Louisiana Legislation of 1946: Criminal Law and Procedure

Dale E. Bennett
theory being that the courts must be independent from the other branches of the government. But whether the constitutional requirement likewise limits the power of the legislature to increase the compensation of judges during their terms of office is a matter subject to inquiry and possible judicial interpretation.

The adjudicated cases by the Louisiana courts are conspicuously silent on this point, the question apparently never having been raised despite the fact that salaries of judges have been increased from time to time (to be effective) during their terms of office.  

Criminal Law and Procedure

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Amendments to Criminal Code—Placing Combustibles

The Louisiana Criminal Code of 1942 abandoned the traditional method of dividing and subdividing crimes with a special criminal statute for each of the various ways in which a crime of a particular type might be committed. Instead, it provided broad, carefully drafted, general definitions of the basic offenses. For example, the definition of theft in Article 67 eliminated previous technical distinctions and replaced approximately one hundred special stealing crimes whose scope and particular limitations had been a source of much litigation and confusion. A number of bills introduced in the 1946 legislature, which would have reverted to the old practice of having a special statute for each particular way in which a crime might be committed, were rejected as being out of keeping with the spirit and purpose of the Criminal Code. One amendment to the Criminal Code was adopted. Louisiana Act 305, proposed by the Criminal Law Section of the State Bar Association and approved by the Louisiana State Law Institute, re-amended Article 54 of the Criminal Code.

Orleans was held unconstitutional on the grounds the statute attempted to direct payment out of the judicial expense fund. No mention, however, was made of the constitutional provision above cited. It would seem, however, that any change made in the salary, whether favorable or unfavorable, would “affect” such salary as well as the judge receiving such salary.

17. Cf. La. Act 3 of 1928 (E. S.) and La. Act 24 of 1936 [Dart's Stats. (1939) § 1429] raising the salaries of the justices of the Supreme Court from $8,000.00 to $10,000.00 and $12,000.00 respectively; La. Act 2 of 1928 (E. S.) [Dart's Stats. (1939) § 1454] raising salaries of the judges of courts of appeal from $6,000.00 to $8,000.00 and La. Act 83 of 1938 [Dart's Stats. (1939) § 1516.1] increasing the salaries of district judges from $5,000.00 to $6,000.00.

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1. Louisiana Act 43 of 1942.
(placing combustibles) so as to eliminate a difficulty created by a poorly considered 1944 amendment. The 1944 amendment had apparently been proposed and adopted as a result of a misunderstanding as to the nature and purpose of that article. Article 54 was originally included in the chapter dealing with the arson crimes in order to plug up a loophole as to the requirements of attempted arson. It provided that the collection and preparation of combustibles for the purpose of later setting fire to them was sufficient to constitute an "attempt" to commit arson. It did not purport to create a special crime of "placing combustibles," but rather sought to show that such activity would constitute attempted arson. Pursuant to the general attempt article (Article 27), the offender who was guilty of attempted arson would be punished in accordance with the type of arson committed—the penalty being fixed at one-half of that for the consummated offense. The 1944 amendment reverted to the old practice of treating "placing combustibles" as a separate offense, regardless of the type of arson contemplated; and it was defective in two important particulars:

(1) It punished any placing of combustibles, regardless of the circumstances. Thus it would include the case of a man burning his own barn to get rid of rats. In this unrestricted form the statute probably failed to adequately state a crime.

(2) It failed to distinguish between the seriousness of the arson crime ultimately contemplated, providing the same penalty for the person who places combustibles to set fire to a crowded theatre (aggravated arson) as for the person who contemplates the lesser offense of setting fire to his own property to collect the insurance (arson with intent to defraud).

Act 305 of 1946 amended Article 54 of the Criminal Code so as to eliminate the patent deficiencies created by the 1944 statute. At the same time, it is more explicit than the original Article 54 in indicating that it merely purports to define an attempt as punished under the general attempt article read in connection with the appropriate arson articles of the Criminal Code.

Miscellaneous Criminal Statutes

Two minor criminal statutes aimed at particular evils which were not within the general purview of the Criminal Code should be briefly noted.

2. Louisiana Act 111 of 1944.
Act 50 makes the scalping of admission tickets to athletic contests, theaters, and other public amusements a misdemeanor. This provision, if enforced, will do much to protect the gullible public in the post-war inflationary era. Act 151 makes it a misdemeanor to administer drugs or any other artificial stimulants to race horses, or for any jockey to conspire or conduct himself in such a manner as to throw a race. Here again the legislature is making an effort to protect the sporting public from those who would manipulate public athletic exhibits—in this case horse racing—so as to secure an unfair pecuniary advantage at the expense and ruination of the sport involved.

Amendments to Code of Criminal Procedure

Act 261, sponsored by the Criminal Law Section of the Louisiana State Bar Association, amended Article 498 of the Code of Criminal Procedure which governs the necessity and scope of the bill of exceptions. The reservation of a bill of exceptions serves a multiple function: it again calls the trial judge's attention to the ruling complained of and gives him an opportunity to correct his error; it lays the ground work for a motion for a new trial in case of conviction; and it presents the issues in such a form as to enable the appellate court to pass on them in case a motion for a new trial, based thereon, is denied by the lower court. The generally accepted rule that a bill of exceptions must be taken to every adverse ruling of the trial judge, does not, by the very nature of things, apply to the overruling of a motion for a new trial based upon alleged trial irregularities to which bills of exceptions have already been reserved. The trial judge has, by the motion for a new trial, been given an opportunity to correct his errors; also, the alleged erroneous rulings are already a part of the record by appropriate bills of exceptions. In the recent case of State v. Houck, the supreme court appropriately held that the overruling of a motion for a new trial, based upon matters which were already in the record by bills of exceptions, was appealable without defense counsel resorting to the superfluous step of taking a bill of exceptions to that ruling. Were it not for the fact that a long list of previous supreme court decisions have apparently taken the view that a bill of exceptions is required, the law would have been well settled by the Houck case. However, the jurisprudence was still in a very uncertain state and an attorney whose motion for a new trial had been

3. 199 La. 478, 6 So. (2d) 553 (1942).
overruled was met with the practical consideration that he must take no chances on the confused nature of the law. He must, therefore, out of abundant caution, reserve a bill of exceptions to the overruling of his motion for a new trial. The reservation of such a bill entailed a certain amount of labor, and the practice, if continued over a long period of time, might have become so accepted that eventually the courts would refuse to recognize a departure therefrom. As a practical solution to the problem, Act 261 amends Article 498 of the Code of Criminal Procedure so as to codify the rule of the *Houck* case and make it clear that a bill of exceptions need not be reserved to the overruling of a motion for a new trial “based upon bills of exceptions reserved during the trial.”

Act 260, sponsored by the Criminal Law Section of the Louisiana State Bar Association, amended Article 85 of the Code of Criminal Procedure so that it would conform with a 1936 amendment to Article I, Section 12, of the Louisiana Constitution. This amendment had liberalized the provision for bail pending appeal from a conviction in felony cases. The original constitutional provision, as did Article 85 of the Code of Criminal Procedure, prohibited bail pending appeal, except where a sentence of less than three years had been imposed. This provision was altered in 1936 so as to permit bail in any case where the sentence was less than five years. The amended Article 85 now conforms to this more liberal provision. Actually, the constitutional provision has always been controlling and the amendment to Article 85 merely eliminates any confusion which might arise from the nonconformity of that provision.

Most Louisiana lawyers are familiar with the much-publicized case of Willie Francis, Negro murderer, who, according to the arguments of ingenious counsel, had been accorded “a pardon by Act of God,” when the portable electric chair failed to function. Counsel also urged that any further efforts to execute the sentence would constitute “cruel and unusual punishment.” The arguments of Willie’s attorneys were promptly rejected by the Louisiana Supreme Court and by the Pardon Board. The United States Supreme Court granted a temporary stay of execution until it could pass upon the beclouded legal and sentimental

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4. See Comment (1945) *Louisiana Law Review* 453, discussing the necessity for a bill of exceptions to the overruling of a motion for a new trial. This student comment by Gordon L. Richey served as the basis for the drafting of Act 261.

5. Louisiana Act 189 of 1936.
issues raised by defense counsel. In order that such a situation may not again arise, Act 149 amends Article 570 of the Code of Criminal Procedure so as to require that the operator of the electric chair shall be "a competent electrician."

Act 80 is a "salary raiser" which increases the salaries of the process servers in Orleans Parish. It also increases the funds available for the salaries, expenses and allowances of the jury commissioners in that parish.

**Education**

*In General*

*Acts 168, 297, 307, and 376 of 1946.* These statutes amend various sections of the Board of Education Act.\(^1\) Formerly, of the eleven members composing the board, three were appointed by the governor, and eight were elected at large from the present congressional districts, for terms of eight years each.\(^2\) Act 307 of 1946 provides for the election of all the members, three from the districts corresponding to the present public service commission districts, and eight from the congressional districts. The terms of the outgoing members are extended, however, until their successors have been elected.\(^3\)

The Superintendent of Education is now authorized to set up appropriate divisions within the department and to select and employ the necessary personnel, subject however to the approval of the board which has been given the power to either confirm or veto any appointments made by the superintendent. A simple majority of the members of the board is sufficient for this action.\(^4\) Formerly, the superintendent enjoyed this power independently of the board.

Formerly, the teachers' tenure section of the act was by its terms restricted and covered only employees of the parish school systems, no provision being made for the inclusion of employees of city school boards.\(^5\) Act 297 of 1946 corrects this omission and makes the tenure provisions applicable to the employees of both city and parish school boards.

Act 376 of 1946 merely empowers parish school boards to

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1. La. Act 100 of 1922, as amended [Dart's Stats. (1939) § 2220 et seq.].
2. La. Act 100 of 1922, § 1 [Dart's Stats. (1939) § 2220].
3. This act is not to become effective until the proposed constitutional amendment (La. Act 392 of 1946), providing for the reorganization of the board, has been ratified.
5. La. Act 100 of 1922, § 48 [Dart's Stats. (1939) § 2267].
adopt resolutions authorizing the various parish superintendents to use check-signing machines in signing payroll checks, and, incidentally, authorizes the different depositaries of funds to pay checks signed in this manner.

_Act 162 of 1946._ Act 52 of 1918,⁶ which has been expressly repealed, was at the same time virtually re-enacted by this statute whereby the state accepts the benefits provided by the Congress of the United States in the promotion of agriculture, trade and industry, and designates the state treasurer as the custodian of the moneys to be received from the federal government. The authority to administer and expend these funds, which was formerly vested on the board of education and on representatives of the state federation of labor, is now exclusively conferred on the board.

_Act 38 of 1946._ A special educational committee of eight members of the legislature to be appointed by the Governor has been created by this act. The stated purpose of this committee is to make a study and survey of the needs and necessity for improvement in all the state public schools, colleges and universities. The committee is vested with authority to conduct hearings, to administer oaths and to compel attendance of witnesses and the production of books and records under subpoena. Under the general appropriation act, twenty thousand dollars was voted for the expenses thereof.

Four other brief acts affecting general education policy passed in the 1946 session are not of sufficient interest to the legal profession to warrant special comment here.⁷

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⁶ Dart's Stats. (1939) § 2323 et seq.
⁷ Act 33 of 1946 merely changes the name of Louisiana Negro Normal and Industrial School to "Grambling College of Louisiana."

Act 65 of 1946 prohibits the driving of school buses by persons under eighteen years of age and makes it a misdemeanor for anyone to hire for driving, or to drive a school bus by a person under the prescribed age, punishable by fine or imprisonment.

In 1944, the Department of Education was authorized to establish and maintain special classes for the education of physically handicapped children between the ages of five and twenty-one years. La. Act 163 of 1944 [Dart's Stats. (Supp. 1946) § 2348.01]. Act 77 of 1946 provides, in addition, for the establishment of special classes of elementary school level for physically handicapped persons between the ages of twenty-one and thirty-five years of age.

After declaring the policy of the state to be the promotion of health among the school children of the state, the legislature _recommends_ (Act 155 of 1946) that officials of the public and private schools furnish milk with the free lunches provided for school children.
Considerable sums were appropriated by the legislature to the educational program of the state. Besides an increase of nearly two million dollars made in the general appropriation act for each year of the biennium various other special appropriations were voted. The sum of $3,146,882.00 was made available by Act 148 exclusively for the purpose of raising the salaries of teachers in the public schools whose pay was less than $3,600.00 per annum. One hundred thousand dollars was made available to the board of education for the vocational rehabilitation of persons disabled in industry; four hundred thousand dollars for the "further development of vocational agriculture, industrial and homemaking education" of veterans; a half million dollars was appropriated for the construction of veterans' housing facilities on the campuses of various state colleges; $50,000.00 for each year of the biennium was set aside to provide educational opportunities in schools and colleges located outside the state for the specialized, professional and graduate education of negro students; $344,870.00 was voted for construction and improvements at the Baton Rouge Trade School, and $37,500.00 for "on the job training" of veterans.

Teachers' Retirement and Leaves of Absence

Act 44 of 1946. Act 83 of 1936 provided for the retirement of teachers at age sixty, and at age fifty-five after thirty years of service. This provision has been amended by providing, in addition, for retirement after thirty-five years of continued service regardless of age, and by adding a proviso for the retirement of teachers-separated from active service "against their will" who are unable to secure employment elsewhere as teachers, provided however, they have met the age requirement. Also, the employee contributions to the teachers retirement fund have

8. The various schedules in the general appropriation act (La. Act 66 of 1946) show a total increase of $1,853,118.00.
13. La. Act 175 of 1946. This was a re-appropriation of funds previously appropriated which would have elapsed on June 30, 1946. The remaining appropriations voted by this act and totaling $4,582,050.00 for construction of buildings in other state colleges were vetoed by the governor without comment.
15. This act became a law by limitation.
16. La. Act 83 of 1936, § 5 [Dart's Stats. (1939) § 2404.5].
been increased from four to five per cent, except that no deductions are to be made on that portion of any salary in excess of six thousand dollars per annum.

