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## Louisiana Constitution, Article VII: Significant Developments

David Conroy\*

Article VII of the Louisiana Constitution addresses state and local revenue and finance. It initially comprised about one-sixth of the entire constitution. Now, after more than fifty amendments, it encompasses approximately one-third. The initial provisions of Article VII clearly reflected a desire of the delegates to the 1973 Constitutional Convention and of the people who approved the constitution that there should be specific limits on the powers of the state government to tax and spend. Subsequent amendments to Article VII have reinforced that basic distrust, particularly by restricting the legislature's power to use specific revenue sources. The result, Louisiana's current constitution, is a complex document that will increasingly require amendment because its restraints on government have become more detailed.<sup>1</sup> This article will highlight some of the more significant developments concerning Article VII since its adoption.

Even the broad initial statement of Article VII—the power of taxation is vested in the legislature—was modified in 1998 expressly to provide that the power to tax may not be exercised by the courts.<sup>2</sup> The requirement of a two-thirds vote of the legislature to increase taxes<sup>3</sup> was extended to include fees in 1995.<sup>4</sup>

A 1991 amendment mandated that there be a single sales tax collector in each parish.<sup>5</sup> Article VII originally prohibited any political subdivision from imposing a motor vehicle license fee,<sup>6</sup> a tax on motor fuel,<sup>7</sup> and an income tax.<sup>8</sup> The prohibition was expanded to include the inheritance tax in 1990.<sup>9</sup> The courts

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1. It would unreasonably burden this publication to reproduce the fifty pages of text that now comprise Article VII. In any event, for an excellent detailed examination of Article VII, see Lee Hargrave, *The Louisiana State Constitution—A Reference Guide* 115 (1991). See also David Conroy, *Louisiana Constitution of 1974: Taxation*, 21 Loy. L. Rev. 97 (1975).

2. 1997 La. Acts No. 1493 (amending La. Const. art. VII, § 1).

3. La. Const. art. VII, § 2.

4. 1995 La. Acts No. 1324 (adding La. Const. art. VII, § 2.1).

5. 1991 La. Acts No. 1072 (adding La. Const. art. VII, § 3(B)).

6. La. Const. art. VII, § 5.

7. La. Const. art. VII, § 4.

8. *Id.*

9. 1990 La. Acts No. 1100 (amending La. Const. art. VII, § 4(c)).

subsequently interpreted the prohibition against income tax to include a prohibition of a tax on earnings.<sup>10</sup>

The three dollar annual automobile license tag fee, regarded as sacrosanct by the 1973 Constitutional Convention, was replaced in 1989 by a one dollar fee for each \$1,000 of actual value (with a ten dollar minimum).<sup>11</sup> Efforts to ease the constitutional restrictions on the state income tax—limiting the tax to the rates that existed in 1973 and requiring an allowance of deduction of federal income taxes—have failed twice with voters.<sup>12</sup>

A series of amendments significantly tightened the budget process. They limited bonded indebtedness,<sup>13</sup> constrained increases in expenditures,<sup>14</sup> clarified balanced budget requirements,<sup>15</sup> mandated current elimination of a previous year deficit,<sup>16</sup> and required immediate action to eliminate projected current year deficit.<sup>17</sup> These amendments also restricted the use of non-recurring revenues in the operating budget,<sup>18</sup> placed the revenue estimating conference in the constitution to insure the effectiveness of this prohibition and the reliability of revenue projections,<sup>19</sup> and required feasibility studies for capital improvements.<sup>20</sup>

The legislature has also shown that innovative means can keep the state running under desperate circumstances. Despite then existing restraints on debt financing, revenue anticipation notes were held not to be debt.<sup>21</sup> The legislature also circumvented taxing restrictions when it created a statewide special district and allowed the special district to issue bonds and impose a sales tax.<sup>22</sup>

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10. *City of New Orleans v. Scramuzza*, 507 So. 2d 215 (La. 1987). It is not clear whether a value added tax that gives no deductions for wages paid and thus effectively taxes wages would similarly be regarded as an income tax.

