The 1958 Proposals to Amend the Louisiana Constitution

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voters, their deputies and employees where any of their official acts have been drawn into question by federal authority. This advice and assistance is to be rendered without cost to the registrar.

This measure, like Act 260 discussed above, makes no mention of segregation or race, but the subject matter, background, and sponsorship by the Joint Legislative Committee on Segregation makes it abundantly plain that it is a segregation act. Congressional adoption of the Civil Rights Act of 1957 and recent activities directed toward the enforcement of that legislation suggest that registrars will be confronted with questions of interpretation arising under the federal act and may face other legal problems calling for adequate legal counsel. Questions of state law may also be involved. For these reasons it seems quite desirable to direct the attorney general's office to provide the legal service required in such cases. Common representation through his office will avoid confusion and conflicting interpretations which would almost inevitably attend representation by individual or local counsel, serving in isolated cases without the benefit of experience derived from working with the problem on a state-wide basis. There is no question concerning the right of the legislature to impose this additional task upon the attorney general.

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William C. Havard*

The 1958 Louisiana Legislature was slightly more restrained than its recent predecessors in terms of the number of amendments that it proposed for consideration by the voters in the congressional general election. Even so, the reduction was slight, since thirty proposed amendments were passed by the required two-thirds vote of those elected to each house of the legislature.

34. La. Const. art. VII, § 56.
†This article was prepared prior to the General Election of November 4, 1958, at which time the proposed constitutional amendments herein discussed were voted on. All of the proposed amendments were approved, except Acts 535, 536, 539, 543, 546, 547, 556, 560, 562, and 563.
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Although this represents the smallest number of proposals to be voted on in a congressional general election since 1950, it hardly affords an opportunity for rejoicing over the prospect of a shift away from the practice of government by constitutional referendum. Since the adoption of the Constitution in 1921, 432 proposals have been voted on (through 1956) and 356 of these have been approved by the electorate. This represents an average of twenty-four proposals and nineteen adoptions every two years. The thirty proposals advanced in 1958 thus managed to keep substantially ahead of the average number for the preceding years. These thirty amendments, if adopted, would add in excess of 15,000 words (conservatively estimated) to the present Constitution, not counting that portion of the amendments which would be substituted for existing materials. These additions alone are more than double the length of the United States Constitution and they would be attached to an instrument already measured in terms of hundreds of thousands of words.

If the number and length of the proposed amendments are sufficient to cause concern, the subject-matter of these proposals gives greater need for pause. A considerable majority of the proposals deserve statutory rather than constitutional status, and several of them were obviously confided to the Constitution because the complexity of that document makes it unsafe to leave them out, even though they are designed to carry out rather trivial governmental objectives. In view of the overwhelming electoral defeat of the 1956 proposal for a constitutional convention,1 and the political complications revealed by that vote as barriers to general constitutional revision, one can only predict that this “protective” type of amendment is almost certain to increase in number and complexity in each succeeding biennium.

This article will discuss only twenty-nine of the thirty proposals, since the significant revision of the appellate courts proposed by Act 561 will be treated separately in a later issue of this Review. For organizational purposes these amendments have been placed in categories which are somewhat arbitrary and certainly not exhaustive as to types. These categories include the legislature, state agencies, the courts, veterans' affairs, education, miscellaneous provisions of a general nature, and political subdivisions and local authorities. They are discussed in the order listed.