Act 198 of 1946. Act 228 of 1944 provided for the allocation, out of the public school fund, of sixty thousand dollars annually to be paid by the state treasurer into the teachers retirement fund, to be used in providing old age assistance to public school teachers not entitled to or not eligible for retirement under the system, and to provide supplementary retirement benefits to teachers receiving in the aggregate, less than seven hundred dollars in retirement benefits. The 1946 statute increases the funds to be allocated to the retirement system to ninety thousand dollars and teachers retiring on or after July 1, 1946, are made eligible for supplementary benefits if the aggregate benefits to which they would otherwise be entitled are less than nine hundred dollars per annum.

Act 235 of 1946. The statute regulating sabbatical leaves of public school teachers has been amended to provide that absence on sick or emergency leave will not interrupt the length of active service required to qualify under the provisions of the act for such leaves.

Scholarships

Act 23 of 1946. This act provides for the free education in the colleges and universities of the state of children between the ages of sixteen and twenty-one years, of war veterans who were in active service between December 7, 1941, and June 30, 1946. Although the beneficial character of this measure cannot be doubted, the statute is intrinsically bad in that the body of the act is broader than its title. Whereas the body is sufficiently broad to include the children, within the prescribed age limits, of veterans who served within the stated dates, the title restricts the operation of the statute to the children of veterans who were killed in action or died from other causes as a result of service in the armed forces. Since the provisions are not separable, it is hoped the matter will be brought to the attention of the legislature for correction at an early date.

18. La. Act 319 of 1940, § 1 [Dart's Stats. (Supp. 1946) §2386.3].
Act 380 of 1946. Under the provisions of Act 287 of 1936\(^1\) Louisiana State University was required to provide scholarships to each member of the legislature for two students to be selected by each of them, except for study in the schools of medicine and music. Act 380 of 1946 broadens the former statute by requiring all state supported colleges and universities to provide these scholarships. Since no exceptions are made, it is evident the scholarships are good for any branch of study in any of the different schools.

**Elections**

**In General**

Act 123 of 1946. An appropriation of $62,500.00 was voted by this act to cover one-half of the purchase price of voting machines for use in the Fourth Ward of Caddo Parish. The act, however, is not to be effective until the use of voting machines has been approved by the electorate of the Parish.

Act 262 of 1946. This act provides that, in cities of more than three hundred thousand inhabitants, an independent candidate for any office (except that of a member of the Orleans Parish School Board) who has not been previously nominated by a recognized political party in a primary election and who wishes to become a candidate at a general election, must pay five thousand dollars into the office of the Secretary of State to be used by him to defray the expenses of holding the election.

**Registration of Voters**

Acts 247, 266, and 267 of 1946. Various sections of the Registration Law of 1940\(^1\) were amended by these acts. Act 247 is designed to exempt inmates of the United States Marine Hospital at Carville from the provisions in the statute prohibiting inmates of charitable institutions from registering and voting. In connection with this act, the following must be noted: (1) It is presently in conflict with the constitutional provision that prohibits the registration of inmates of charitable institutions;\(^2\) (2) Act 388 of 1946, which is a proposed constitutional amendment to be submitted to the electorate in November, is also designed to exempt the inmates of Carville from the prohibition presently ex-
isting; (3) neither the proposed amendment, nor the statute “amending” the registration statute contain any indication that it was intended that the act was to become effective upon adoption of the constitutional amendment, or that the proposed amendment will validate the companion legislation. It follows, therefore, that although Article XXI, Section 2, of the Constitution of 1921 authorizes the legislature to enact legislation to become effective upon adoption of a proposed constitutional amendment, nevertheless the jurisprudence to the effect that such legislation is invalid unless that intention is clearly expressed in the statute, or unless the amendment itself expressly provides it is to have retrospective effect, does not appear to have ever been overruled. Consequently, it necessarily follows that Act 247 of 1946 will be inoperative and that the provisions in the present statute will have remained unchanged. On the other hand, however, if the proposed constitutional amendment is adopted, it and not the statute will govern, and consequently, in order to have the statutory provisions conform to the new provisions of the constitution, another amendment will technically be necessary.

Another change in the registration act was accomplished by Act 266 of 1946 under which the registrar of votes is no longer required to establish a registration office at or near the polling places, but may do so at his discretion, except in the parishes of Orleans, East Baton Rouge and De Soto.

Act 267 of 1946 merely extends the 1941 registration, which had been previously extended until 1946, until December 31, 1948. Any elector, therefore who has registered since January 1st, 1941, will be eligible to vote without the necessity of further registration until 1949.

Primary Election Law

Acts 221, 231, 243, 351, and 366 of 1946. Different sections of the Primary Election Statute of 1940 were amended by these acts. Under Section 89 of the original statute, if a person was convicted of any violations of that law, he was ineligible, for four

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4. La. Act 45 of 1940, Art. III, § 3 [Dart's Stats. (Supp. 1946) § 2615.24] provided: “In all parishes (parish of Orleans excepted) the registrar of voters, ... shall ... establish his office for at least one day, at or near each polling place ...”; by the 1946 amendment the word “shall” was changed to “may.”

5. La. Act 46 of 1940 [Dart's Stats. (Supp. 1946) § 2682.5 et seq.].
years thereafter, for employment by the state or any political subdivision thereof. Act 221 of 1946 has re-enacted the section with all its penalty provisions except the ineligibility for employment clause, so that conviction under the statute is no longer a bar to subsequent state employment.

Parish executive committee members were required to meet within fifteen days after their election for the purpose of organizing and electing their own officers. As amended, the statute now provides that this meeting be held not less than forty-five nor more than fifty days after their election.

The date for the meeting of the central committees for the purpose of calling primary elections of candidates to the United States Congress and candidates to the state judiciary whenever they are to be elected at congressional elections has been changed from the first Tuesday in July to the third Tuesday in May, preceding the primary election. The date for the election, however, remains unchanged as the second Tuesday in September following the meeting.

Committees of political parties authorized to order primary elections for the nomination of municipal or ward officers were required to meet one hundred and eleven days prior to the date fixed for the election for the purpose of ordering the election. This meeting is now to take place at any time within a period not more than one hundred and twenty-six nor less than one hundred and eleven days before the date fixed for the primary election.

Whenever a special election is to be held to fill vacancies, committees are now authorized to fix the date at which the primary will be held, as well as the last day and hour on which candidates should qualify. Formerly, they were merely authorized to fix the date for the primary and the last day for the qualification of candidates.

Relative to candidates, the following changes were also made: Candidates against whom objections have been filed with the chairman or secretary of the committee have seventy-two instead of forty-eight hours after service of the objections, to file their answers thereto; prospective candidates must file notice

6. Id. at § 15 [Dart's Stats. (Supp. 1946) § 2682.19].
12. Id. at § 28, as amended by La. Act 351 of 1946.
of intention to become such by five o'clock, Central Standard
Time, on the tenth day after the issuance of the call for the pri-
mary, whether the election is for state, parochial or municipal
officers;\textsuperscript{13} the deposit which candidates are required to make
with the chairman of the respective committees is no longer re-
turned to the candidate in case he is disqualified after a hearing
on oppositions filed, but is to be kept by the committee as costs
for hearing of the opposition;\textsuperscript{14} and the additional fees required
of candidates for incidental expenses of the committees, have
been increased from a maximum of $100.00 to a maximum of
$110.00.\textsuperscript{15}

Regarding the ballots, the changes made are perhaps insig-
nificant. It is now required that all sample and official ballots
must be designated as such in black, instead of red ink.\textsuperscript{16} Of more
practical importance is the new requirement imposed upon reg-
istrars of voters to certify to the Secretary of State the number
of registered voters in each precinct, so as to enable the secretary
to determine more accurately the number of ballots which, under
the statute, he is required to send to each precinct.\textsuperscript{17}

With regard to polling booths, Act 231 of 1946 provides that
these may be set up within the confines of the United States
Marine Hospital at Carville,\textsuperscript{18} and in the case of adjoining pre-
cincts, the former provision requiring that polling booths be
placed at least three blocks apart has been omitted.\textsuperscript{19}

The one other statute amending the primary election law is
Act 366 of 1946, under which the clerk of court of the parish
where elections are held will from now on receive a copy of the
tally sheets compiled by the election commissioners, who are re-
quired to make an additional copy for that purpose.

**Insurance**

*Act 288 of 1946.* Two significant changes regarding the non-
forfeiture of insurance policies after payment of a stipulated
number of premiums have been made. Under Act 93 of 1906, as

\begin{itemize}
  \item[13.] Id. at § 30, as amended by La. Act 351 of 1946. Notice of Intention
  had to be filed within 20 days, if the candidacy was for a state or district
  office, and within 10 days if for parochial or municipal office.
  \item[14.] La. Act 46 of 1940, § 32, as amended by La. Act 351 of 1946.
  \item[15.] Id. at § 42(e), as amended by La. Act 351 of 1946.
  \item[16.] Id. at § 42, as amended by La. Act 351 of 1946.
  \item[17.] La. Act 351 of 1946.
  \item[18.] La. Act 231 of 1946.
  \item[19.] La. Act 46 of 1940, § 49, as amended by La. Act 351 of 1946.
\end{itemize}
originally enacted, a policy contract which had been in effect for three years did not lapse for failure to pay subsequent premiums, but the insured was given the option of obtaining the cash surrender value thereof, or of applying the accumulated reserve to the purchase of extended or paid-up insurance.\(^1\) If the insured failed to exercise an option, the accumulated reserve was automatically, under the terms of the statute, applied to the purchase of extended insurance,\(^2\) and any provision in the policy contract which required the insured to select in advance which option would be availed of should there be a default in premium payments was unenforceable. The reason for this was that the insured who permitted the policy to go unpaid would neither obtain cash surrender value nor extended insurance, since he would be obligated from the inception of the policy to accept what would be more advantageous to the company: that is, paid-up insurance.\(^3\)

Act 57 of 1932\(^4\) changed the provisions of the 1906 statute governing the application of the accumulated reserve by providing that if no other option contained in the policy was availed of by the insured, the accumulated reserve, without any further act on the part of the insured, was to be applied, either to the purchase of extended or paid-up insurance, at the option of the insured.\(^5\) Under this amendment, therefore, insurance companies were no longer required to apply the reserve to the purchase of extended insurance, but could, on the failure of the owner to pay subsequent premiums and exercise any of the options stated in the policy, apply the reserve either to the purchase of paid-up or extended insurance.

Did the 1932 amendment in any way modify the right of the insured to the options originally granted by the statute of 1906? In the case of Edwards v. National Life & Accident Insurance Company,\(^6\) the court of appeal held that a clause which forces the insured to agree, at the time the contract is entered into, to what benefit he will be entitled to after the lapse of the policy

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6. 11 So. (2d) 125 (La. App. 1943).
did not deprive him of the optional rights and privileges conferred upon him by law. In that case, the policy contract contained a provision to the effect that in the event of default in the payment of premiums after three years, the policy would automatically be commuted to paid-up insurance. The company advanced the plausible contention that since the insured had died without demanding the application of the accumulated reserve toward the purchase of extended insurance, the automatic provision applying the reserve to paid-up insurance was enforceable under the very terms of the 1932 amendment. The court pointed out, however, that the automatic clause gave the insured no option but obligated him, from the moment of the issuance of the policy, to accept paid-up insurance upon default of premiums after three years, and that under the terms of the statute, it was only upon the failure of the owner to avail himself of an expressed option, after the policy had lapsed, that the insurer was authorized to apply the reserve.  

Act 288 of 1946 was evidently enacted for the purpose of overruling the decision in the Edwards case and to give effect to clauses exacting an election from the insured at the time of issuance on all policy contracts issued prior and up to the effective date of the act. The statute provides that if no other option expressed in the policy is exercised by the insured, "the policy shall provide for [the reserve] to be applied to the automatic option shown in the policy, which automatic option shall be" to purchase either extended or paid-up insurance. It will be observed that this provision is to govern only with regard to policies issued prior to the effective date of the act; all future policies being governed by an additional section referred to as the "standard non-forfeiture clause": under which the insured must elect, within sixty days, between cash surrender value and paid-

7. Edwards v. National Life & Accident Ins. Co., 11 So. (2d) 125, 128 (La. App. 1943); "In the instant case, the insured was granted no privilege or option as to the manner in which, upon the lapse of the policy, the reserve would be applied. She was obligated from the moment of the issuance of the policy to accept a paid-up value whenever the policy lapsed after the payment of three years premiums. Under this restrictive stipulation the statutory proviso 'if no other option expressed in the policy' became, as was said in the Watson case, 'meaningless'. . . . Furthermore, it is only upon the failure of the owner to avail himself of an expressed option, . . . that the insurer is authorized to apply the reserve. This right of the insurer is, therefore, conditional. . . ."


9. Ibid.

10. Ibid.

up insurance. It is further provided that the paid-up benefit will become effective automatically unless the insured elects another available option not later than sixty days after the due date of the premium in default.

While the 1906 statute applied to life, as well as to industrial, policies and made policies non-forfeitable after premiums had been paid for three years, the new non-forfeiture clause of Act 288 of 1946 makes it optional with industrial insurance companies either to elect to come under the statute or to be governed exclusively under the provisions of Act 148 of 1936,12 which provides that in the event of default of premium payments, after premiums have been paid for five years, the insured is entitled to a stipulated form of insurance, the net value of which shall be equal to at least two-thirds of the reserve on the policy at the date of default.

It is to be noted that, although the right granted the insured to receive any benefit upon failure to meet his premiums rests on statute and the legislature has the power to stipulate the standards under which these benefits shall be granted, the trend in favor of the insured, which began with the passage of the 1906 act, now seems to be turning in favor of the insurer. At least, the insurer, under the 1946 act, is in a better position to state the terms under which the insured will receive the statutory benefits in the event of default in the payment of premiums.

Act 113 of 1946. This is a new statute prohibiting, with certain specified exceptions, domestic insurance companies from insuring residents of a reciprocal state, which, as defined by the act, is a state which prohibits a domestic insurer thereof from insuring Louisiana residents unless such insurer is authorized to do business in Louisiana. This statute further requires the Secretary of State to notify domestic companies from time to time which are the reciprocal states whose residents may not be insured by them.