11. 1989 La. Acts No. 28 (amending La. Const. art. VII, § 5).

12. 1989 La. Acts, 1st Ex. Sess., No. 1; 2000 La. Acts No. 48; see Thomas H. Ferrell, 1 *Louisiana Voters Reject Tax Reform Amendment*, State Const. Commentaries and Notes 27 (1989); Thomas H. Ferrell, 3 *The Louisiana Constitutional Convention of 1992*, State Const. Commentaries and Notes 9 (1992).

13. 1993 La. Acts Nos. 1043, 1044 (amending La. Const. art. VII to add § 6(B)(2) and § 6(F)).

14. 1990 La. Acts No. 1096; 1993 La. Acts No. 1045.

15. 1990 La. Acts No. 1096.

16. *Id.*

17. *Id.*

18. 1993 La. Acts No. 1042; 1997 La. Acts No. 1501 (amending La. Const. art. VII, § 10).

19. 1990 La. Acts No. 1096; 1993 La. Acts No. 1042.

20. 1993 La. Acts No. 1045.

21. *State Bond Comm'n v. All Taxpayers*, 510 So. 2d 662 (La. 1987); *State Bond Comm'n v. All Taxpayers*, 525 So. 2d 521 (La. 1988). See also Lee Hargrave, *Limits on Borrowing and Donations in the Louisiana Constitution of 1975*, 61 La. L. Rev. 137 (2001).

22. *Board of Dirs. of the La. Recovery Dist. vs. All Taxpayers, Prop. Owners*,

Article VII, Section 9 requires that all state money be deposited in the state treasury and credited to the Bond Security and Redemption Fund. In each fiscal year, an amount from this fund must first be allocated to pay all of the obligations secured by the full faith and credit of the state. Initially, there were no other constitutionally dedicated funds besides the Bond Security and Redemption Fund. Now, there are many more—the Louisiana Wildlife and Fisheries Fund,<sup>23</sup> the Louisiana Education Quality Trust Fund,<sup>24</sup> the Wetlands Conservation and Restoration Fund,<sup>25</sup> the Revenue Stabilization/Mineral Trust Fund,<sup>26</sup> the Higher Education Louisiana Partnership Fund,<sup>27</sup> the Mineral Revenue Audit and Settlement Fund,<sup>28</sup> the Oilfield Site Restoration Fund,<sup>29</sup> the Oil Spill Contingency Fund,<sup>30</sup> the Millennium Trust,<sup>31</sup> the Louisiana Fund,<sup>32</sup> the Millennium Leverage Fund,<sup>33</sup> the Transportation Trust Fund,<sup>34</sup> the First Use Tax Trust Fund,<sup>35</sup> the Louisiana Investment Fund for Enhancement,<sup>36</sup> and the Lottery Proceeds Fund.<sup>37</sup> A constitutional amendment, enacted by a two-thirds vote of each house of the legislature and approved by a vote of the people, created each of these funds. These newer provisions require that designated revenues be deposited into a specified fund and limit the use of the revenues, in some cases restricting the appropriations to capital gains and income earned by the fund. Some of the funds were required in order to counterbalance certain constitutional provisions that might otherwise require revenues to be expended in an unintended or undesirable fashion.<sup>38</sup> While undoubtedly well intentioned, such funds reduce the

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and Citizens of the State of La., 529 So. 2d 384 (La. 1988) (later prohibited by 1994 La. Acts No. 48 (adding art. VI, § 30.1)). *See also* Hargrave, *supra* note 21, at 137.

23. La. Const. art. VII, § 10-A.

24. La. Const. art. VII, § 10.1.

25. La. Const. art. VII, § 10.2.

26. La. Const. art. VII, § 10.3.

27. La. Const. art. VII, § 10.4.

28. La. Const. art. VIII, § 10.5.

29. La. Const. art. VII, § 10.6.

30. La. Const. art. VII, § 10.7.

31. La. Const. art. VII, § 10.8. A copy of this section follows as Appendix A to this article simply to illustrate the complexities and detail of these funds and the resultant likelihood of the need for amendment as needs change.