1. La. Acts 1956, No. 166. The call was defeated by a vote of nearly six to one at the November 6, 1956, congressional general election.
THE LEGISLATURE

Two of the 1958 proposed amendments relate to the legislature. Two of the 1958 proposed amendments relate to the legislature.² Act 535 proposes an amendment to Article III, Section 2, which provides for the apportionment of the House of Representatives. The proposal would raise the maximum membership of the House from 101 to 102 members. An enabling act was passed in conjunction with this proposal which assigns the additional member to East Baton Rouge Parish,³ thereby increasing that parish's representation to three members if the amendment carries. The proposal does not otherwise alter the language of the Constitution with respect to legislative apportionment; in particular, it retains the stipulation that the legislature shall (beginning in 1960) carry out a decennial reapportionment of the House of Representatives after each federal census. As yet no reapportionment has been effected under the terms of this mandate. The fact that four other proposals to raise the House membership for the benefit of particular constituencies were introduced in the 1958 session⁴ may indicate the beginnings of a precedent for securing some measure of reapportionment by regularly amending the Constitution to add representation for specific parishes.⁵ Despite the fact that the ratio of population to representation presently is higher in East Baton Rouge than in any other constituency, this procedure hardly qualifies as an appropriate method of solving the serious problem of securing an equitable apportionment in terms of the constitutional requirement that such representation "shall be equal and uniform, and shall be based upon population."⁶

The second amendment affecting the legislature is of a procedural nature. Act 552 would add a provision (designated as Section 8.1) to Article III, which would prohibit the legislature from amending bills or proposals to amend the Constitution if such an amendment would have the effect of substituting a new subject matter or making a change not germane to the proposal

⁴. House Bills 293, 380, 885, and Senate Bill 53.
⁵. The only change that has taken place in the apportionment of the House under the present Constitution was the addition of a second member for Jefferson Parish in 1954. La. Acts 1954, No. 505, amending LA. R.S. 24:35 (1950). Since the Constitution allowed for a maximum of 101 members and only 100 seats had previously been apportioned, no constitutional amendment was necessary in that case.
⁶. LA. CONST. art. III, § 2.
as introduced originally. An exception is specifically included to cover substitute bills or joint resolutions, provided these measures are assigned new numbers.

STATE AGENCIES

Three proposals affect certain of the major officials or departments in the executive branch. Act 559 would amend Article V, Section 1, in order to change the title of the state "Auditor" to "Comptroller." Since the reinstitution of the office of Supervisor of Public Funds and the reassignment of the major portion of the state's post-audit responsibilities to the Supervisor's office,7 the use of the term "Comptroller" is probably the more accurate designation of an official who acts as the chief accounting officer of the state rather than as an auditor.

Act 560 proposes to amend Section 18 of Article V by adding the Commissioner of Insurance to the list of constitutional elective officers. Passage of the amendment would give constitutional ratification to the 1956 action of the legislature severing the exercise of the functions of Commissioner of Insurance from the office of the Secretary of State and providing that the Commissioner be appointed by the Governor with the consent of the senate until 1960 and thenceforth be elected for a four-year term at the state general election.8

A new charity hospital, to be located in Baton Rouge, is proposed by Act 536, which would add Section 13 to Article XVIII. This hospital would be administered by the State Department of Hospitals and its construction would be financed by bonds (up to $3,950,000) issued against the uncommitted portion of the three-fourths mill ad valorem tax authorized by Section 3 of Article XVIII. Somewhat redundantly, the proposal also stipulates that the Board of Liquidation of State Debt may issue additional bonds not in excess of $30,000,000, payable from the same source, "if so authorized by subsequent Constitutional Amendment." (Emphasis added.) An amendment, identical in effect, was proposed by the legislature in 1956, but was defeated

8. La. Acts 1956, No. 200, amending LA. R.S. 22:2, 5 (1950). The statutory action was taken pursuant to the LA. CONST. art. V, § 20, which provides that the Insurance Department "shall be attached to the office of the Secretary of State until otherwise provided by law."
by a narrow margin at the November 6, 1956, general election.9

THE COURTS

Three amendments propose changes in the structure, organization, and jurisdiction of the courts.10 As was indicated at the outset, the amendment reorganizing the appellate courts, and revising their jurisdiction is given coverage elsewhere in this issue11 and will not be discussed here.