Act 116 of 1946. This act is designed to protect the corporate name of domestic or foreign insurance companies authorized to do business in Louisiana by providing that the corporate name of any such company cannot be deceptively similar to that of either (1) any domestic or foreign company doing business in the state, (2) any person or unincorporated association where such person or association has filed an intention to incorporate within

12. Dart's Stats. (1939) § 4131.11.
the last preceding seventeen months, or (3) any foreign insurance company not then authorized to do business in Louisiana, if it has, within the last preceding twelve months, signified an intention to incorporate in this state.

_act 248 of 1946_. This act authorizes foreign insurance companies doing business in this state to invest up to fifteen percent of their total capital and net surplus in revenue producing real estate.

_act 296 of 1946_. Under this act the Secretary of State is required at least once in every three years, or oftener if necessary, to visit each life insurance company organized under the laws of Louisiana on the legal reserve plan authorized to issue policies in excess of twenty-five hundred dollars on any one life. The purpose of this visit is to examine thoroughly its financial condition and ascertain whether it is complying with all the requirements of law.

_act 289 of 1946_. Act 7 of 1932, Section 4,\(^{13}\) provided for an annual license tax on insurance companies, graduated on the gross premiums received. It was also provided, however, that the amount of the tax payable should be only one-third of the amount so fixed, if the company were able to show that at least one-sixth of the total admitted assets were invested in either bonds of this state or subdivisions thereof, in mortgages on property located in this state, or in policy loans to individual residents or domestic corporations of Louisiana. The 1946 statute amends this section so as to extend the above reduction in the license tax in favor of companies which can show that at least one-sixth of their total admitted assets are invested in stock of domestic homestead building or loan associations, to the extent that such stock is guaranteed or insured by the federal insurance deposit corporation or other federal agency.

**Fire and Marine Insurance**

_act 205 of 1946_. This statute created the “Louisiana Inland Marine Rating Commission” composed of three members, one of which is the Secretary of State and two others appointed by the governor. The Secretary of State is to receive a per diem of twenty-five dollars and the other two members are paid on a salary basis. One of these latter serves as chairman and is paid $5,000 a year, while the other is secretary and is paid $3,600.

The commission is domiciled in Baton Rouge, with powers to

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\(^{13}\) Dart's _Stats._ (1939) § 8707.
regulate inland marine insurance rates on risks located in Louisiana, and the act requires every inland marine insurer doing business in Louisiana to sign an agreement with the Secretary of State that he will abide by, and comply with, the rates approved and with the rules and regulations which the commission adopts. The purpose of the legislation is undoubtedly to establish a uniform rate for inland marine insurance risks in the state.

**Act 349 of 1946.** Under the provisions of Act 302 of 1926\(^4\) the Louisiana Insurance Commission and the Louisiana Rating and Fire Prevention Bureau (the latter to be under the supervision of the commission) were created for the purpose of determining and fixing equitable premium rates to be charged on fire, windstorm, hail and automobile fire and theft insurance. All stock fire insurance companies were brought under the operation of the act and made subject to the regulations imposed thereby. Section 21 of that act, although excepting mutual insurance companies from most of the regulations, subjected them to certain sections, particularly Sections 2 and 9, which provided for investigation by the commission in all cases of complaints of discriminatory or excessive rates. Act 349 of 1946 has further subjected these mutual companies to the provisions of Sections 8 and 17 of the original act, as amended, which require all companies coming under its provisions to file with the commission a schedule of rates showing the compensation which each company will pay its agents for the ensuing calendar year, including the rate of commissions to be earned, with the exception of the salaries of company representatives or agents employed solely on a salary basis. The amended portion further grants all companies subject to regulation the right, not previously provided for, to apply for a hearing before the commission when aggrieved by a ruling of the bureau on questions of rates, the findings of the commission being further subjected to judicial review.

**Industrial, and Life and Accident Insurance**

**Act 292 of 1946.** A new paragraph has been added to Section 9 of Act 20 of 1935 (2 E. S.).\(^5\) The original section merely limited the value of health and accident insurance policies to $5,000.00. As now amended, it further requires that every policy contain a clause reserving the right of the company to increase the rate of dues or assessments or to levy additional assessments.

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\(^{14}\) Dart's Stats. (1939) § 4221 et seq.

\(^{15}\) Dart's Stats. (1939) § 4170.22.
against the insured to the extent that may be necessary to pay their respective share of losses in cases where the mortuary fund becomes depleted. The proceeds of such increase, however, are to be placed to the credit of the fund and no part thereof is to be used for expenses of management.

**Act 293 of 1946.** Act 20 of 1935 (2 E. S.)\(^\text{16}\) was also amended by Act 293 of 1946. Section 10 of the statute provided that 33\(\frac{1}{3}\) per cent of the total income received by health and accident insurance companies from premiums, assessments, dues, and membership fees, could be used for the payment of salaries of officers, agents and other employees. The remaining 66\% per cent must be placed to the credit of the mortuary fund exclusively for the payment of benefits. To this section has been added a proviso which authorizes these companies to use for the expenses of management, the entire income received from premiums, assessments or membership fees on new policies in any one year, and to permit them to pay, at the option of the companies, insurance taxes and other fees from the mortuary fund.

**Act 121 of 1946.** This act amends the provisions of Act 114 of 1898\(^\text{17}\) relative to the reserve of industrial and service insurance companies permitting maximum reductions of seventy per cent thereof on all policies issued prior to January 1, 1937, forty per cent on policies issued between January, 1937, and December, 1946, and twenty-five per cent on all policies issued after January 1, 1947. Within the maximums above specified, the reductions are permitted only to an amount equal to a discount given by a funeral director furnishing the services contracted, evidenced by a contract duly entered into between the company and the director. If a company elects to avail itself of the reductions permitted, it must not pay any dividends to stockholders unless the reserves are equal to seventy-five per cent of the face value of funeral policies, and one hundred per cent of the cash policies.

**Act 291 of 1946.** Regarding the graduated deposit to be made by industrial life insurance companies with the Secretary of State as a prerequisite to doing business, Act 148 of 1936, Section 7,\(^\text{18}\) provided that this deposit could be made from reserves or other funds in securities "as are now required by surety companies." Act 291 of 1946 is more specific, requiring this deposit to be made in bonds of the United States or of the State of Louisiana or other

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17. Dart's Stats. (1939) §§ 4063, 4054.
18. Dart's Stats. (1939) § 4131.7.
political subdivisions thereof having a population of not less than twenty-five hundred inhabitants with an assessed valuation of not less than two million five hundred thousand dollars. In case where the deposit is to be made in state or political subdivision bonds, it is further required that these be payable both in principal and interest from the proceeds of a direct unlimited ad valorem tax dedicated for that purpose.

**Act 290 of 1946.** With regard to the paid-up capital stock which industrial life insurance companies are required to have as a prerequisite to doing business, Act 148 of 1936 provided for a capital stock of one hundred thousand dollars fully paid up in cash, when the maximum amount of the policies or benefit certificates to be issued on a single life did not exceed in the aggregate the sum of twenty-five thousand dollars, exclusive of double indemnity, or more than fifty dollars per week for sickness or disability benefits. This was evidently a typographical error in the act which is now corrected by providing that the paid up capital stock should be one hundred thousand dollars when the maximum amount of the policies and benefits to be issued do not exceed twenty-five hundred dollars.

**Act 115 of 1946.** Section 3 of Act 148 of 1936 required every industrial life insurance policy to have a clause providing for a "stated cash payment" in the event a change of domicile of the insured made it impractical for the company to furnish the services contracted for. The 1946 amendment requires that this "stated cash payment" cannot fall below seventy-five per cent of the value of the service as stated in the contract.

**Act 271 of 1946.** This act amended the service insurance law by requiring that all such companies engaged in service insurance business as defined by the act, must have a capital stock of not less than five thousand dollars as a prerequisite to doing business in the state, as well as net admissible assets to the value of five thousand dollars, and a paid-in capital stock of five thousand dollars. Prior to this amendment, the act required a minimum of five hundred dollars of capital stock and fifteen hundred dollars in net assets and paid in capital.

**Acts 81, 82, 84 and 99 of 1946.** These acts all amend Section 7 of the service insurance companies act, with the result that there are now four different versions of the same section.

19. Dart's Stats. (1939) § 4131.3.
Briefly, the original section was composed of six paragraphs numbered consecutively. The first three defined “service insurance” companies for the purposes of the act as all companies contracting for the following benefits and services: (1) funeral benefits not exceeding three hundred dollars; (2) hospitalization benefits and the drugs incidental thereto, upon sickness or physical disability, and (3) home nursing care under the supervision of graduate nurses in cases of sickness or other physical disability. Paragraph 4 provided for the issuance of term policies only, incontestable after one year except for non-payment of premiums. Paragraph 5 required all policies to contain a clause providing for “a stated cash payment in lieu of services” where the insured was absent from the domicile so as to make it impracticable for the company to furnish the service contracted for, and paragraph 6 exempted fraternal societies from the provisions of the act.

Act 81 of 1946 inserted a new provision (referred to as paragraph 4) so as to include in the definition of service insurance companies, those contracting for the erection of monuments of a value of not more than three hundred dollars; the old paragraphs 4, 5, and 6 thus became paragraphs 5, 6, and 7, respectively. Act 82 merely re-enacted the section in its original form, amending paragraph 5 thereof so as to provide that in case of impracticability of performance on the part of the company because of the absence of the insured, the stated cash payment to be paid in lieu of services should not be less than seventy-five per cent of the face value of the policy.

Act 84 also re-enacts the section in its original form except that paragraph 2 includes not only companies contracting for hospitalization and drugs, but also companies contracting for the services of physicians and surgeons. It also provides that companies contracting for the latter services must have increased their paid-up capital stock by one thousand dollars.

Act 99 contains only five paragraphs. It omits the original paragraph 3 which defined as service insurance companies those furnishing home nursing care upon sickness or disability, so that the original paragraphs 4, 5, and 6 have become paragraphs 3, 4, and 5, respectively. Taken alone, Act 99 brings within the operation of the act only those companies contracting for hospitalization and those contracting for funeral benefits, with the added proviso that in cases of hospitalization insurance, the insured will have the option of obtaining the service in any hospital or sanitarium of his choice.
This raises the question as to whether all four acts are effective. A similar situation arose in 1938 when the legislature amended, in three separate statutes, Act 165 of 1932 designating the legal holidays in the state. At that time, the office of the attorney general rendered an opinion to the effect that the act last in order of approval governed. This opinion overlooked, however, that all laws go into effect at the same time, and that precedence should not be given to a statute over another if effect can be given to all of them without conflict. Fortunately, the 1938 statutes were repealed at a subsequent session of the legislature and an act adopted which embodied the provisions of all former acts.

Although each of these acts is different, neither is necessarily in conflict with the others and they can all be given effect without abrogating any of their provisions. A composite statute would have seven subsections or paragraphs as follows: (1) original paragraph 1, which was not altered in any way by any of the amendatory statutes; (2) original paragraph 2, as amended by Act 84 of 1946; (3) original paragraph 3, included in all other amending acts without change except in Act 99 of 1946; (4) new paragraph 4, injected into the statute by Act 84 of 1946; (5) original paragraph 4, which was not altered by any of the amending acts; (6) original paragraph 5, as amended by Act 82 and Act 99 of 1946; (7) original paragraph 6, not altered in any way by any of the amending statutes.

The only possible conflict would arise in proposed paragraph 6. As above stated, the original paragraph 5 as amended by Act 82 of 1946 requires all policies to contain a provision for a "stated cash payment, not less than 75 per cent of the face value of the policy, in the event the absence of the insured from the domicile, makes it impracticable for the company to furnish the service contracted for." Act 99 omits this provision in toto, but provides instead that in cases of hospitalization insurance, the insured has the option of obtaining hospitalization in any hospital or sanitarium of his choice. A situation may arise where, because of the absence of the insured, who has bought hospitalization insurance, it is impracticable for the company to furnish the serv-

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ice contracted for, in which case, the company would make use of the clause inserted in the policy contract and pay seventy-five per cent of the benefits. But Act 99 gives the insured the right to choose any hospital and does not limit him to a hospital of his domicile, the inference being that the insured may demand the full value of the contract in services rendered in a hospital other than that of his domicile, irrespective of whether it is impractical for the company to pay such benefits. It can be reasonably implied, however, that what the legislature had in mind was to limit the cash payment option to services other than hospitalization. In this manner this conflict may be resolved, but it is hoped that the legislature will pass curative legislation at its next session in order to forestall likely litigation on the matter.

Act 114 of 1946. This act requires all industrial life and life, health and accident insurance companies to submit for the approval of the Secretary of State all policy forms, endorsements and riders to be issued, as well as application blank forms.

LABOR AND INDUSTRY

Labor Organizations

Two statutes affecting labor unions and their members were passed at the recent session of the legislature. Act 180 of 1946 declares it to be the policy of the state that labor disputes affect the public interest and should be settled fairly and, so far as is possible, without interruption or delay in production and distribution; and to that end it declares it to be the duty of employers and employees alike to negotiate their contracts in good faith, to be binding upon and enforceable against both parties. Because of the importance of this legislation, it will be discussed in detail in a forthcoming issue of this Review. Further comment here is therefore omitted.¹

The other statute enacted, which will also be discussed more at length in another portion of this volume, affects the recipients of unemployment compensation when unemployment is due to a labor dispute. Under Section 4 of the unemployment compensation act,² an employee otherwise eligible for weekly compensation was disqualified for a period not exceeding three weeks, if

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¹ A comment is being prepared on this act as well as on the companion measure, H. B. 105 vetoed by the governor, which will appear in the January issue.
² La. Act 97 of 1936, as amended by La. Act 160 of 1944 [Dart's Stats. (Supp. 1946) §§ 4434.1 et seq.].
his unemployment was due to a labor strike in progress at the place where he was employed, unless it was shown that he neither participated nor was directly interested in the strike and that he was not a member of the class of workers actually striking or directly interested in the strike. The 1946 amendment disqualifies an individual who is otherwise eligible for compensation in all cases where his unemployment is due to a dispute in which he is actually participating or in which he is directly interested. The provisions limiting the period of disqualification to three weeks has thus been omitted. On the other hand, a claimant who becomes unemployed by reason of a labor dispute may still recover unemployment benefits upon showing that he is not actually striking or directly interested in the strike, whereas previously, he was further required to prove that he did not belong to the class of individuals who were actually striking.