32. La. Const. art. VII, § 10.9.

33. La. Const. art. VII, § 10.10.

34. La. Const. art. VII, § 27.

35. La. Const. art. VII, § 9.

36. La. Const. art. IX, § 10.

37. La. Const. art. XII, § 6.

38. For example, the limitations on the use of non-recurring funds in La. Const. art. VII, § 10(D)(2).

flexibility of the legislature as well as suggest a distrust of it to use its powers wisely.<sup>39</sup>

Section 16 establishes a prescriptive period for the collection of taxes. The period extends three years from December 31 of the year when the taxes are due and may be interrupted or suspended as provided by law. In *Succession of Ott*, the first circuit court of appeal thus held that the three year prescription was suspended by failure to include an asset in the inheritance tax return.<sup>40</sup>

Part II of Article VII addresses property taxation. The 1974 Constitution provides for property that is classified as land or residential improvements to be assessed at ten percent of fair market value and other properties to be assessed at fifteen percent. In order to conform better with then existing practices, Section 18 was amended in 1979 to assess public service properties (other than electric cooperatives) at twenty-five percent.<sup>41</sup> The United States Court of Appeals for the Fifth Circuit later held that this amendment, with respect to railroad properties involved in interstate commerce, violated the Railroad Revitalization and Regulatory Reform Act<sup>42</sup> because it assessed interstate railroad properties at a higher ratio to true market value than the ratio of assessed value of other commercial and industrial property.<sup>43</sup> Act 22 of 2000 sought to remedy the disproportionate taxation of certain public service properties in an unusual fashion. It gave tax credits to a regulated telephone company in order to give it a better competitive position with respect to its unregulated competitors. Section 1 of the act specifically set forth the legislature's findings as follows:

It is the finding of the legislature that the telecommunications industry has become increasingly competitive and that the distinctions among the providers of the various types of telecommunication services have become blurred. Further, it is the finding of the legislature that the Louisiana property tax laws now place certain telephone companies at a competitive disadvantage because their properties are classified as "public service properties" and assessed at the ratio of twenty-five percent of such properties' fair market values while their competitors' properties are classified as "other property" and assessed at the ratio of fifteen percent of such properties' fair

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39. Additional restrictions on the legislature's use of public funds is found in La. Const. art. VII, § 14. See Hargrave, *supra* note 21, at 137.

40. 768 So. 2d 259 (La. App. 1st Cir.), *writ denied*, 776 So. 2d 468 (2000).

41. 1979 La. Acts No. 799.

42. 49 U.S.C.A. §11503 (West 1997).

43. *General Am. Transp. Corp. v. Louisiana Tax Comm'n*, 680 F.2d 400 (5th Cir. 1982).

market values. Accordingly, the legislature finds that, in order to mitigate the effects of such competitive disadvantage, telephone companies whose properties are classified as "public service properties" should be entitled to a credit against their corporate income and franchise taxes in an amount equal to their ad valorem property tax attributable to the higher assessment ratio applicable to public service properties. The legislature further finds that it is in the best interests of the state and its political subdivisions that the tax revenues available to the state not be diminished by the corporate income and franchise tax credits allowed to certain telephone companies; and that an expansion of the sales and use tax base to include interstate telecommunication services is expected to provide to the state tax revenues equal to the amount of corporate income and franchise tax credits allowed to certain telephone companies. The legislature further finds that it is in the best interests of Louisiana consumers of telecommunication services that any tax savings experienced by such telephone companies be passed on to such consumers in the form of proportionate reductions in the prices of the services provided by such telephone companies.

Further tinkering with the classifications in Section 18 should be anticipated whether by constitutional amendment, legislative act, or judicial holding because of the economic realities faced by utilities in an ever more competitive environment.