Act 563 proposes an amendment which would add a paragraph to Section 8 of Article VII, relative to the re-retirement of retired judges of courts of record who are assigned to active duty. Under the proposal, any such retired judge assigned to active duty under the terms of this section who serves continuously for two years or more or attains the age of seventy may retire from his assigned duty and receive additional retirement pay in an amount necessary to equal two-thirds of the salary of the position to which he has been assigned. The additional increment of retirement pay is to come from the source from which the judge was compensated while assigned, and the interim between the original retirement and the assignment to active duty is to count as continuous service.

An additional district judgeship for the Twenty-second Judicial District (Washington and St. Tammany Parishes) would be created by Act 564, which proposes to add Section 31.1 to Article VII. This district would be divided into divisions “A” and “B” solely for the purpose of having the presiding judge of Division “A” be a resident and qualified elector in Washington Parish and the presiding judge of Division “B” a resident and qualified elector in St. Tammany Parish.

VETERANS' AFFAIRS

Two of the proposed amendments—Acts 538 and 553 relate to veterans. The first of these would add a paragraph to Article X, Section 4(b) extending the $5000 veteran’s homestead exemption from five to ten years for those who are veterans of both World War II and the Korean Conflict, with the date of expira-

11. See page 72 supra.
tion set for 1969. Act 553, proposing an amendment to paragraphs 9 and 19 of Article XVIII, Section 11, provides for the extension from December 31, 1956, to January 1, 1960, of the final date for filing claims for the bonus payable to veterans of the Korean Conflict.

**Education**

Three of the 1958 proposed amendments relate to various aspects of public education, including higher education. Act 543 proposes to amend Article XII, Section 18 to require that, henceforward, all revenues derived from the sale of sixteenth section lands granted by Congress for public school purposes or from the sale of timber, mineral leases, contracts, and royalties on these lands shall be paid directly to the appropriate parish school board for placement in its general fund or for use in the acquisition, construction, and equipment of school buildings and facilities. These revenues have previously been deposited in the state treasury and credited to the parish, with the state paying four percent interest on these funds until such time as the school board directs by resolution that the treasurer return them for use as capital expenditures. Under the terms of the amendment, all funds hitherto deposited in this manner would continue to be handled the same way, and only revenues accruing after its adoption would be paid directly to the parish school boards.

The popular approval of Act 544 would add a new section—number 25—to Article XII. This proposal stipulates that the metropolitan commuter’s college (for New Orleans) “shall be and remain at all times an integral part of Louisiana State University and Agricultural and Mechanical College under the direction, control, supervision, and management” of the Board of Supervisors of that institution. In view of the habituation to government by constitutional amendment characterizing state activities, the commitment of this provision to the Constitution would seem to be of dubious value as a protection against the future proliferation of independent institutions of higher education.

Act 557 proposes to amend the much-amended Section 1 of Article XII,12 which makes general provision for public educa-

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12. This section was amended twice in 1954 (La. Acts 1954, Nos. 752 and 747, both adopted on November 2, 1954) so the Constitution now carries two versions of the provision.
tion in the state. This proposed amendment is part of the package program of segregation legislation passed in the 1958 session. In 1956, the federal district court invalidated that version of Article XII, Section 1, which sought, as an exercise of the state police power, to maintain separate schools for white and colored. The proposal under consideration deletes all reference to the operation of segregated schools, but adds a provision authorizing the legislature to provide financial assistance to students attending private non-sectarian schools. The proposal thus would remove the direct mandate on segregated schools which the federal courts invalidated and replace it with a constitutional sanction for the enabling act authorizing the closing of public schools threatened with racial integration.