Minors and Women

A statute of 1942 regulates the hours of work of women employed in industry generally, by fixing a maximum work week of forty-eight hours. Excepted from the provisions of the law were women employed in certain industries, and particularly women employed in stenographic or other clerical work, except when employed by laundries, hotels and restaurants. Act 383 of 1946 adds to the class of workers not covered by the act, file, route, and information clerks; multiple, teleprinter, switchboard, telephone and telegraph operators.

Boys over the age of twelve years, who, during the war and for ninety days after the termination thereof were specially permitted to sell and deliver newsprint over fixed routes in residential areas, may continue to do so under the provisions of Act

3. Id. at § 4 [Dart's Stats. (Supp. 1946) § 4434.41. "An individual shall not be eligible for benefits: . . . (d) For any week with respect to which the Administrator finds that his unemployment is due to a labor dispute which is in active progress at the factory . . . at which he is or was last employed. Provided, that such disqualification shall not exceed the three weeks immediately following the beginning of such dispute; and provided further that this subsection shall not apply if it is shown to the satisfaction of the Administrator (1) he is not participating in or directly interested in the labor dispute which caused his unemployment, and (2) he does not belong to a grade or class of workers of which immediately before the commencement of the dispute there were members employed at the premises at which the dispute occurs, any of whom are participating in or directly interested in the dispute. . . ."

5. La. Act 183 of 1942, § 10 [Dart's Stats. (Supp. 1946) § 4342.21].
186 of 1946 which has re-enacted the war measure on a permanent basis.

Firemen and Policemen

Act 59 of 1942 prescribes minimum wages for firemen in accordance with certain schedules based on the population of the municipalities where they are employed, but no provision was made in the act which would limit the number of hours of work. Act 179 of 1946 has supplied the deficiency by amending the pertinent provisions and establishing a maximum of seventy-two hours of work in any one calendar week except in emergencies, but in such cases firemen who will be required to work overtime will be paid time and one-half for each hour in excess of the maximum established. In addition, this amendment makes the provisions of the act relative to wages and hours of work inapplicable to firemen in municipalities having a population in excess of three hundred thousand.

With regard to the members of the state police, the act creating the department likewise failed to provide for a maximum of working hours. Unlike the above amendment to the firemen's act, however, Act 369 of 1946 merely authorizes the superintendent of police to arrange the hours of work of each employee so that none will work more than six days per week without being given compensatory time off.

Laws and Legislature

In General

A special appropriation of fifteen hundred dollars for each year of the biennium was made by Act 42 of 1946 in favor of the Board of Commissioners for the Promotion of Uniformity of Legislation. The Board was originally created in 1902 "to examine the subjects upon which uniformity of legislation . . . is desirable" and to consider and draft uniform legislation for submission and adoption by the several states. Although since its creation, twenty-four uniform statutes have been adopted in

7. La. Act 59 of 1942 [Dart's Stats. (Supp. 1946) §§ 5726.1 et seq.].
8. La. Act 94 of 1936 [Dart's Stats. (1939) § 9307.1 et seq.].
1. The functions of this board were transferred to the Department of Justice under the reorganization statute of 1940, which was later declared unconstitutional. See La. Act 47 of 1940, tit. 25, § 5 [Dart's Stats. (Supp. 1946) § 7789.154].
2. La. Act 39 of 1902 [Dart's Stats. (1939) § 9671 et seq.].
Louisiana⁴ no previous appropriations appear to have been made. The present appropriation is to defray the expenses of the three members who compose the board while travelling in the official business of the board, and to contribute two hundred and fifty dollars to the National Conference of Commissioners of Uniform State Laws.

The Louisiana State Law Institute, which, since its inception in 1938 as a law revision commission and legal research agency for the state, has largely contributed towards law improvement and reform, has, in addition to its other tasks,⁵ been instructed by the legislature to prepare a draft of a projet for a constitution of the state.

The magnitude of this task is enormous, but the institute is no longer a novice in the art of law reform. The Louisiana Criminal Code of 1942⁶ is but one instance in which the institute has demonstrated its ability, and the fact that the legislature has

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4. At present, the Institute is undertaking a revision of the statutes under the authority of La. Act 42 of 1942 [Dart's Stats. (Supp. 1946) §§ 10011-10012].

5. La. Act 52 of 1946.

entrusted this important assignment to the institute is ample proof of the legislature's recognition of this fact.

In the field of insurance, the legislature has recognized the need for an integrated body of laws coordinating the various statutes, and to this end, it has entrusted the secretary of state to make a survey of the insurance laws of other states and to draft a projet of an insurance code for submission and approval by the legislature in 1948.

Also, the commission presently engaged in the task of surveying the tax laws of the state has been continued, and the date for the submission of the proposed Revenue Code for the approval of the legislature has been extended until 1948.

**Constitutional Limitations**

Article III, Section 16, of the Constitution of 1921 provides that all laws must embrace but one object and have a title "indicative of such object."

Does an act which purports to amend an existing statute meet with the above constitutional requirement by merely referring to the number of the statute to be amended without quoting its title? This question, which arises in connection with three of the acts adopted at the 1946 session, is not altogether free from difficulty.

The title of Act 18 of 1946 merely states it is an act "to amend Section 8 of Act 15 of the Third Extraordinary Session of the Legislature for the year 1934 . . ." but it gives no indication as to the title of the "amended" statute nor as to the object of the amendment.

The jurisprudence is well settled that an amending act need not state the nature or the object of the amendment. Is it necessary then that the title of the amended statute be set out in full in the title of the amendatory act? The courts have held that the title of an act which states the object to be to amend and re-enact a section of the Revised Statutes, only the number of which is given, meets with the constitutional requirement. But in none of the adjudicated cases has been found one in which the statute amending an independent act, as distinguished from particular sections of the Revised Statutes, or articles of the Civil Code or Code of Practice, failed to contain in its title the title of the amended statute. However, the dictum found in the adjudicated

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decisions seems to indicate the courts will favor amendatory legislation which identifies the amended laws simply by number without the necessity of quoting in full the title thereof. No stronger language than that found in State v. Cognevich\(^8\) can be quoted to indicate the attitude of the courts in this respect. In that case the court made the following statement:

"To the contention that the title of the act would be sufficient if it read simply, 'An Act to amend Act 35 of 1894,' we answer that no one could doubt it after the decisions of this Court in State v. Brown, 41 La. Ann. 771, 6 South. 638, and other cases . . ."\(^9\)

There appears to be no valid reason why an amendatory statute should contain a full quotation of the title of the amended act. The custom seems to be a carry-over from earlier practice in this state, when the amended acts were not referred to by number and year, but merely by title and date of approval.\(^10\) Thus it was difficult to identify the amending legislation with the act to be amended, unless a reference was made to the title of the act affected thereby. The prevailing practice, therefore, seems wholly unnecessary, and much time could be saved by omitting from amendatory legislation the full quotation of the title, of the acts amended.

Another instance where the legislature departed from its present practice in citing in full the titles of amended statutes is Act 371 of 1946. In this instance, however, the purpose of the amendment is stated in the title, which is to provide a method of procedure in suits against the state under the provisions of Act 20 of 1914, which it amends. Certainly, the "object" of the act is fully stated in the title and the act to be amended is fully identified by number.

Still another variation is found in Act 232 of 1946 which is an act "To amend the title of act 13 of the Special Session of 1940 . . . and to amend and re-enact section 1 of that act (which makes it unlawful for the state . . . to expend public funds for advertising . . .)." Although the amendatory statute fails to

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9. 124 La. 414, 419, 50 So. 439, 442.
10. Cf. La. Act 101 of 1854 entitled: "An Act to amend an Act entitled 'an act to provide . . . etc.' approved April 30th, 1853" and Act 140 of the same year entitled: "An Act to repeal an Act entitled 'An act to regulate the terms of the District Courts . . .' approved First March Eighteen Hundred and Fifty Four."
quote in its title the title of the amended act, yet a synopsis of
the provisions of the act to be amended is given. It is submitted
all three of these statutes comply with the constitutional require-
ment.

MOTOR VEHICLES

The 1946 legislation relative to motor vehicles includes an
amendment to the automobile registration license statute of 19381
permitting taxicabs, which upon payment of a twenty-five dol-
ars license fee were heretofore permitted to operate only within
the limits of incorporated cities and towns, and within a radius
of seven miles beyond. Under the 1946 amendment they are
further enabled to operate between a municipality and its air-
port, regardless of distance, when incidental to the transporta-
tion of passengers travelling by air.2 This statute was enacted
no doubt to relieve the transportation problem between cities
and airports and particularly to supplement the insufficient trans-
portation facilities existing between the City of New Orleans and
Moisant International Airport.

Persons operating vehicles weighing in excess of the pre-
scribed weights for which they are licensed are now subject to
a specific penalty of not more than one hundred dollars or im-
prisonment not exceeding thirty days or both.3 The wartime
measure permitting increased load weights and overall length
of vehicles used by common or contract carriers has been made
permanent by the adoption of Act 304 of 1946.4

By Act 219 of 1946, municipalities have been authorized to
provide, by ordinance, for the installation of parking meters on
streets to be designated by them.5

Perhaps the most important measure regarding the operation
of automobiles is Act 255 of 1946 providing for the licensing of
all operators throughout the state. Heretofore, no general state
supervision over automobile drivers was exercised, and, except
for the provisions of Act 286 of 1938 providing for the examination
and licensing of chauffeurs, there was no law regulating the
driving of motor vehicles in general. This act is undoubtedly the

2. La. Act 374 of 1946.
3. La. Act 109 of 1946. Other violations are likewise punishable by a
   fine not in excess of $100.00 or imprisonment not exceeding thirty days. Note
   that no minimum penalties are provided for.
4. See also La. Act 20 of 1946.
result of the greater emphasis currently being placed on increased safety on the public highways.

Briefly, the act provides for the licensing of all operators and chauffeurs who have passed the prescribed examination, which, however, may be dispensed with in the case of persons presently operating a motor vehicle. In this respect the act is perhaps only an encouraging gesture in the right direction. However, the juvenile problem has been met by provisions prohibiting minors under fifteen years to drive, nor will a license be issued to minors fifteen years or over unless their applications are signed by their parents or tutor. In addition, chauffeurs' licenses will not be issued to minors under eighteen years of age.

The power of the legislature to regulate the use of motor vehicles on the public highways of the state and the state's right to require a license in furtherance of its regulatory powers is generally recognized, and constitutional objections against the imposition of license fees as an unauthorized use of the taxing powers have consistently been rejected. The theory upon which these licensing statutes have been upheld is that the fee charged is for the purpose of defraying the expense necessarily incurred in issuing the license. This would be true of the present statute except for the special provisions which are undoubtedly designed to apply to the City of New Orleans. The act provides that in cities having a population of three hundred thousand or over, the license fee will be two dollars for an operator's license and five dollars for a chauffeur's license, as contrasted with one dollar and three dollars, respectively, elsewhere. Also, in cities having a population of three hundred thousand or over, one-half of the fee charged for drivers' licenses and two dollars of the five dollar fee charged for chauffeurs' licenses is to be placed to the credit of the local police pension fund. There seems to be no relation between the regulation of traffic on the highways and the pensioning of local policemen, and therefore it would appear there is no valid reason for the imposition of a higher license fee in larger cities, especially since the increase is to be used for purposes admittedly not connected with, or incidental to the issuance of the licenses.


7. It is entirely settled that under the police power a license fee can be imposed within the limit of the expense necessarily or probably incurred in issuing the license, and of inspecting and regulating the business the license covers. Bozeman v. State, 7 Ala. App. 151, 61 So. 604 (1913).
Navigation

Harbor and Terminal Districts

The Lafayette Harbor and Terminal District, governed by a board of commissioners composed of five members to be appointed by the police jury of the Parish of Lafayette, was created by Act 14 of 1946. The board is invested with all the necessary authority, similar to that enjoyed by other harbor district commissioners, to regulate the commerce and traffic of the harbor and to issue bonds and incur debt for the construction and maintenance of harbor facilities.

Also, for the purpose of improving and maintaining navigation in the Mermentau River and adjacent streams the Jennings Navigation District was brought into being by Act 254 of 1946. The board of commissioners of the district, which serves as its governing body, is likewise conferred full authority to regulate the commerce and traffic on the river and to incur debt, secured by bonds, for the purpose of constructing facilities in aid of navigation.

Port of New Orleans

The Board of Commissioners of the Port of New Orleans was required to make various annual reports to the governor concerning the financial status of the port and the extent of traffic for the preceding year. The contents required in each report varied, but in substance they were alike and necessarily contained many duplications. Act 318 of 1946 was undoubtedly designed to correlate all these into one single report and thereby avoid unnecessary duplications. The act requires the Board of Commissioners of the Port of New Orleans to publish an annual report in lieu of all other reports heretofore required, showing such statistical and financial data as may be necessary to indicate the nature, extent and results of the operations of the port. Copies of this document are to be sent to the governor, the supervisor of public funds and to the state auditor.

Locks and Levees

The Board of Levee Commissioners for the Orleans Levee District and the Board of Commissioners of Grand Prairie Levee District have been jointly authorized to rebuild the recently

1. Cf. La. Acts 70 of 1896, § 7; 180 of 1908, § 5; 14 of 1915 (E.S.), § 3; 109 of 1918, § 4 [Dart’s Stats. (1939) § 7365].
destroyed eleven miles of levee on the East Bank of the Mississippi River between Bayou La Moque and Ostrica Canal.\(^2\)

The navigation locks constructed by the old Department of Conservation in the Main Line Mississippi River Levee near Empire, under the provisions of Act 108 of 1944, have been placed, along with all other navigation locks, under the supervision of the Department of Public Works, which is charged with maintaining and operating them.\(^3\)

**Pilots**

The law relative to pilots is somewhat confused owing principally to inconsistent legislation which has been enacted since 1880. In the Port of New Orleans, there are two pilot organizations, the River Port Pilots, who operate between Pilot Town and New Orleans, and the New Orleans Bar Pilots, operating from Pilot Town out to sea. The statutes governing these two sets of pilots are so obscure, however, that it is difficult to ascertain which provisions apply to each.