Section 20 initially established a \$30,000 homestead exemption from property taxation. Based on an assessment ratio of ten percent, it exempted homes valued at \$30,000 or less from property taxes and excluded from taxation the first \$30,000 of value on all residences. Pursuant to the authorization contained in the 1974 constitution, this exemption was raised to \$50,000 by the legislature effective January 1, 1978,<sup>44</sup> and then to \$75,000 by a constitutional amendment adopted in 1980.<sup>45</sup> In 1993, the exemption was extended to apply to mobile homes.<sup>46</sup> Beginning January 1, 2000, homeowners of sixty-five years of age or older with an income of \$50,000 or less (adjusted for inflation) were also given the right to freeze the amount of their assessments to the assessment of the year the owner qualifies and received the special assessment level.<sup>47</sup>

Regular efforts have been made to both increase and decrease the homestead exemption, and such efforts can be expected to continue.

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44. 1976 La. Acts No. 387.

45. 1980 La. Acts No. 844.

46. 1993 La. Acts No. 1046.

47. 1997 La. Acts No. 1491 (adding La. Const. art. VII, § 18(G)).

The disparity in values of homes throughout the state, the revenue needs of local governments and school boards, and the imbalance in ad valorem taxes paid respectively by individuals and businesses are creating a need for an overhaul of the present system for giving tax relief to homeowners. However, the lack of consensus on a proper resolution will probably lead to a continuation of periodic patchwork amendments.

Section 23 of Article VII had the sole original purpose of insuring that the constitutional change to the assessment practices in 1974 did not result in an increase or decrease in the total taxes collected in the year of implementation. It was unrelated to the Section 18(F) requirement that property be reappraised at intervals of not more than four years. Indeed, the debates indicate that at least some delegates to the 1973 constitutional convention assumed that assessors would reassess a portion of the properties each year, with the entire parish or assessment district completed over a period of four years.<sup>48</sup> However, the practice evolved into having one quadrennial reassessment of all properties at the same time. This routine was effectively amended into the constitution when current Paragraph (B) to Section 23 was added. This new section requires the same rollback or roll up of millages to avoid an increase or decrease in taxes collected "in *the year* in which the reappraisal and valuation provisions of Section 18, Paragraph (F) of this Article are implemented."<sup>49</sup>

The extensive list in Section 21 contains other exemptions from ad valorem taxes that derived from a number of amendments.<sup>50</sup> The most notable amendment expanded the exemption for cash, stocks and bonds to all incorporeal property.<sup>51</sup> While some question whether property tax exemptions belong in the constitution, a proposal to preserve the existing exemptions, but to subject them to change by a two-thirds vote of the legislature, met such overwhelming opposition in the 1973 Constitutional Convention that it was withdrawn.<sup>52</sup> Nevertheless, the legislature effectively created a new exemption from ad valorem taxes without actually having to amend the existing exemptions in the constitution. This tax statute provided a refundable

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48. VIII Records of the Louisiana Constitutional Convention of Louisiana: Convention Transcripts at 1871-72 (Oct. 23, 1973).

49. 1980 La. Acts, 2nd Ex. Sess., No. 1 (amending La. Const. art. VII, § 23) (emphasis added).

50. 1981 La. Acts Nos. 942, 943 and 944; 1989 La. Acts No. 845; 1990 La. Acts Nos. 1101 and 1104.

51. 1996 La. Acts No. 47.

52. I Records of the Louisiana Constitutional Convention of Louisiana: Journal of Proceeding at 668 (Oct. 24, 1973); VIII Records of the Louisiana Constitutional Convention of Louisiana: Convention Transcripts at 1907-12 (Oct. 24, 1973).

state corporate income and franchise tax credit local property taxes paid by manufacturers, distributors, and retailers on inventory held.<sup>53</sup> While this effectively achieves the desirable goal of exempting inventory from property tax, it also has questionable results. The state, in essence, is subsidizing local governments from potential lost revenues (had there been a true constitutional exemption) by requiring the owner of the inventory to pay the property tax at the local level and thereafter claiming the credit at the state level.