MISCELLANEOUS PROVISIONS OF A GENERAL NATURE

Three of the 1958 proposals, although general in nature, would make changes in widely varying aspects of the Constitution. A strengthening of the position of adopted children relative to heirship is contemplated by Act 548, which would amend Section 16 of Article IV. Under this amendment children lawfully adopted would become forced heirs to the same extent as if born to the adopter. Such children would also retain their rights as heirs of their blood relatives, although the rights of inheritance of blood relatives from these children would be terminated by the adoption. Under the present version of this section the adopted child is the forced heir of the adoptive parent to the exclusion of the father and mother of the adoptive parent, and the adopted party does not acquire any right of succession to the property of the relatives of the party adopting.

Act 555 proposes to amend Article IV, Section 12, by adding a provision authorizing the state or any of its agencies, political corporations, or subdivisions to maintain, in cooperation with or on behalf of the United States or any of its agencies, rights of way, servitudes, or easements acquired in connection with the construction or improvement of artificial or natural waterways and highways and railroad bridges spanning these waterways.

13. La. Acts 1958, Nos. 187, 256, 257, 258, 259, 482, 483. Other segregation measures also were passed (see pages 114-128 supra), which were separate from those introduced in the interim committee’s package proposals.


Act 562 proposes an amendment to paragraph 3 of Section 4 of Article X which would have the effect of exempting all agricultural implements and other machinery and equipment used exclusively for agricultural purposes from ad valorem taxation. Under the existing provision agricultural implements and farm improvements to the value of $500 and one wagon or cart are exempt. An identical proposal was defeated by the voters in the November 1956 general election.16

POLITICAL SUBDIVISIONS AND LOCAL AUTHORITIES

As usual, a sizeable number of proposed amendments are concerned with local matters. Nearly half of the amendments proposed in the 1958 session belong in this category. Some four or five of these are of statewide concern, four others relate to New Orleans and five affect other specific cities or parishes. Topically, two of the amendments provide for the creation of additional types of special districts, two are concerned with zoning, three with port commissions, four with water and sewerage problems, one with the general problem of local indebtedness, one with homes for older persons, and one with civil service. Not more than two or three of them involve matters that are, strictly speaking, of sufficient breadth to be regarded as essentially constitutional. The great majority naturally have fiscal consequences; the practice of imposing rigid constitutional controls on expenditures for specific purposes and the related practice of dedicating practically all tax resources to specific functions have contributed to a serious inflexibility in the capacity of the parishes and cities to provide solutions to local problems through local action. This situation is naturally and inevitably contributory to the multiplication of local political subdivisions and administrative units, many of which require constitutional action. The result is a circular reaction of cause and effect: constitutional rigidity demands effectuation of new or additional programs by way of the amending process, and excessive amendment further ossifies governmental structure and practice.

Act 547 would amend Article XIV, Section 14(f) to raise the maximum limits of bonded indebtedness of political subdivisions of the state (municipalities, parishes, and special districts given this status in various subsections of Article XIV, Section 14)

16. La. Acts 1956, No. 596. The vote on the proposal was 153,680 for the amendment and 227,506 against it, Report of the Secretary of State, supra note 9.
from ten percent to fifteen percent of the taxable value of the
property within the subdivision. The present provision allowing parishwide school districts and special school districts to exceed this maximum and incur bonded debts amounting to twenty-five percent of the taxable value in the district for specified purposes is not affected by the amendment.

If approved by the voters, Act 554 would amend Article XIV, Section 15(u), which establishes the conditions under which cities (and parishes governed jointly with one or more cities) may be brought under the provisions of the Constitution with respect to the state and city civil service systems. The present constitutional provision permits cities or city-parishes between 50,000 and 250,000 (the system is mandatory for cities over 250,000) to elect by majority vote of their qualified electors to adopt the system. The proposed amendment would reduce the minimum population required of a city or city-parish desiring to come under the plan from 50,000 to 10,000.

Act 556 proposes to add a new section (11.1) to Article XIV which would authorize any parish, ward, or municipality to levy an additional ad valorem tax of three mills for a period of not more than ten years in order to provide homes for "senior" citizens. The tax could be levied only after approval of a majority of taxpayers both in number and assessed valuation, and such homes would be restricted to persons over sixty years of age who had been residents of the parish in which the tax was levied for two years preceding their eligibility for admission to the home.

