contains comparable provisions, but in slightly different terms. In the case of leases, for example, the latter act authorizes leases

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8. Act 190, discussed at page 168 *infra.*
for terms of 40 years at fixed rentals, and for terms up to 99 years if they contain a provision for readjustment of the rental at the end of 40 years of the term. Act 630 also authorizes the districts to issue bonds payable out of lease and rental income, such bonds to be for terms not in excess of 40 years, bearing interest not to exceed five percent.

The final measure in the group concerned with ports and waterways is Act 632 which proposes to authorize the Legislature to provide for the creation of the Sabine River Authority. In a separate legislative act (Act 432) discussed infra, the Legislature made provision for the creation of this agency, conditioned upon the adoption of this amendment.

Two of the amendments relate to public employees' retirement systems. Act 602 proposes to amend the provisions of article XIV, section 12, authorizing the levying of an annual tax up to one and one-half mills for the maintenance of a municipal employees' retirement system. This provision is presently applicable only in the case of cities having a population of not less than 15,000 nor more than 20,000, and the amendment proposes to increase the latter figure to 30,000. The effect of the amendment will be to preserve Bogalusa's retirement system despite its population increase.

Act 627 proposes to confer power upon the Legislature to provide for retirement systems for public employees other than policemen and firemen, whether employed by a political subdivision of the state, the state itself, or jointly by such subdivisions and the state. The new proposal would become article XVIII, section 9.1. Inasmuch as the Legislature has already exercised such authority in several instances, this measure would seem to have been proposed in a spirit of ratifying or validating such legislation and placing beyond question the power of such governmental agencies to administer such systems.

Act 608 proposes to amend article XIV, section 15.1, relating to municipal fire and police civil service systems. Various changes are proposed. In the first place, the provision is made applicable to cities with a population between 13,000 and 500,000, rather than 13,000 and 250,000 as presently provided. The leave of absence provision would be liberalized to authorize such leaves

on behalf of "an employee who is an officer or official representative of an employee association," for periods up to ninety days in one year, to attend to the affairs of the association. Not more than three employees in a department would be entitled to take such leave at the same time. The state examiner and deputy examiner both continue to be appointed from lists of successful applicants who have taken examinations, and appointments to fill these positions must be made from among the three ranking highest on the list. However, the Governor, rather than the Civil Service Commission, makes the appointments to these positions in case of vacancies.

Act 625 proposes to amend article XIV, section 14(m), which presently empowers the Legislature to authorize municipalities or other political subdivisions to issue bonds for the purpose of acquiring revenue producing public utilities. The effect of the amendment would be to enable the Legislature to authorize individual municipalities and local political subdivisions to delegate such authority to any commission or agency that may be formed by a combination of municipalities, political subdivisions, or both, to accomplish the same ends. The obvious purpose of such authorization would be to permit the undertaking of larger projects, and the pooling of resources which would presumably assure more favorable marketing of bonds.

When the 1952 Legislature proposed the adoption of article XIV, section 14(b.2), subsequently adopted by the electors, authorizing the issuance of bonds by municipalities, wards, or parishes in order to encourage the location of industrial enterprises, it imposed certain duties and powers upon the "governing authorities" of these political subdivisions. In the case of parishes and municipalities, little difficulty was encountered in determining what body was indicated by the term "governing authority," but in the case of wards, some doubt arose. In order to resolve the doubt, Act 633 proposes that the section now be amended to provide that in the parishes governed by police juries, the police jury shall be regarded as the governing body of a ward.

The remaining five amendments in the field of local government affect particular, designated communities. East Baton Rouge Parish would be affected by two of these measures. Act 621 would authorize its governing authority to zone the territory in the parish lying outside the City of Baton Rouge, and Act 626
would authorize the Parish Parks and Recreation Commission to increase its annual levy, subject to approval of the voters, from one to two mills. (Article XIV, sections 29 (b) and 3 (b)).

Jefferson Parish will be given another opportunity to provide itself with a form of government more suited to needs of the community and wishes of its citizens by Act 631. In 1952 the Legislature by simple act provided for a commission form of government for the community, subject to a referendum vote of its citizens. The plan was overwhelmingly ratified by the people and they subsequently elected a slate of officials to staff their newly created government who were to take office in June 1956. In the interim, the constitutionality of the new plan was challenged by litigation and the Supreme Court declared the 1952 act invalid under the provisions of article XIV, section 3.10 The Legislature, in session at the time of the decision, was asked to re-enact the commission plan in the form of a constitutional amendment, but the proposal failed of passage. Act 631 is a compromise which simply proposes the creation of a charter commission consisting of fifteen members (appointed by various governing bodies and interested groups within the parish) to prepare a form of government within nine months after the adoption of the amendment to be submitted to the electors at an election held not less than thirty nor more than sixty days thereafter. In the interim — and in the event the commission fails to produce a plan, for the indefinite future — the parish continues to be governed by a police jury.

Act 594 proposes to authorize the City of New Orleans to establish liens against the owners of abutting property when it undertakes to perform subsurface drainage improvement work independently of the paving or resurfacing of streets, and to issue local drainage improvement certificates secured by these liens. The power to issue such certificates will presumably enable the city to finance drainage programs, separately undertaken, on the same basis as street improvement programs. In the latter instance the city already has the power to assess abutting property, and to issue bonds against anticipated tax revenues.

The last of the local government measures is Act 634 proposing the creation of Iatt Lake Water Conservation District,

10. Ladnier v. Mollere, 89 So.2d 301 (La. 1956).
consisting of portions of the Parishes of Grant and Rapides. The purpose of the district is to provide an adequate fresh water supply for industrial and other uses in the two parishes by conserving existing lakes, streams and other water bodies, and by constructing new ditches, channels, dams, and levees. The district would be governed by a five-man board of commissioners, consisting of two to be appointed by each of the police juries of the affected parishes, plus a fifth to be appointed by the Governor. The district would finance its acquisition of property and operations by the issuance of bonds against which it would pledge the anticipated revenue resulting from the sale of water, and would have no taxing power.