Act 99 of 1880 was “an act to regulate the system of pilotage of the ports of the state,” but applied by its own terminology to pilots serving the entrances to the Mississippi, as well as to pilots serving the other entrances, ports or passes in the sea coast. It provided for the appointment by the governor of pilots recommended to him by “the board of examiners,” but made no provision for the establishment of such board. The subsequent amendments to this act in 1890 and 1894 supplied this deficiency by providing for the establishment of a board of three examiners who were to examine and recommend applicants for appointment as pilots for “Calcasieu Bar, Pass, and River.” This board, being the only one in existence at that time, had, no doubt, jurisdiction over all other pilots to be appointed for all the other entrances to the Mississippi as well as the other passes and ports along the coast, even after the amendment of 1910, relative to the qualification of pilots for the entrances to the Mississippi River.\(^4\)

In 1908, however, the body known as the “River Port Pilots of New Orleans” was established to operate between Pilot Town and the Port of New Orleans.\(^5\) A board of river port pilot com-

\(^2\) La. Act 45 of 1946.
\(^3\) La. Act 34 of 1946.
\(^4\) La. Act 99 of 1880, § 2, as last amended by La. Act 26 of 1910, § 1 [Dart’s Stats. (1939) § 9141].
\(^5\) La. Act 54 of 1908 [Dart’s Stats. (1939) § 9154 et seq.].
missioners was also created, which at the same time was authorized to act as a board of examiners and make recommendation for the appointment of pilots to operate between Pilot Town and New Orleans.

Still another act was passed in 1928 establishing a board of three examiners “who shall compose the board of river port pilot commissioners and examiners” with jurisdiction over all “river pilots within their localities in all navigable streams . . . including intercoastal canals, Calcasieu and Sabine Rivers, bars and passes, as likewise in all other navigable rivers and streams in the State” but excluding the “Port of New Orleans and its pilotage jurisdiction on the Mississippi River.”

Did this 1928 statute bring within the jurisdiction of the board created thereby the bar pilots of New Orleans? It must be noted that the act merely excepted from its provisions pilots of the Port of New Orleans on the Mississippi River. Did the new act abolish the board of examiners established by the amendments to the statute of 1880? And did the 1928 legislation, which is all-inclusive, supersede the provisions of the Revised Statutes of 1870 relative to the appointment, qualification and removal of pilots throughout the state?

These are but few of the questions which arise by reason of the indefiniteness of this legislation. The 1946 statutes on this subject do clarify the situation to a limited extent. Particularly is this true with reference to Act 278 of 1946 which amends Section 2 of the original Act 99 of 1880. This amendment makes it clear that the section, at least, is to apply to the pilots to the entrances of the Mississippi River, including pilots “on any other inland waterway connecting the port of New Orleans with the Gulf of Mexico or other outside waters.”

The act of 1908, creating the River Port Pilots of New Orleans, as well as the 1928 statute, were also amended, but only with regard to the fees which they are entitled to charge.* The confusion regarding the application of these different measures to the different bodies of pilots is still present, and makes it evident that clarifying legislation should be enacted at an early date.

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PENSIONS AND RETIREMENT SYSTEMS

The trend in recent legislation toward the establishment of pensions and retirement benefits of state public employees continues, as is evidenced by the numerous statutes adopted at the 1946 session of the legislature.

Act 124 of 1946 is an enabling statute for a constitutional amendment which would authorize the legislature to establish a retirement system for public school bus drivers, janitors, custodians and other maintenance employees. The act will not be effective, however, until, and unless, the proposed amendment is adopted. Even then, operations under the system are not to begin until July 1, 1947.

Similarly, Act 126 of 1946 is the corresponding enabling legislation for a constitutional amendment authorizing the establishment of a pension and retirement system for the aged and incapacitated state employees, including the employees of dock boards, boards of commissioners, levee and drainage districts and state hospitals. The amendment, if adopted, will ratify the present legislation; but the system will not go into operation until July 1, 1947.

Amendments to existing statutes included Act 62 of 1946 which repeals Section 18 of Act 359 of 1938, an act providing for assistance to the aged and needy blind. The repealed section required the recipient of assistance to notify the proper authorities of any acquisition of property in excess of the amount stated in his application. Upon the death of any recipient, the total amount of assistance paid was allowed as a claim against the estate of the decedent, after reasonable funeral expenses had been paid, and the Federal Government was entitled to one-half of any amount collected from the estate of the deceased. On the other hand, however, Act 63 of 1946, which appears as an independent statute, re-enacts some of the provisions of the repealed portions of the 1938 statute, by providing that all recipients of old age assistance, and aid to the needy blind, as well as recipients of aid to dependent children or other assistance granted by the state, must report to the Department of Public Welfare the receipt or acquisition of any property or income in excess of the amount stated in their application for assistance. Failure to do so is a

2. La. Act 410 of 1946, proposing an amendment to Art. XVIII of the Constitution of 1921, by adding a new section thereto, to be numbered Section 8.
misdemeanor punishable by fine of not more than five hundred dollars and not more than six months' imprisonment.

Act 12 of 1940, which provided for a firemen's pension and relief system for the City of Alexandria, has been amended by providing for increased employee contributions. A new provision was also added which authorizes the City of Alexandria to appropriate to the fund twenty-five per cent of the proceeds collected by it from the operation of parking meters; in addition, the city was authorized to pay into the fund, from the general alimony tax, such sums as are necessary to make up any deficit that may appear from the operations of any year. As originally enacted, firemen who were disabled from causes other than those arising out of their employment could collect compensation at the rate of fifty per cent of their regular monthly salary, which benefits were to terminate when other employment was secured. As now amended, compensation is payable for injuries arising out of or in the course of employment and no limitation is made as to the amounts payable. In addition the amendment establishes a maximum of benefits payable per month, and provides that the fact that a beneficiary has burial insurance is not a bar to recovery of burial expenses.

The firemen's pension statute for the City of Lake Charles was also amended to authorize the city to pay into the relief fund all the amounts received by it as rebates, regardless of amount, on fire insurance premiums of foreign companies.

The general statute authorizing municipalities between fifty thousand and two hundred and fifty thousand inhabitants to establish local pension systems for their police departments was amended by Act 37 of 1946. The amendments include a provision making the widowed mother of a member receiving retirement compensation eligible for dependency benefits; municipalities may now appropriate out of their general alimony fund such sums as are necessary to make up any deficiency in the relief fund; assessments against members have been raised from one to two per cent; and the age for dependent children has been raised to seventeen years.

Act 249 of 1946 amends the State Police Retirement System

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4. Id. at § 13, as amended by La. Act 4 of 1946.
5. La. Act 186 of 1944.
7. La. Act 343 of 1940 [Dart's Stats. (Supp. 1946) § 5688 et seq.].
Act of 1944,\(^8\) by providing for the reinstatement of members who served in the armed forces upon payment of current and past due contributions.

In addition to the foregoing, a new statute authorizing the parishes throughout the state to establish pension and relief systems for sheriffs and deputy sheriffs was adopted,\(^9\) and the City of Baton Rouge has been authorized to create a system to pension and retire city firemen.\(^10\)

Only brief mention is needed of other acts affecting the present topic. Act 119 of 1944, which authorizes municipalities in excess of one hundred thousand inhabitants to adopt ordinances establishing pension systems for all appointive officers and employees, has been made applicable to municipalities of ninety thousand inhabitants and over;\(^11\) the statute authorizing the establishment of a firemen's pension system for the City of Monroe has been repealed and rewritten;\(^12\) the teachers' retirement system law for the Parish of Orleans\(^13\) has been redrafted;\(^14\) and a new statute creating a retirement system for the unskilled employees of the Orleans Parish School Board was adopted.\(^15\)

\(^{1}\) **PROFESSIONS AND OCCUPATIONS**

**Cosmetic Therapy**

Beauticians wishing to qualify as teachers in the practice of the profession will have to meet higher standards under the provisions of Act 228 of 1946 which now requires them to be graduates of an approved high school, to have completed the curriculum of the teacher's training course under the supervision of a licensed teacher, and to have passed a qualifying examination given under the supervision of the board of cosmetic therapy.\(^1\)

**General Contractors**

Act 223 of 1946 amends the general contracting statute\(^2\) to permit contractors delinquent in their payment of fees to be re-

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\(^{8}\) La. Act 136 of 1944 [Dart's Stats. (Supp. 1946) § 9307.40 et seq.].

\(^{9}\) La. Act 327 of 1946.

\(^{10}\) La. Act 299 of 1946.

\(^{11}\) La. Act 259 of 1946.


\(^{13}\) La. Act 116 of 1910, as amended [Dart's Stats. (1939) § 2405 et seq.].

\(^{14}\) La. Act 287 of 1946.

\(^{15}\) La. Act 282 of 1946.

\(^{1}\) Formerly an operator could be licensed as a manager or teacher after serving two years under the supervision of a licensed manager. La. Act 135 of 1924, § 3, as amended by La. Act 149 of 1944 [Dart's Stats. (Supp. 1946) § 9485].

\(^{2}\) La. Act 397 of 1938 [Dart's Stats. (1939) § 9583.19 et seq.].
instated and have their licenses renewed without further examination upon payment of the current fees.

Civil Engineering

Act 43 of 1946 exempts from compliance with the civil engineering act employees of the state or of any of its political subdivisions who are presently engaged in the practice of the profession and employed as such by the state.

Notaries Public

Since 1890, the number of notaries for the Parish of Orleans has been periodically increased until 1942 when the number was increased to seven hundred and twenty-five. Act 265 of 1946 has further increased this figure to eight hundred and twenty-five.

Applicants for notarial commissions in the Parish of Orleans were required to pass an examination before the supreme court and receive a certificate of competency signed by at least three judges thereof. Under Act 381 of 1946, this examination is to be held in the Civil District Court, and the certificate signed by three of the judges thereof. It is also provided that the court may appoint a committee of lawyers to conduct the examination, and that the examination may be dispensed with in cases where the applicant is an attorney, duly admitted to practice and maintaining an office in the City of New Orleans.

Act 32 of 1942 provides for all acts executed in a foreign country by members of the armed forces before an officer of the United States Army, Navy, Marine Corps and Coast Guard, and two attesting witnesses to have the effect of authentic acts executed in Louisiana. Act 253 of 1946 does not purport to amend this 1942 statute, but it does, in effect supersede it by providing that all acts executed before an officer of the United States Army, Navy, or Marine Corps are to be admissible in evidence as having been properly executed, if made “in accordance with any of the various statutes of the United States” whether the instruments are executed in a foreign country, on the high seas or in the United States or territories thereof.

3. La. Act 308 of 1908 [Dart’s Stats. (1939) § 9544 et seq.].
5. La. Act 42 of 1890, § 7 [Dart’s Stats. (1939) § 6310].
In General

Act 75 of 1946. Under the provisions of Act 237 of 1924 relative to the judicial sale of property for nonpayment of taxes, the sheriff making and executing the sale was entitled to a commission of two per cent of the amount bid and paid, provided it did not exceed twenty-five dollars per day in any one day's adjudications. This act increases the commission to four per cent; it places no limit on the commissions which may be earned in any one day, and, in addition the sheriff is entitled to charge fifteen dollars for each act of sale executed by him, to be paid by the adjudicatee of the property.

Act 182 of 1946. A comprehensive statute relative to the collection of taxes due to the state was enacted in 1940. Section 15 provided for refunds of overpayments or of payments where no tax was due. The collector was authorized to credit the whole amount or any portion thereof to any other tax liability of the taxpayer and, if it was determined that no other taxes were due, the department was authorized to make a refund. Section 16 of the statute provided that no refunds or credits should be made after three years from the thirty-first day of December of the year in which the tax became due, or after one year from the date the tax was paid, whichever was later. Both these provisions have been repealed, so that the remedy now available to taxpayers for the recovery of taxes erroneously paid into the treasury is that provided by Act 120 of 1942, creating the Board of Tax Appeals, the functions of which are to examine into the justice, merit and correctness of all such claims, and to make recommendations for the payment thereof.

Act 328 of 1946. This act requires all tax assessors for the different parishes (except the assessor for the Parish of Orleans) to complete and file the tax rolls of their respective parishes by the fifteenth day of November of each year, beginning in 1946. The act further requires the officer having custody of the assessors' salary and expense fund to withhold from the salary of the assessor who is in default the sum of five dollars for each day of delay.

Act 27 of 1946. The funds authorized to each parish for clerical and other expenses of tax assessors were considerably in-

1. Dart's Stats. (Supp. 1946) § 6654 et seq.
creased by this act. Most increases ranged from one to two thousand dollars, but in a few instances the increases were quite substantial.  

**Banks and Banking**

*Act 7 of 1946.* This act provides for a tax to be levied on shares of bank stock based upon a percentum of the assessed valuation thereof. At the outset, it is significant that this is not a specific amendment to the existing legislation on the subject, but purports to be an independent statute. It incorporates earlier provisions relative to the taxing of bank shares, and specifically repeals all previous statutes.  

While the act is a consolidation of the law on taxation of bank shares, its primary purpose is to effect a reduction of the tax, not by granting specific exemptions, but by reducing the basis to a percentum thereof. It provides, in brief, that for the purposes of the tax, the shares of stock in Federal Joint Stock Land Banks are to be assessed at ten per cent of their valuation, while in the case of national banks the shares are to be assessed at fifty per cent of their value.

The original statute provided that the basis for arriving at the value of the shares of stock in any bank was the sum of the capital stock, plus the surplus and undivided profits, as ascertained by the statements required to be furnished by the officers of the particular institution. In 1938, the legislature passed Act 172, amending the original provisions, whereby a reduction of the tax was to be accomplished by providing that, in valuing the shares for the purposes of the tax, only the excess surplus, undivided profits and contingent reserves, over and above the par value of the capital stock was to be added to it.  