Acts 539 and 549 provide for the creation of certain types of special or "single purpose" districts. The former supplements Article XIV, Section 14(b.2), which authorizes the parishes, wards, and municipalities to incur debt and issue negotiable bonds to acquire plant sites and facilities in order to encourage industrial enterprises. Although the present constitutional provision generally authorizes the creation of industrial districts and confers the same authority on them as is applicable to wards, municipalities, and parishes undertaking industrial encouragement programs, it does not spell out the method of organization of such districts. The proposed amendment remedies this defect (if it is a defect) by providing that the governing authority creating such a district shall also be the governing authority of
the district, and that its treasurer shall be the treasurer of the city or parish in which it is located. The proposed amendment further provides for the government of industrial districts comprising areas included in more than one parish, and makes minor changes in the provisions governing the sale of industrial district bonds.

Act 549 proposes the addition of Section 11.1 to Article VI, which would permit the creation by parish ordinance of mosquito abatement districts. These districts would be governed by a board of five commissioners appointed by the parish governing authority for rotating three-year terms. Mosquito abatement districts would constitute political subdivisions of the state for purposes of levying special taxes under the provisions of Article X, Section 10, of the Constitution; and they would be allowed to adopt ordinances to further the purposes for which they were created, and to provide penalties for violation within the limits fixed for the violation of parish ordinances. The methods used by the districts for abatement and control of mosquitoes and other anthropods would be subject to the approval of the State Health Officer. The placement of this proposal in Article VI would seem to add to the complexities of the constitutional problem resulting from the dispersion of related material throughout the document. Although one of the objects of mosquito abatement districts certainly would be the protection of health, the substance of the proposed amendment is such that it seems to fit more appropriately into Article XIV, which deals with political subdivisions, including special districts.

Two of the amendments with a purely local effect are concerned with parish-wide zoning in West Baton Rouge and Calcasieu Parishes, respectively. Act 537, affecting West Baton Rouge, follows the language of constitutional authorizations for parish zoning previously conferred on Jefferson and East Baton Rouge. The parish is permitted to zone its territory, to create residential, commercial, and industrial districts, and to prohibit the establishment of places of business in residential districts. Act 558, relating to Calcasieu, adds a qualifying clause to this general authorization making it inapplicable to dwellings and

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17. Article VI deals with state administrative agencies. Section 11 is concerned with the organization of public health administration.
19. LA. CONST. art. XIV, § 29(a), (b).
commercial buildings in subdivisions approved for mortgage loan purposes by the Federal Housing Administration and the Veterans Administration and exempting buildings built under the inspection and supervision of these agencies from inspections and fees established under the authority of the zoning authorization. Both of these acts purport to enter the Constitution as Article XIV, Section 29(c), but this is not the first time that the problem of duplication of numerical designation has occurred, and with the increased use of decimals and parenthetical letters to accommodate new material, it is unlikely to be the last.

Two other amendments of a specifically local nature deal with port commissions (an additional amendment affecting the New Orleans Port Commission is discussed below). Act 551, proposing to add Section 33 to Article VI, would create the Lake Providence Port Commission, with port facility powers embracing the entire parish of East Carroll. The commission would consist of seven members, who would serve for six-year rotating terms. Four of the commissioners would be appointed by the governing authority of the parish, two by the governing authority of the town of Lake Providence and one by the Governor. The commission would have powers similar to other local port authorities hitherto authorized by the Constitution with regard to the regulation of commerce and traffic within the port area, the provision of facilities, the levying of fees, and entering into agreements with transportation companies with respect to transportation and storage of goods. Upon approval of a majority of property taxpayers (in number and amount) the commission could levy an annual two and one-half mill ad valorem tax. It could also, with the approval of the Board of Liquidation of the State Debt, incur debt to the extent of $15,000,000, with the bonds constituting, first, a general obligation of the commission and secondarily being guaranteed by a pledge of the full faith and credit of East Carroll Parish and the state. The conditions under which the commission’s bonds may be issued are fully prescribed, including a sixty-day prescriptive period for challenging the legality of the resolution authorizing the issue and the manner of advertising and handling bids. The commission is also authorized to mortgage its properties, receive assistance from other governments, and expropriate property in accordance with the state’s expropriation laws.