Article VII of the National Municipal League's "Model State Constitution" pertains to public finance. It contains no mention of taxes and states:

Ideally, some authorities believe, a state constitution should be silent on matters of taxation and finance, thus giving the legislature and the governor complete freedom to develop fiscal policies to meet current and emerging requirements. Even if such a situation is not likely to materialize immediately, the *Model* should not mirror the complex and lengthy fiscal articles found in many state constitutions and which obviously are barriers to responsible government.<sup>54</sup>

While idealistic, the model constitution's approach is unlikely to find favor in Louisiana in the foreseeable future. Rather, Louisiana's constitution will likely continue to contain specific limits on the powers of the government to tax and spend. Therefore, frequent amendments to the constitution are likely to proceed continuously as the state struggles with its recurring budget crises.<sup>55</sup>

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53. 1991 La. Acts No. 153; La. R.S. 47:6006 (2001).

54. National Municipal League, *Model State Constitution* 91 (6th ed. 1963).

55. See James A. Richardson, *Louisiana Fiscal Alternatives* (1988); see also Mark T. Carleton, *Elitism Sustained, The Louisiana Constitution of 1974*, 54 *Tul. L. Rev.* 560 (1980) and for interesting background, see Ronald J. Gomez, *My Name is Ron and I'm a Recovering Legislator* (2000). Since 1974, 80 of the 156 proposed amendments to the Constitution and 51 of the 105 that passed affect Article VII. In the 2001 Regular Session of the Louisiana Legislature, five of the seven proposed constitutional amendments to be voted on in November 2002 relate to Article VII, including adjustments to constitutionally protected allocations in the event of a budget deficit (Act 1236), permitting limited investments in stocks by certain funds (Acts 1232 and 1235), establishing a Drought Protection Trust Fund (Act 1233) and requiring full funding of supplemental pay for fire protection and law enforcement officers (Act 1234).

## Appendix A

**§ 10.8. Millennium Trust**

## Section 10.8. Millennium Trust

**(A) Creation**

(1) There shall be established in the state treasury as a special permanent trust the "Millennium Trust". After allocation of money to the Bond Security and Redemption Fund as provided in Article VII, Section 9(B) of this constitution, the treasurer shall deposit in and credit to the Millennium Trust certain monies received as a result of the Master Settlement agreement, hereinafter the "Settlement Agreement", executed November 23, 1998, and approved by Consent Decree and Final Judgment entered in the case "Richard P. Ieyoub, Attorney General, ex. rel. State of Louisiana v. Philip Morris, Incorporated, et al.", bearing Number 98-6473 on the docket of the Fourteenth Judicial District for the parish of Calcasieu, state of Louisiana; and all dividend and interest income and all realized capital gains on investment of the monies in the Millennium Trust. The treasurer shall deposit in and credit to the Millennium Trust the following amounts of monies received as a result of the Settlement Agreement:

(a) Fiscal Year 2000-2001, forty-five percent of the total monies received that year.

(b) Fiscal Year 2001-2002, sixty percent of the total monies received that year.

(c) Fiscal Year 2002-2003, and each fiscal year thereafter, seventy-five percent of the total monies received that year.

(d) For Fiscal Year 2000-2001, Fiscal Year 2001-2002, and Fiscal Year 2002-2003, ten percent of the total monies received in each of those years for credit to the Education Excellence Fund which, notwithstanding the provisions of Subparagraph (C)(1) of this Section, shall be appropriated for the purposes provided in Subsubparagraph (d) of Subparagraph (3) of Paragraph (C) of this Section.

(2) The Health Excellence Fund shall be established as a special fund within the Millennium Trust. The treasurer shall credit to the Health Excellence Fund one-third of the Settlement Agreement

proceeds deposited each year into the Millennium Trust, and one-third of all investment earnings on the investment of the Millennium Trust. The treasurer shall report annually to the legislature as to the amount of Millennium Trust investment earnings credited to the Health Excellence Fund.