Thus, whereas prior to the 1938 statute, the whole of the declared surplus, undivided profits and contingent reserves were included in fixing the value of the shares to be taxed, only the excess thereof over and above the value of the capital stock was to be included. The

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4. This provision is taken from Act 116 of 1922 [Dart's Stats. (1939) § 684].
5. La. Act 14 of 1917 (E. S.) [Dart's Stats. (1939) § 684 et seq.].
6. Id. at § 4 [Dart's Stats. (1939) § 687].
9. East Baton Rouge Parish was granted an increase of $20,000.00; Caddo Parish was granted an increase of $12,000.00; Ouachita Parish was granted an additional $3,500.00 and Lafourche Parish an additional $4,000.00.
1938 amendment, however, was declared unconstitutional on the grounds that it in effect granted an exemption not authorized by the Constitution, thus refuting the contention on behalf of the plaintiffs that it merely provided for a method of arriving at the valuation of the shares for tax purposes. 8

Act 7 of 1946 establishes the basis for arriving at the valuation of the shares by providing that such valuation is to be the value of the declared capital stock, plus surplus and undivided profits, as shown by the statements of the bank, thus adopting the same standard first imposed by the original statute. But, as pointed out above, the statute further provides that the tax is to be paid only on ten per cent of the valuation in the case of Federal Joint Stock Land Banks and on fifty per cent in the case of national banks. Is such a provision countenanced by the Constitution? Is this not in effect granting an exemption in violation of the constitutional prohibition and within the teeth of the supreme court decision holding the 1938 amendment unconstitutional? 9

Although there seems to be ample precedent for the enactment of taxing provisions based upon a percentum of valuation, 10 the supreme court has at least indicated that such provisions

8. "To maintain that an exemption resulting from a formula or a mode for the assessment valuation or the computation of the tax is not an exemption would be, in effect, holding that the exemption clause of the Constitution above referred to places no limitation upon the power and authority of the Legislature to exempt property from taxation. In short, if this method of legislative procedure were sanctioned by the courts, the constitutional prohibition against exemptions would be in practical operation eliminated from the Constitution. This result we cannot countenance, because it would be contrary to both the letter and the spirit of the constitutional provision in question. . . ." Hibernia Nat. Bank v. Louisiana Tax Commission, 195 La. 43, 65, 196 So. 15, 22 (1940).

In this connection see also State v. Union Building Corporation, 185 La. 598, 170 So. 7 (1938); State v. Union Mayer Sugar & Molasses Co., 204 La. 742, 16 So. (2d) 251 (1949) holding that the provisions of the corporation franchise tax act, if interpreted to exclude from taxation the borrowed capital of the corporation only to the extent that it exceeded the sum of capital stock, surplus and undivided profits would render it unconstitutional. See discussion on page 94, infra.

9. In this connection it is interesting that the proponents of Act 172 of 1938 attempted to incorporate its provisions in the constitution by subsequently proposing a constitutional amendment (See La. Act 289 of 1940) as well as an enabling act (See Act 260 of 1940) to become effective on the adoption of the constitution. Needless to say the amendment failed to receive the approval of the electorate.

10. Cf. La. Act 116 of 1922, providing for a tax on 10 per cent of assessed value on shares of Federal Joint Stock Land Banks; La. Act 142 of 1926 [Dart's Stats. (1939) § 8377], providing for assessment of property of ship repair plants at 40 per cent of actual value for tax purposes; and La. Act 208 of 1936 [Dart's Stats. (1939) § 8380.2] providing for assessment of property used in manufacture of tung oil at 10 per cent of actual value for tax purposes.
would also be violative of the constitutional prohibition as being a disguised exemption, and it is apparent that, under the guise of classification by reduction of the assessment value, ample opportunity is afforded for securing exemptions from taxation on property otherwise taxable in its entirety. It may well be that the present statute is fraught with the same objections which made the 1938 act unconstitutional.

Corporations

Act 201 of 1946. The Corporation Franchise Tax Act of 1935 levied a tax on domestic and foreign corporations, and except for certain necessary differences in the manner of ascertaining the assets within the state for the purposes of computing the tax, both domestic and foreign corporations were taxed alike at the rate of two dollars per one thousand dollars of capital stock, surplus and undivided profits. It was further provided that, if the capital used or invested in the business included borrowed capital in excess of capital stock, surplus and undivided profits, such excess of borrowed capital was to be added to the capital stock, surplus and undivided profits, as a part thereof. Thus, according to the act, corporations were required to pay a tax of two dollars per one thousand dollars of capital stock, surplus and undivided profits, and two dollars per one thousand dollars of borrowed capital, but only to the extent that the amount of the borrowed capital exceeded the total amount of capital stock, surplus and undivided profits.

Nevertheless, and in spite of the clear and concise language of this act, our supreme court held that the total amount of borrowed capital should be included in the tax base. The court based its decision on the ground that, to interpret the statute as merely taxing borrowed capital to the extent it exceeded the amount of capital stock, surplus and undivided profits would render the statute discriminatory and consequently unconstitutional.

11. "The plaintiffs contend that the method of taxing the shares of stock, instead of the property of corporations engaged in the banking business, discriminates against them because the Legislature, by Act 163 of 1924, undertook to require that the bonds of any of the states, or of any of their political subdivisions . . . not exempt from taxation should be assessed at 10 per cent. of their market value. The statute is so palpably violative of the constitutional requirement that all property that is subject to taxation shall be assessed at its actual cash value, that it has never been enforced." First National Bank v. Louisiana Tax Commission, 175 La. 119, 139, 143 So. 23, 29 (1932).

12. La. Act 10 of 1935 (1 E.S.) [Dart's Stats. (1939) § 8722 et seq.].
See also State v. Xeter Realty Co. Ltd., 182 La. 414, 162 So. 29 (1935).
In a later decision the constitutionality of the statute was again questioned, but the court adhered to its former decision. The 1946 amendment follows the court's interpretation of the statute so that the provision in question now requires the tax to be paid on the "outstanding capital stock, surplus, undivided profits and borrowed capital" and at the same time reduces the tax rate to a dollar and fifty cents per thousand.

Regarding the distribution of the proceeds of the tax, the act provided for the payment to the Board of Supervisors of Louisiana State University one-quarter of the annual collections, in addition to the unused and unexpended portion of the one-quarter of the tax allocated to the State Board of Education. This portion of the act has been amended so as to allocate to the university the remainder of the tax after all other disbursements have been made, not to exceed $1,217,000.00 per annum.

Act 85 of 1946. Regarding the distribution of the proceeds of the chain store tax, it was formerly provided that all taxes collected should be paid into the Department of Revenue to be disbursed and apportioned to the various parishes of the state wherein the stores were located, based pro rata upon the population of each parish. Act 85 of 1946 amends these provisions so that the tax is now prorated among the various municipalities, except where the stores are located outside municipal corporate limits, in which case the tax is allocable to the parishes wherein the stores are located.

Motor Fuel

Acts 183 and 184 of 1946. Act 183 exempts from the two cents motor fuel tax imposed by Act 87 of 1936 the product commonly known as Farm Tractor Fuel, whether the same is sold for use

14. "If this interpretation be correct, it is readily seen that the act is discriminatory in that the tax levied might be unequal on corporations of the same class engaged in the same kind of business." State v. Union Building Corporation, 185 La. 598, 613, 170 So. 7, 12 (1936). Cf. Hibernia National Bank v. Louisiana Tax Commission, 195 La. 43, 196 So. 15 (1940), where a similar statute was declared unconstitutional.

15. State v. Union Mayer Sugar & Molasses Co., 204 La. 742, 16 So.(2d) 251 (1943).

16. La. Act 10 of 1935 (1 E. S.) § 4, as last amended by La. Act 201 of 1946.

17. La. Act 10 of 1935 (1 E. S.), § 11, as amended by La. Act 12 of 1942 (E. S.) [Dart's Stats. (Supp. 1946) § 8732]. Note that the 1946 statute has effected a change in the numerical order of the sections, the original Section 11 of the 1935 statute being now Section 10.


19. This amendment did not become effective until October 1, 1946.

exclusively for farm purposes or not. A similar exemption is made by Act 184 with respect to the four cents tax imposed by Act 6 of 1928 (E.S.). Formerly, this fuel was exempt only when used exclusively for farm purposes.

Act 18 of 1946. Act 15 of 1934 (3 E.S.) imposing an occupational license tax on wholesale and retail distributors of gasoline has been amended to provide that, in calculating the gross sales which form the basis for determining the amount of the license tax, they are entitled to deduct therefrom that part of the purchase price of the product which represents federal and state taxes.

Act 283 of 1946. The two cents gasoline tax statute of 1936 provided for the disposition of the proceeds of the tax as follows: One-half to be credited to the general highway fund and one-half to be placed in a special fund to be distributed by the treasurer to the different parishes and to the City of New Orleans to be used by them for the construction of roads and bridges in the parishes, and streets and bridges in the City of New Orleans, “and for other public purposes.” Act 283 of 1946 amends the above provisions by restricting the purposes for which the tax may be used by the parishes and the City of New Orleans to the construction of roads, streets and bridges only.

In connection with the act, it is to be observed that it provides that the proceeds placed to the credit of the special fund are to be apportioned, allocated and disbursed to the parishes and the City of New Orleans “in the same proportion that the gasoline tax heretofore collected under Act 87 of 1936, as originally enacted, was apportioned and paid to the parishes and the City of New Orleans.”

Section 5 of the original act prorated the tax on the basis of the total tax collected in each parish. Act 19 of 1938, which first amended this section, excluded therefrom the language specifying the manner in which the proration should be made, but provided instead that the distribution should be made “in the same proportion that the gasoline tax heretofore collected under Act 87 of 1936 was apportioned and paid,” thus following the method contained in the section as originally adopted, but which was

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21. La. Act 6 of 1928 (E.S.), § 1, as last amended by La. Act 69 of 1944 [Dart's Stats. (Supp. 1946) § 8906].
22. La. Act 15 of 1934 (3 E.S.), § 8, as amended by La. Act 175 of 1944 [Dart's Stats. (Supp. 1946) § 8595].
23. La. Act 87 of 1936, § 5 [Dart’s Stats. (1939) § 8835.18].
24. Ibid.
25. Ibid., as last amended by La. Act 283 of 1946.
repealed by the amendatory statute itself. In all subsequent amendments the same reference has been made with the result that, as presently enacted, the distribution is to be governed by a provision of the statute which no longer exists as such, having been repealed by the first amendatory act of 1938. This raises the question as to whether a repealed statute may be adopted or revived by a mere reference thereto. As the statute now reads, the proceeds of the two cents tax is to be allocated to the parishes, but nowhere in the "live" portions of the law is there provided the method to be used for making this allocation nor for effecting an equitable distribution thereof, except by reference to a repealed portion of the act, which is the very thing which the Constitution prohibits.

A similar question was presented in the case of Airey v. Tugwell, wherein an act which purported to convey to a levee district certain lands "according to all the terms and provisions of the relative granting statutes" was held unconstitutional, since the statutes referred to had been previously repealed. Although it is unlikely that any litigation may arise in connection with this statute, the necessity for an amendment curing this defect is apparent, and it is hoped the matter will be brought to the attention of the legislature at its next regular session.

Severance of Natural Resources

Act 202 of 1946. Section 2 (8-g) of Act 24 of 1935 (2 E.S.) provided for a severance tax of one cent per barrel of forty-two gallons on natural gasoline and casinghead gas, subject to a credit of one cent per barrel of the license tax imposed upon the manu-

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29. "The phrase 'relative granting statutes' refers, of course, to section 11, Act 18 of 1894, which section . . . was repealed by Act 237 of 1924. . . . [The statute] directs that the lands be conveyed to the Levee District 'according to all the terms and provisions of the relative granting statutes' . . . . If that law was not revived or amended by Act 324 of 1938 . . . the Register of the State Land Office had no authority to make the transfer. But the old repealed law was not revived or amended. . . . There can be no doubt that under our constitution no law can be re-enacted merely by reference and that the re-enactment of a repealed law by reference is prohibited.' Airey v. Tugwell, 197 La. 982, 994, 3 So.(2d) 99, 103 (1941).
facturers, distillers and refiners of petroleum and petroleum products. This section has been amended to omit therefrom the provisions granting the credit, so that the taxpayer is no longer entitled to deduct taxes paid under the occupational license tax law. Section 2 (9) was also amended by this act. As originally worded, it imposed a severance tax of three-tenths of one cent per 1000 cubic feet on natural gas, but it provided that in determining the quantity of gas for the purpose of the tax "gas injected into the earth of the State of Louisiana" was to be excluded, as well as gas produced from oil wells and flared or vented directly into the atmosphere. The 1946 amendment provides that the tax is to be paid on all gas produced, except gas which of necessity has to be flared into the atmosphere in the production of oil, and gas which is subsequently restored to the formation of the earth. Gas, however, injected into the earth for the purpose of producing oil by the method known as the "gas lift method" is to be taxed at the same rate as if produced for commercial purposes. As the statute was formerly worded, gas injected into the earth was exempted from the tax, and no distinction was made whether the gas was injected for restoration purposes, or for the purpose of producing oil with the aid thereof. The intention of the legislature has been clarified by the present statute, the evident purpose being to tax all gas produced, except that which is subsequently restored or that which is necessarily wasted.

Inheritance

The Louisiana Inheritance Tax Law provides for the appointment of attorneys for the inheritance tax collectors in the different parishes to assist them in the collection of the taxes. The compensation of these attorneys was fixed by the statute at four per cent on all taxes collected monthly up to one hundred and fifty thousand dollars, and two per cent on amounts in excess thereof. While the compensation of these attorneys remains the same in all other parishes, Act 242 of 1946 reduces the compensation of the attorney for the tax collector of the Parish of Orleans to two per cent on the first one hundred and fifty thousand dollars, and one per cent on amounts in excess thereof.

31. La. Act 15 of 1934 (3 E. S.), § 41, as last amended by La. Act 125 of 1940 [Dart's Stats. (Supp. 1946) § 8629.1].
32. Dart's Stats. (Supp. 1946) § 8523.
33. La. Act 127 of 1921, § 22 [Dart's Stats. (1939) § 8577].
Four statutes were passed amending different sections of the income tax statute; and although there was some duplication in the amendatory measures, there were fortunately no conflicting provisions. Taken together, several significant changes were effected, particularly regarding the provisions for deductions from gross and net income.