Act 546 proposes to add Section 32 to Article VI, which would
allow the Greater Krotz Springs Port Commission (created by statute in 1956)\textsuperscript{20} the power to incur indebtedness in the same amount and under the same conditions as are applicable to the Lake Providence Commission. The effect of the latter amendment would be simply to lend constitutional sanction to the statutory authorization to issue bonds extended to the Greater Krotz Springs Port Commission by R.S. 1404-1405.

Act 550 proposes to add a supplemental method of organizing and financing sewerage improvements in East Baton Rouge Parish. The proposal would add Subsection 3(d) to Section 3 of Article XIV. Upon the adoption of this addition the governing authority of the parish could, after appropriate notice and hearing, consolidate one or more sewerage districts within the parish, and take into such consolidated districts territory not previously organized for sewerage purposes. The proposal specifically protects the contract rights of holders of existing bonds and continues the rights to reimbursement in lieu of homestead taxes by stipulating the continuity of the objectives of underlying sewerage districts created prior to April 1, 1956.\textsuperscript{21} The act provides that the governing authority may, without an election, authorize the issuance of refunding bonds (which may, in the case of revenue bonds, include additional indebtedness for improvements). The governing authority could also pledge the full faith and credit of the parish or the district to the payment of obligations of the districts regardless of whether these are issued against service charges, special assessments, or the proceeds of the ad valorem tax. All unexempt property within the political subdivision would be subject to taxes necessary for this purpose if the full faith and credit of the unit is pledged. If the obligations are primarily payable out of service charges, special assessments, or revenues other than ad valorem taxes, the ten percent debt limit established by Article XIV, 14(f) is waived.\textsuperscript{22} Municipal corporations within the parish would similarly be allowed to pledge their full faith and credit for such debts and, regardless of any other limitations, any municipal corporation or sewerage district in the parish could, under the amendment, issue bonds for sewer-


\textsuperscript{21} See La. R.S. 39:253 (Supp. 1956) curtailing payments in lieu of homestead taxes from the property tax relief fund to certain types of special districts created after the cut-off date.

\textsuperscript{22} See Act 547, proposing to raise this limit to fifteen percent.
age purposes which, together with outstanding bonded indebtedness for the purpose, do not exceed fifteen per cent of the assessed value of taxable property in the political subdivision. Special assessments to cover the entire cost of improvements are authorized, with the reservation that their manner of computation be uniform. Without going into the further details of a long and complex amendment, it might be said that Act 550 would extend to the governing authority of East Baton Rouge Parish sufficient and immediate authority to cope with any sewerage problem confronting it, without the hindrance of property taxpayer elections or the possibility of delay for lack of fiscal resources.

Three of the four proposed constitutional amendments pertaining to New Orleans concern the Sewerage and Water Board of that city. Two of these proposals are interdependent; Acts 540 and 542 each stipulates that it shall not go into effect unless the other is approved by the electors at the general election in November 1958. Act 540, which would add Sections 23.4 through 23.12 to Article XIV, permits the Sewerage and Water Board by three-fourths vote, and with the approval by three-fourths vote of the Board of Liquidation, City Debt, and a two-thirds vote of the City Council, to issue up to $12,000,000 in bonds, payable out of the avails of the special two mill tax authorized by Section 23.1 of Article XIV. Revenues from the bonds would be used solely for sewerage, water, and drainage purposes or to refund bonds issued under the terms of the amendment. The usual protective features of such forms of indebtedness are provided, including the establishment of a maximum interest rate; prescriptive period for challenging the validity of the issuance; method of advertising, accepting bids and selling the bonds; the term of maturity of the bonds; and their exemption from taxation. Bonds sold under this amendment would be exempt from the computations of the debt of the City of New Orleans for all debt limitation purposes.