(3) The Education Excellence Fund shall be established as a special fund within the Millennium Trust. The treasurer shall credit to the Education Excellence Fund one-third of the Settlement Agreement proceeds deposited each year into the Millennium Trust, and one-third of all investment earnings on the investment of the Millennium Trust. The treasurer shall report annually to the legislature and the state superintendent of education as to the amount of Millennium Trust investment earnings credited to the Education Excellence Fund.

(4) The TOPS Fund shall be established as a special fund within the Millennium Trust. The treasurer shall deposit in and credit to the TOPS Fund one-third of the Settlement Agreement proceeds deposited into the Millennium Trust, and one-third of all investment earnings on the investment of the Millennium Trust. The treasurer shall report annually to the legislature as to the amount of Millennium Trust investment earnings credited to the TOPS Fund.

(5) The amount of Settlement Agreement revenues deposited in the Millennium Trust and credited to the respective funds may be increased and the amount of such revenues deposited into the Louisiana Fund may be decreased by a specific legislative instrument which receives a favorable vote of two-thirds of the elected members of each house of the legislature.

(B) **Investment.** Monies credited to the Millennium Trust pursuant to Paragraph (A) of this Section shall be invested by the treasurer with the same authority and subject to the same restrictions as the Louisiana Education Quality Trust Fund. However, the portion of monies in the Millennium Trust which may be invested in stock may be increased to no more than fifty percent by a specific legislative instrument which receives a favorable vote of two-thirds of the elected members of each house of the legislature. The legislature shall provide for procedures for the investment of such monies by law. The treasurer may contract, subject to the approval of the State Bond Commission, for the management of such investments and, if a contract is entered into, amounts necessary to pay the costs of the contract shall be appropriated from the Millennium Trust.

(C) **Appropriations.** (1) Appropriations from the Health Excellence Fund, Education Excellence Fund, and TOPS Fund shall be limited to an annual amount not to exceed the estimated aggregate annual earnings from interest, dividends, and realized capital gains on investment of the trust as recognized by the Revenue Estimating Conference. Amounts determined to be available for appropriation shall be those aggregate investment earnings which are in excess of an inflation factor as determined by the Revenue Estimating Conference. The amount of realized capital gains on investment which may be included in the aggregate earnings available for appropriation in any year shall not exceed the aggregate of earnings from interest and dividends for that year.

(2) Appropriations from the Health Excellence Fund shall be restricted to the following purposes:

(a) Initiatives to ensure the optimal development of Louisiana's children through the provision of appropriate health care, including children's health insurance, services provided by school-based health clinics, rural health clinics, and primary care clinics, and early childhood interventions programs targeting children from birth through age four including programs to reduce infant mortality.

(b) Initiatives to benefit the citizens of Louisiana with respect to health care through pursuit of innovation in advanced health care sciences, and the provision of comprehensive chronic disease management services.

(c) Each appropriation from the Health Excellence Fund shall include performance expectations to ensure accountability in the expenditure of such monies.

(3) Appropriations from the Education Excellence Fund shall be limited as follows:

(a) Fifteen percent of monies available for appropriation in any fiscal year from the Education Excellence Fund shall be appropriated to the state superintendent of education for distribution on behalf of all children attending private elementary and secondary schools that have been approved by the State Board of Elementary and Secondary Education, both academically and as required for such school to receive money from the state.

(b) Appropriations shall be made each year to the Louisiana School for the Deaf, the Louisiana School for the Visually Impaired,

the Louisiana Special Education Center in Alexandria, the Louisiana School for Math, Science and the Arts, the New Orleans Center for Creative Arts and the Louis Armstrong High School for the Arts, after such schools are operational, to provide for a payment to each school of seventy-five thousand dollars plus an allocation for each pupil equal to the average statewide per pupil amount provided each city, parish, and local school system pursuant to Subsubparagraphs (d) and (e) of this Subparagraph.