**Act 195 of 1946.** As last amended by Act 158 of 1944, Section 32 of the statute defined "dividends" paid by corporations for the purposes of the tax as any distribution made to shareholders, whether in money or in other property "out of [their] earnings or profits." This term has been redefined to mean any distribution made, whether in money or in other property, out of earnings or profits "accrued since December 31, 1933." The purpose of this amendment is evidently to exclude from taxation dividends paid from profits earned prior to the passage of the original statute and to resolve in favor of the taxpayer a possible doubt as to whether a tax could be imposed retroactively on dividends derived from property acquired prior to the effective date of the act.

**Act 191 of 1946.** As already stated, this act amended Sections 11 and 26 of the income tax statute, but since its provisions are duplicated in the other amendatory acts, it is unnecessary to discuss it further under this heading.

**Act 200 of 1946.** In general, gross income, for the purposes of the act includes gains, profits and income derived from salaries, wages or compensation for personal services or from professions or occupations, or growing out of the ownership of property. Excluded from gross income are certain items such as amounts received from insurance policies, values acquired by donations or by inheritance, liability insurance benefits and interest on obligations of the state. To the list of items to be excluded from gross income has been added capital gains which are defined as gains from the sales or exchanges of capital assets located outside the state. Correlatively, capital losses from sales or exchanges of capital assets located outside the state.

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34. La. Act 21 of 1934 as amended [Dart's Stats. (1939) § 8587.1 et seq.].
35. La. Act 21 of 1934, § 32, as last amended by La. Act 158 of 1944 [Dart's Stats. (Supp. 1946) § 8587.32].
37. Supra p. 27, n. 20.
38. La. Act 21 of 1934, § 8, as last amended by La. Act 146 of 1944 [Dart's Stats. (Supp. 1946) § 8587.8].
39. Ibid., as last amended by La. Act 200 of 1946.
capital assets located outside the state are not deductible from net income.\(^{40}\)

 Act 203 of 1946. Section 9 of the Income Tax Act\(^{41}\) permits certain deductions to be made from gross income for the determination of the net taxable income. To this list has been added a provision designed to exempt from taxation the amount of income taxes paid in other states.\(^{42}\) Among the items deductible were charitable donations up to fifteen per cent of the taxpayers net income, computed without benefit of the exemption, but no distinction was made between individuals and corporations. The maximum allowed as a deduction for charitable donations under the 1946 statute has been reduced, with respect to corporations, to five per cent of the net income.\(^{43}\)

 In addition to the personal exemptions of one thousand dollars and twenty-five hundred dollars in favor of single and married persons, respectively, the statute now grants an additional exemption in favor of veterans of fifteen hundred dollars if single and of twenty-five hundred dollars if married.\(^{44}\) Thus, the total exemption given to war veterans is twenty-five hundred dollars if single, and five thousand dollars if married and living with husband or wife. These additional exemptions, however, are for a limited period of five years.

 The provisions permitting credits for educational expenses formerly extended to expenses furnished to persons “under the age of 21 years.”\(^{45}\) These provisions have been amended so as to restrict the credit to expenses furnished to persons between the ages of eighteen and twenty-one years.\(^{46}\) The credit allowed for dependents was not changed but a new provision has been added the effect of which is to reduce this exemption by four hundred dollars in the case of a head of a family other than a married person living with husband or wife. It is provided that in the case of a head of a family who is such only by reason of having

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41. La. Act 21 of 1934, § 9, as last amended by La. Act 205 of 1944 [Dart's Stats. (Supp. 1946) § 8587.9].

42. Ibid., as last amended by La. Act 203 of 1946.

43. The amount remains unchanged with respect to individuals, except that if in the taxable year and in each of the eight preceding taxable years the contributions of an individual taxpayer, plus the amount of income taxes paid exceed 90 per cent of his net income for each taxable year, then the 15 per cent limit imposed is not to be applied.


46. Ibid., as last amended by La. Acts 191 and 203 of 1946.
one or more dependents for whom he would be entitled to the dependency credit of four hundred dollars or the educational expense credit, the credit will be disallowed with respect to one of such dependents.\textsuperscript{47}

Domestic corporations as well as individuals have been granted a further credit against income taxes paid in other states on income taxable under its laws, regardless of the domicile of the taxpayer, except in cases where a reciprocal law exists in the state to which the tax has been paid.\textsuperscript{48}

Of the above innovations injected into the income tax statute, only the one pertaining to the special exemptions in favor of veterans appears questionable under the Constitution. The Constitution permits the levy of taxes on net incomes, but it specifically provides that these must be equal and uniform.\textsuperscript{49} Thus, the inquiry is necessarily whether the exemption granted to veterans results in unwarranted discrimination against all other taxpayers similarly situated. It is the uniform rule of law that constitutional requirements as to the equality and uniformity of taxation do not inhibit the legislature from, nor do they deprive it of, the power of dividing the objects of taxation into classes, provided always that the classification adopted is reasonable and based on substantial differences.\textsuperscript{50}

As to whether or not veterans as such may be placed in a special class for the purpose of exemption the courts are in disagreement. Some jurisdictions prefer to hold that veterans may be included as a class for the purpose of exemptions from taxation, the classification being not only reasonable but also substantial and warranted,\textsuperscript{51} while others prefer to hold the classification arbitrary and unreasonable.\textsuperscript{52} Thus, in considering the validity of a statute exempting war veterans from payment of

\textsuperscript{47} La. Act 21 of 1934, § 11(4), as added by La. Act 203 of 1946.
\textsuperscript{48} La. Act 21 of 1934, § 11(6-a), as added by La. 203 of 1946.
\textsuperscript{49} La. Const. of 1921, Art. X, § 1.
\textsuperscript{51} City of Macon v. Samples, 167 Ga. 150, 145 S.E. 97 (1928); Strauss v. Borough of Bradley Beach, 117 N.J.L. 46, 168 Atl. 681 (1936); Farley v. Watt, 165 Okla. 6, 23 P.(2d) 687 (1933); Harkin v. Board of Commissioners of Nibobara County, 30 Wyo. 455, 22 Pac. 35 (1924).
\textsuperscript{52} State v. Garbroski, 111 Iowa 496, 22 N.W. 959 (1900); City of Laurens v. Anderson, 75 S.C. 62, 55 S.E. 136 (1906); State v. Shadrol, 75 Vt. 277, 54 Atl. 1081 (1903).
certain occupational license taxes, the Supreme Court of Georgia said:

"And it does seem to us that the reasonableness of the classification here, based upon outstanding facts which characterized the class created, is so manifest that it cannot even be doubted. The men who are included in the class exempted by this statute were deemed subject to classification when the war in which they served was on. They were classified for the purpose of having them leave their business and their occupation, and their property, and some of them their families, to go to war and incur the hardships and dangers, and it is not unreasonable to classify them now for the purpose of exempting them from certain burdens of taxation. . . ."55

So also, the Supreme Court of Oklahoma stated:

"The soldiers . . . were selected from a particular class . . . The government selected male citizens of a particular age . . . Those who were classified and called away were handicapped not only by an interrupted preparation, but by a tremendous inflation of values which met them upon their return. They constituted a distinct class, distinguished from the mass of society—a class created by deprivation of equal opportunity in civil pursuits at home and marked by disability incident to defense of their country abroad."54

And the Supreme Court of New Jersey:

"It has for many years been the custom of the state to recognize veterans of our wars as men in a class distinct from the mass of its citizens; a class which has rendered distinctive service to the country, in many cases suffering injuries or lasting disability."55

Despite the contrary decisions of other jurisdictions, it appears that the modern trend is toward holding that the classification of veterans as such is not objectionable either as class or discriminatory legislation. The fact that these exemptions are of a temporary duration only is a favorable factor, should their constitutionality be questioned in our courts.

Availing itself of the provisions of Article III, Section 34, of the Constitution\(^1\) the legislature raised the per diem of its own members as well as the salaries of a great many state officers.\(^2\) In the majority of instances, the promulgated acts are noted as having received the necessary two-thirds vote in each house; in some instances, however, this notation is conspicuously absent, although it does not necessarily follow that these acts failed to receive the necessary votes.\(^5\)

**Act 294 of 1946.** This statute authorizes the criminal sheriff for the Parish of Orleans to appoint as many deputy sheriffs as may be necessary not in excess of one hundred and fifteen, and requires the City of New Orleans to pay them the salaries established by the act. This statute has been attacked as unconstitutional\(^4\) on the grounds that it is an act to change the salaries of public officers without the necessary two-thirds vote as required by the Constitution.\(^5\) A similar controversy arose concerning the constitutionality of Act 108 of 1928 which set forth the salaries and classifications of eighty-nine criminal deputy sheriffs for the Parish of Orleans.\(^6\) It was contended by the City of New Orleans that the act “changed” the salaries of the deputies which were fixed by the Constitution at “not less than one hundred dollars.”\(^7\) The supreme court, however, held these salaries were not “fixed” within the meaning of Article III, Section 34, because the Constitution did not provide for a definite amount but merely stated the minimum below which they could not fall; nor were they fixed by statute, and consequently, the two-thirds vote was not necessary for the validity of the act which, for the first time fixed the salaries for the deputy criminal sheriffs for the Parish of Orleans.\(^8\) Act 108 of 1928, however, was repealed by Act 114 of 1932

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1. La. Const. of 1921, Art. III, § 34. “Salaries of public officers, whether fixed in this Constitution or otherwise, may be changed by vote of two-thirds of the members of each House of the Legislature.” (Italics supplied.)
2. For an analysis of these statutes, see p. 25, n. 12.
3. Cf. Act 153, raising salary of city court judge of Monroe, which passed by 71 votes in the House and 28 in the Senate; Act 213, raising salary of clerks of court in East Feliciana which passed by 67 votes in the House and 26 in the Senate.
5. La. Const. of 1921, Art. III, § 34.
8. “As section 88 of Article 7 of the present Constitution did not ‘fix’ in the usual sense of that term, the salary of each of the deputies of the criminal sheriff for the parish of Orleans, it cannot be contended logically . . .
which in turn empowered the Commission Council of the City of New Orleans to fix the salaries of the deputy criminal sheriffs at not less than a certain percentage of the salaries fixed by the act of 1928. Although Act 114 of 1932 was subsequently repealed, its provisions are now embodied in Act 8 of 1940 (E. S.), and it should follow that the salaries of the deputy criminal sheriffs of New Orleans are not now fixed within the meaning of the constitutional provisions above referred to, and that Act 204 of 1946 does not in effect “change” the salaries of the deputy criminal sheriffs of New Orleans, but merely fixes them for the first time.

*Act 94 of 1946.* This act amends Section 10 of Act 114 of 1921 which established the salary of both the clerk and the stenographer of the Criminal District Court for the Parish of Orleans. Act 94 of 1946 increases these salaries but failed to obtain the necessary two-thirds vote in the House. This would make it clearly unconstitutional, for it could not be contended that this was not a statute changing the salary of these officers, the avowed purpose of the act being to amend the statute which fixed these salaries, by increasing the same.

Aside from any other legal questions which may be presented in passing upon the constitutionality of salary raising statutes, an important question is whether the vote required by the Constitution is two-thirds of the elected members, or merely two-thirds of the members present at the time the vote is taken. The only time this question seems to have been presented for consideration, the supreme court did not find it necessary to pass upon it, but it is interesting to note that the legislature itself

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9. La. Act 8 of 1940 (E. S.) [Dart's Stata. (Supp. 1946) § 7480].
11. The official calendar of the House of Representatives for 1946 shows it received only 60 affirmative votes.
12. This issue was squarely presented to the court in State v. City of New Orleans, supra, but the court dismissed it as unnecessary for the decision thus: “Hereafter, should there be an attempt to change the salaries of the deputy criminal sheriffs for the parish of Orleans by amendment to Act No. 108 of 1928, then there will be ample time and opportunity to consider and dispose of the other issues raised by respondent in this case.” 171 La. 670, 675, 131 So. 843, 845 (1930).
considers the necessary vote to be two-thirds of the elected members to each house.\(^{13}\)

Two other acts failing to receive the affirmative vote of the elected members of both houses are Act 187, raising the salary of the Judge of the City Court of Shreveport\(^{14}\) and Act 358, raising the compensation of the tax assessor for the Parish of Bossier,\(^ {15}\) which had been last established by the legislature in Act 97 of 1944.\(^ {16}\)

**STATE DEPARTMENTS, BOARDS AND COMMISSIONS**

*In General*

All state agencies, departments, boards and commissions, must now pay rent on space occupied by them in buildings owned or maintained by the state. The director of finance is authorized to assess and collect this rent on a current rental basis, and all rental revenues must be deposited in the state treasury to the credit of the general fund.\(^1\)

*Advertising*

Act 13 of the Extraordinary Session of 1940, made it unlawful for the state, or any department, board or commission thereof to expend any public funds for public advertising except for bids for public works, supplies or for the sale of bonds. Act 232 of 1946 has amended this statute so as to permit educational institutions to advertise freely extension courses offered by them as well as publications and other materials offered for sale. Especially benefited by this amendment is the Louisiana State University Press which was heretofore unable to properly advertise its publications among the booksellers and the general public. This amendment places the University Press on an equal footing

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13. The following note appears in the calendar of the House for the year 1938 upon the voting on S.B. 65, raising the salaries of the judges of district courts: "... June 8, read third time in full, roll call on final passage, yeas 74, nays 0, the bill, having received a two-thirds vote of the members elect was finally passed, title adopted, ordered to Senate." (Italics supplied.) In 1926 the legislature passed Act 59, raising the salaries of state officials. The House Journal for that year contains a note to the effect that the original bill, falling to obtain the required two-thirds vote of the elected membership, had been defeated. On reconsideration, the bill passed with the necessary 67 votes.

14. The official calendars show the bill obtained 70 affirmative votes in the House and 24 in the Senate.

15. This act received only 64 affirmative votes in the House, the vote on final passage being 65 to 1.


1. La. Act 331 of 1946.
with other university presses throughout the country, and particu-
larly enables it to bring before the public at large the extent and
quality of its publications.