Act 542 (adding Sections 23.13 through 23.27 to Article XIV) proposes an amendment which would provide a method for the Sewerage and Water Board to carry out a drainage program for the largely undrained (and in many cases, unimproved) areas of the city, including the areas east of the Inner Harbor Naviga-
tion Canal and North of Florida Avenue and certain defined portions of Algiers. This undrained territory would be identified as Area A and could be subdivided into smaller drainage areas, consistent with the unity prescribed by sound engineering principles, for carrying out specific drainage programs. The amendment would require that a drainage plan be established by the Board before undertaking the project. The amendment further provides for the establishment of a special board of appraisers, divorced from personal interest in the project, to determine the value of such improvements to each piece of property in the area. The Board would be permitted to underwrite up to twenty percent of the costs of the total improvements and the remaining costs would be assessed against the owners. Provision is made for notification and hearing on the projected plan and, upon determination by the Board to proceed, for the filing of a petition with the Civil District Court of the Parish of Orleans for confirmation of the action. Further provision is made for court notification of property owners, hearing, and appeal. Upon receipt of the court's decree, the Board would be empowered to let contracts under conditions fixed in the amendment and to fix the assessment, which would be subject to liens on the land on a parity with those for ad valorem taxes levied by the city. The expected proceeds of these assessments could be funded into revenue certificates under the conditions spelled out by the proposal and such certificates would be exempt from computations of the city debt for all debt limitation purposes. The tie-in between this proposal and the amendment contemplated by Act 540 results from the fact that if the revenue from bonds proposed for issue under Act 540 should be used for drainage purposes such as those provided for in Act 542, the proceeds from the assessments of benefits and property liens under the latter would be applied against the retirement of the bonds.

The third amendment affecting the New Orleans Sewerage and Water Board would amend Section 23.3 of Article XIV so as to allow the Board to fund part of the revenues from its water rates into water revenue bonds. Such action would be taken by a resolution adopted by a vote of three-fourths of the Board and approved by a two-thirds vote of the City Council and a

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24. When the rate-fixing power of the Board was added to the Constitution (art. XIV, § 23.3) in 1954 (La. Acts 1954, No. 767), it was specified that “this amendment does not authorize the issuance of any bonds and authority therefor shall be by subsequent amendment to the Constitution.”
three-fourths vote of the Board of Liquidation, City Debt. If the amount required to service existing and contemplated bonds exceeded $1,750,000 in a given year and necessitated a rise in water rates, a property taxpayer election would be necessary for approval of proposed issues. Conditions for the issuance of the bonds are provided, including terms, proportion of debt to collections from water rates, maximum interest, manner of advertisement and sale, and the procedures for assuring the fixing of water rates sufficient to provide for their retirement. Such bonds would be payable solely from water revenue and would not be general obligations of the city.

Act 545 proposes an amendment adding Section 16.5 to Article VI. This amendment would have the effect of increasing the debt limit of the Board of Commissioners of the Port of New Orleans from $35,000,000 to $95,000,000 for all purposes, exclusive of the bonds for the construction of the Inner Harbor Navigation Canal.

CONCLUSION

Some of the problems arising from what this commentator can only regard as the abuse of the amending process were indicated during the discussion of specific proposed amendments. Others are a result of the prolixity and complicated nature of the amendments considered collectively. The usual objections may be raised against the effects that the adoption of these amendments would have on the draftsmanship of the Constitution: that document would be further enlarged, its contents more diffused and difficult to interpret, its contradictions and inconsistencies increased, and the line between basic and statutory law further obscured.