(c) Appropriations may be made for independent public schools which have been approved by the State Board of Elementary and Secondary Education or any city, parish, or other local school system and for alternative schools and programs which are authorized and approved by the State Board of Elementary and Secondary Education but are not subject to the jurisdiction and management of any city, parish, or local school system, to provide for an allocation for each pupil, which shall be the average statewide per pupil amount provided in each city, parish, or local school system pursuant to Subsubparagraphs (d) and (e) of this Subparagraph.

(d) Beginning Fiscal Year 2000-2001 and for each fiscal year through the end of Fiscal Year 2006-2007, of the monies available for appropriation after providing for the purposes enumerated in Subparagraphs (a), (b), and (c) of this Subparagraph, the following appropriations shall be made to the state superintendent of education for distribution as follows:

(i) Thirty percent of the funds available to be divided equally among each city, parish, and other local school system.

(ii) Seventy percent of the funds available to be divided among each city, parish, and other local school system in amounts which are proportionate to each school's share of the total state share of the Minimum Foundation Program appropriation as contained in the most recent Minimum Foundation Program budget letter approved by the State Board of Elementary and Secondary Education.

(e) Beginning Fiscal Year 2007-2008 and for each fiscal year thereafter, of the monies available for appropriation after providing for the purposes enumerated in Subsubparagraphs (a), (b), and (c) of this Subparagraph, one hundred percent of the monies available for appropriation in any fiscal year shall be appropriated for each city, parish, and other local school system on a pro rata basis which is based on the ratio of the student population of that school or

school system to that of the total state student population as contained in the most recent Minimum Foundation Program.

(f) Monies appropriated pursuant to this Subparagraph shall be restricted to expenditure for pre-kindergarten through twelfth grade instructional enhancement for students, including early childhood education programs focused on enhancing the preparation of at-risk children for school, remedial instruction, and assistance to children who fail to achieve the required scores on any tests passage of which are required pursuant to state law or rule for advancement to a succeeding grade or other educational programs approved by the legislature. Expenditures for maintenance or renovation of buildings, capital improvements, and increases in employee salaries are prohibited. The state superintendent of education shall be responsible for allocating all money due private schools.

(g) Each recipient school or school system shall annually prepare and submit to the State Department of Education, hereinafter the "department", a prioritized plan for expenditure of funds it expects to receive in the coming year from the Education Excellence Fund. The plan shall include performance expectations to ensure accountability in the expenditure of such monies. The department shall review such plans for compliance with the requirements of this Subparagraph and to assure that the expenditure plans will support excellence in educational practice. No funds may be distributed to any school or school system until its plan has received both legislative and departmental approval as provided by law.

(h) No amount appropriated as required in this Paragraph shall displace, replace, or supplant appropriations from the general fund for elementary and secondary education, including implementing the Minimum Foundation Program. This Subsubparagraph shall mean that no appropriation for any fiscal year from the Education Excellence Fund shall be made for any purpose for which a general fund appropriation was made in the previous year unless the total appropriations for the fiscal year from the state general fund for such purpose exceed general fund appropriations of the previous year. Nor shall any money allocated to a city or parish school board pursuant to this Paragraph displace, replace, or supplant locally generated revenue, which means that no allocation to any city or parish school board from the investment earnings attributable to the Education Excellence Fund shall be expended for any purpose for which a local revenue source was expended for that purpose for the previous year unless the total of the local revenue amount expended that fiscal year exceeds the total of such local revenue amounts for the previous fiscal

year.

(i) The treasurer shall maintain within the state treasury a record of the amounts appropriated and credited for each entity through appropriations authorized in this Subparagraph and which remain in the state treasury. Notwithstanding any other provisions of this constitution to the contrary, such amounts, and investment earnings attributable to such amounts, shall remain to the credit of each recipient entity at the close of each fiscal year.

(4) Appropriations from the TOPS Fund shall be restricted to support of state programs for financial assistance for students attending Louisiana institutions of postsecondary education.

*Added by Acts 1999, No. 1392, §1, approved Oct. 23, 1999, eff. July 1, 2000.*