Nor are the effects confined to the document itself; the processes and functions of government are conditioned by the use to which the amending device is put. One or two points which are pertinent to the 1958 proposals will be sufficient for purposes of illustration. The necessity for reliance on legislative action and a statewide referendum rather than on local initiative within the

25. LA. CONST. art. VI, § 16. In this case the Constitution is being amended to add a new section when the amendment has the effect of supplanting a paragraph in an existing section, thereby adding to the number of inconsistencies in the structure of the Constitution. In addition, the title of the amendment states that the amendment is to Section 16, whereas other amendments specify that decimalized designations constitute separate sections rather than subsections of an article.
framework of general law for carrying out activities of a purely local nature has had painfully obvious consequences. It is difficult, for example, to provide any satisfactory explanation as to why some amendments of a local effect carry and others fail, but the failure of such an amendment may make it virtually impossible for a particular municipality, parish, or special district to utilize the police power in some area of vital importance to it. Given the structure of the present document, however, it is increasingly necessary to amend the Constitution specifically and in detail prior to undertaking any additional local functions. By the same token, the protective features of the Constitution in such matters as debt limitation may for all practical purposes be nullified, not by general assent of the voters, but by the cumulative effect of special exemptions in the form of a series of amendments.

Finally, the larger questions of the conditions precedent to responsible government itself are raised by reflection on the amending process in Louisiana. It has been argued that the system works, after all; and even though the tidy mind of the academician may be upset by the pragmatic approach to the resolution of problems which the great use made of amendments represents, the harm to the political system is slight. An extension of this argument has even been made to the effect that frequent amendment is very desirable because almost every decision of any consequence is referred to the electorate, thereby enhancing the spirit and practice of democracy in the state. It is further suggested that in the absence of understanding or interest on the part of the voter, he will vote on amendments according to the endorsement or condemnation of them by one or the other of the state political factions. Such arguments ignore the facts that American democracy is representative rather than plebiscitarian, that a constitutional system depends on a workable allocation of controls and functions between electorate and representative, and that indications of excessive partisanship in the content of a constitution may bear close comparison with the mark of Cain. The current fiscal difficulties of the state afford an excellent illustration of the peril of ignoring these points. The Louisiana Legislature is, so far as this writer knows, the only one in the United States which has bartered away its taxing power by proposing a limiting amendment26 whose momentary

26. LA. CONST. art. X, § 1a (added by La. Acts 1955, No. 140, adopted November 6, 1956) prohibits the levying of additional state taxes and the increase
appeal to the voters could scarcely have been gainsaid by any argument whatsoever. However, the pre-history of the two-thirds rule on taxes affords as much evidence of the difficulties arising from the haphazard proposal of amendments, unrestrained partisanship, and failure to clarify authority and responsibility as the rule itself. The habit of dedicating every state revenue to a specific purpose (often by amendment) was ultimately responsible for a financial inflexibility (and a departmental autonomy) that was certain to create an imbalance in the allocation of state funds in the face of needs for new services. At the same time, the dedication of revenues by amendment relieved the legislature of the difficult (and politically hazardous) responsibility of apportioning these funds according to demonstrated need. Technical decisions relative to the levying of taxes, the allocation of tax resources, and indebtedness were passed on to the voters, whose decisions frequently were made with only limited, and not overly responsible, guidance from their elected representatives. Even if elaborately partisan and of limited use as a solution to the very real problem of financial responsibility, the two-thirds rule was perhaps a logical development from the conditions preceding its passage. Governmental excesses, however, have seldom been effectively curtailed by an almost total prescription on governmental activity.

The Louisiana experience with government by amendment for nearly forty years strongly suggests the need for application of Judah P. Benjamin’s warning in the Louisiana Constitutional Convention of 1845 that “a constitution is not a piece of patchwork, for people to tinker on.”

of existing state taxes except upon approval by two-thirds vote of the elected members of each House of the Legislature.