Also amending Act 13 of the Extraordinary Session of 1940 is Act
194 of 1946 which permits the different parishes to pay the
higher rates charged by printers for official notices published in
the various official journals. 2

Department of Commerce and Industry

Act 204 of 1944, which created the Department of Commerce and
Industry, provided for the establishment of a board for the
government thereof composed of twelve members appointed by
the governor, whose terms were to run concurrently with that of
the governor. Act 112 of 1946 amends these provisions, but it is
obvious the only effect of the amendment is to declare a vac-
cy in the offices of the board members presently in office, and
to authorize the appointment of new members by the governor,
as originally provided in the act. 3 Other amendments to the
original statute provide for the establishment of advisory com-
mittees composed of members appointed by the governor to assist
the department in the performance of its functions. 4

Department of Institutions

Act 47 of 1946 creates in the Department of Institutions, and
as a unit thereof, the Hot Wells Hospital of Rapides Parish, to be
administered by the department. At the same time, Act 220 of
1938, which originally created the hospital under the jurisdic-
tion and supervision of the State Hospital Board and the Board
of Health, was repealed. The 1946 statute also makes an appro-
priation of one hundred and fifty thousand dollars for buildings
and improvements, and an appropriation of fifty thousand dol-
lars for maintenance and operation. Since the hospital was al-
ready in existence, and since it had previously been transferred
to the Department of Institutions under the provisions of Act 3
of 1942, 5 the present statute, but for the appropriations it carries,
accomplishes very little.

2. See also La. Act 193 of 1946, amending the pertinent provisions of La.
Act 49 of 1877, as amended, authorizing payment of increased charges for
judicial advertisements.
3. The act provides "... The terms of the present members of the Board . . .
shall expire when this act takes effect, and the governor shall appoint
the members of the board as herein provided. . . ." La. Act 112 of 1946, § 2.
5. La. Act 3 of 1942, § 3 [Dart's Stats. (Supp. 1946) § 9328.2]: "The fol-
Department of Veterans Affairs

As originally enacted, the statute creating this department stated that its purpose was to administer the affairs of veterans entitled to the benefits provided by the Congress of the United States and of the State of Louisiana. Act 164 of 1946 has enlarged the scope of the department by stating its purpose is to administer the affairs of veterans who are entitled to benefits "under the laws of the United States and the several states thereof." No other changes of any significance were made.

Athletic Commission

Act 325 of 1946 repeals the former statutes relative to the athletic commission and in turn creates a new commission with authority to regulate and control boxing and wrestling contests in the state.

Milk Commission

Act 192 of 1946 repealed all other statutes relative to the regulation of the purchase, sale and distribution of milk within the state, and established a new milk commission, composed of the president of the State Board of Health, the Commissioner of Agriculture, the head of the Louisiana State University Dairy Department and nine other members appointed by the governor. The commission is given the necessary authority to regulate the sale and purchase of milk on the basis of butterfat content and to adopt such regulations as are necessary to insure proper standards and grades.

In this connection Act 159 of 1946 is to be noted. This act prohibits the shipment or transportation of milk and milk products into the state, unless the shipper has first obtained a permit from the president of the Board of Health. The Board of Health is authorized to set up standards which the product to be shipped must meet and to require that every container must be so labeled or tagged as to show that the product shipped is of the standard required and that all regulations have been complied with.

ollowing boards, agents, agencies and institutions are hereby merged and consolidated into the Department of Institutions: . . . The Hot Wells Hospital (Rapides Parish) . . . ."

7. Cf. La. Act 279 of 1936 [Dart’s Stats. (1939) §§ 9390-9411], which in turn repealed all other former statutes.
Recreation and Park Commission—Baton Rouge

Act 246 of 1946 is an enabling statute creating the Recreation and Park Commission for the Parish of East Baton Rouge, which will replace the present Baton Rouge Parish and Municipal Recreation Commission, upon the adoption of the constitutional amendment on which the statute is based.9

Board of State Affairs

Under Section 6 of Act 140 of 1916, the Board of State Affairs was authorized to employ a secretary at a salary of forty-eight hundred dollars per annum, as well as other necessary clerical employees whose compensation was to be fixed by the board. Act 76 of 1946 has modified these provisions by authorizing the board to employ a secretary at a salary "as may be fixed by the board," and by providing that all other clerical employees of the board are subject to the civil service law.

State Printing Board

One of the controversial measures adopted at the 1946 session of the legislature was Act 216 of 1946, which re-established the State Printing Board previously abolished upon the adoption of the Fiscal Code of 1942.10 The new board is composed of the governor, the lieutenant governor, the director of the department of commerce, the speaker of the house, and the secretary of the senate. The declared purpose is to regulate state printing by letting contracts to the lowest bidders only. The director of finance is authorized to establish the basis upon which bids are to be made and received, and to adopt such regulations as are necessary for the proper administration of the statute. All bids are to be accompanied by a faithful performance bond ranging from ten thousand dollars to thirty-five thousand dollars, according to the contract to be let, and all contracts must be approved by the governor, the president of the senate and the speaker of the house, or any two of them.

Suits Against the State

Under the provisions of the Constitution of 1913, the legislature was required to prescribe the particular method of procedure provided therein in authorizing suits against the state. This

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procedure was uniform in all cases, all suits being required to be brought in the district court at the capital of the state, service of citation being made upon both the governor and the attorney general. The supreme court was given appellate jurisdiction in all cases, regardless of jurisdictional amount, and all claims had to be reduced to a judgment rendered by the supreme court.\footnote{1} Article III, Section 35, of the present Constitution was a departure from the previous requirement in that it merely prescribes that the legislature shall provide a method of procedure and the effect which the judgments rendered shall have.\footnote{2} Thus, the procedure need not be uniform in all cases, and, as evidenced by the statutes enacted at the recent session,\footnote{3} the suits may be instituted in any convenient court of competent jurisdiction, with service of citation on the heads of the particular agencies or department involved, at the convenience of the parties.\footnote{4} Despite this liberality, however, the provisions of this section of the Constitution have been strictly construed, and all acts which fail to prescribe the method of procedure to be followed are held unconstitutional.\footnote{5}

With the exception of one,\footnote{6} all the acts passed by the legislature of 1946 authorizing suits against the state met the present requirements. They followed a general pattern of specifying the court where the suit is to be brought, the person or persons to be served, the manner in which the judgment is to be satisfied, and in some instances, authorizing the compromise of the claim on the recommendation of the attorney general.\footnote{7}

\footnotesize{\begin{itemize}
\item\footnote{1} La. Const. of 1913, Art. 192.
\item\footnote{2} La. Const. of 1921, Art. III, § 35.
\item\footnote{3} See the list of statutes cited at p. 25, n. 11.
\item\footnote{4} Cf. La. Act 19 of 1946, authorizing suit through the Department of Wild Life and Fisheries, to be instituted in the district court either at East Baton Rouge or Lafourche Parish, citation to be served on the commissioner and on the attorney general; La. Act 40 of 1946, authorizing suit through the Department of Institutions to be filed in the 19th Judicial District Court, service to be made on the Director of Institutions and on the attorney general; La. Act 41 of 1946, authorizing suit through the Department of Highways to be filed in the district court either in Baton Rouge or in the Parish of East Carroll, service to be made on the director of the Department of Highways and on the attorney general.
\item\footnote{6} La. Act 365 of 1946, which authorizes suit for personal injuries \emph{without} designating the forum or the persons upon whom service of citation is to be made.
\item\footnote{7} See La. Acts 19 and 40 of 1946. The validity of stipulations authorizing the compromise of claims is questionable. The constitutional provision authorizing suit against the state is merely a waiver of the state's immunity to suit [Lewis v. State, 196 La. 814, 200 So. 265 (1941)] and does not in any way authorize the compromise of claims but contemplates, on the other hand, that no appropriation is to be made to pay any claims except upon a}
On the question as to whether an act which fails to state or designate the forum where the suit is to be filed is deficient as failing to provide for the procedure to be followed, the supreme court in a recent decision stated unequivocally that such a statute would not violate the constitutional requirements. This decision is certainly a departure from the general understanding of the meaning of “method of procedure” as used in the Constitution, the designation of the forum being part of that method. No doubt it is the purpose of Act 385 of 1946 to overrule this decision of the supreme court. This act is a proposed amendment to Article III, Section 35, of the Constitution of 1921, which, if adopted, will require the legislature to provide the method for citing the state, to designate the court or courts in which the suit is to be instituted, and, except as to the method of citation and the jurisdiction of the courts, to provide for the method of procedure to be the same as in the case of suits between private litigants. While retaining the latitude presently enjoyed by the legislature in choosing the forum and designating the parties upon whom service of citation is to be made, this proposed amendment provides for a more or less uniform requirement to be contained in all acts authorizing suits against the state. The amendment thus will tend to diminish controversies as to the requirements for valid legislation. However, it must be noted that the proposed amendment merely clothes in legislative language the general interpretation placed by the legislature and by the courts upon the article of the Constitution, and does not require the legislature

judgment validly rendered by a court of competent jurisdiction. See also La. Const. of 1921, Art. IV, § 8, prohibiting the legislature from making any appropriations for private purposes.

8. Lewis v. State, 207 La. 194, 20 So. (2d) 917 (1945), wherein the court held: "The Legislature, in granting Miss Lewis the right to sue the State, had the unrestricted power to provide a method of procedure and the effect of the judgment which might be rendered in the suit. In passing Act 273 of 1942, the Legislature waived prescription and provided for the effect of any judgment that might be rendered in favor of Miss Lewis. It is true it did not in the body of the act designate the forum in which the suit should be brought, but it was not obliged to do this, unless it decided to depart from the well established rule of procedure that a tort action must be brought at the domicile of the defendant as provided by Article 162 of the Code of Practice, or in the parish where the tortious act was committed." (207 La. 194, 209, 20 So. (2d) 917, 921-922.) "If no mention whatever were made in the title of the act of the courts in which the suit against the State might be brought, it would not render the act unconstitutional, since it was the obvious intention of the Legislature in passing the act that the suit authorized therein should be brought at the seat of the state government, in the Parish of East Baton Rouge... Hence, it is clear that the reference in the title of the act to the courts in which the suit might be brought may be regarded as mere surplusage and wholly unnecessary for the accomplishing of the purpose the Legislature had in mind...." (207 La. 194, 211, 20 So. (2d) 917, 922.)
to do any more than it has generally done in the past. Had the proposal contained a self-operative standard method of procedure for instituting suits against the state, prescribing the method of citation and designation of the courts in which such suits should be brought,\(^9\) much of the confusion now arising would have been eliminated.

In this connection, Act 371 is also worthy of note. It amends the Workmen's Compensation Act of 1914\(^{10}\) by adding a new section to provide that in all cases where suit is brought against the state, or any board or other agency thereof, on a claim for workmen's compensation under the act, the suit is to be instituted in the district court for the Parish of East Baton Rouge, if against the state, and if the suit is against a board or other agency, the suit is to be brought in the district court either at the domicile of the nominal defendant agency or at the domicile of the plaintiff at the time the injury occurred. When the suit is against the state, service is to be made on both the governor and the attorney general, and, in the case of suits against any board or other agency, the service is to be made on the president or chairman thereof or upon any other officer authorized to receive such service.\(^{11}\)

Again, the evident purpose of this amendment is to correct the deficiency in the workmen's compensation statute in that, although that act purports to grant an exclusive right of action to state employees for compensation for injuries sustained while in the scope of their employment,\(^{12}\) it failed to provide for the procedure to be followed in instituting the suit. In line with the settled jurisprudence on the subject, the supreme court held that the provisions of the act which authorized suits against the state for compensation were unconstitutional.\(^{13}\) In view of this holding, it may be doubtful that the present amendment accomplishes its purpose, for, although a method of pro-

\(^9\) Cf. La. Act 371 of 1946. For further discussion as to methods of settling claims against the state see supra p. 52.

\(^{10}\) La. Act 20 of 1914 [Dart's Stats. (1939) §§ 4391-4432].

\(^{11}\) La. Act 371 of 1946.

\(^{12}\) La. Act 20 of 1914, § 1 [Dart's Stats. (1939) § 4391].

\(^{13}\) "When the legislature undertakes to authorize a suit against the state, it is its mandatory duty to provide the method of procedure and the effect to be given to the judgment which may be rendered in such suit. As no such provision is contained in Act No. 20 of 1914, or in any of its amendments relating to recovery against the State in suits for workmen's compensation, the provisions contained in Act No. 20 of 1914 authorizing the bringing of suit for compensation against the State is violative of Article 192 of the Constitution of 1913, as well as Article 3, Section 35 of the Constitution of 1921." (Italics supplied.) Martin v. State, 205 La. 1052, 1059-1060, 18 So.(2d) 613, 616 (1944).
procedure is now provided, the right of action originally conferred by the statute might be regarded as non-existent, since the provisions which granted it were declared unconstitutional.\footnote{A statute which has been declared unconstitutional may be revived, but only by a full re-enactment of the statute or of the unconstitutional provisions. State v. Walters, 185 La. 1070, 66 So. 364 (1914); Dilly v. East Feliciana Parish, 6 So. (2d) 699 (La. App. 1942). See also Police Jury v. Mayor of Shreveport, 157 La. 1032, 69 So. 828 (1915). In a subsequent suit the plaintiff in the Martin case, supra note 13, obtained additional authority by Act 155 of 1944 "to institute suit under the provisions of Act 20 of 1914," and was permitted to recover. Martin v. State, 25 So. (2d) 251 (La. App. 1946). The court of appeal did not pass on the question of constitutionality of the provisions of the workmen's compensation act giving state employees a right of action under the act. It is clear that the special authority conferred on the plaintiff was the basis of the suit.}

**MISCELLANEOUS**

*Commercial Buildings*

Under the provisions of Act 375 of 1946, all commercial buildings to be constructed in the future in cities having a population of more than fifty thousand inhabitants must have safety bolts in all windows on all floors above the second story to safeguard employees engaged in window cleaning, window repair work, et cetera.

*Intoxicating Liquors*

The alcoholic beverage laws were amended so as to give local authorities full discretion in the granting of licenses for the dispensing of vinous or spirituous liquors. Also, the license fees for both wholesalers and retailers were increased.\footnote{La. Act 102 of 1946.}

*Libraries*

The library formerly operated by the Louisiana Library Commission will now be known as the Louisiana State Library;\footnote{La. Act 103 of 1946.} the name of the law library located in the New Court House Building at New Orleans has been changed to "Law Library of Louisiana" and it and the Huey P. Long Memorial Library are now placed under the control of the attorney general.\footnote{La. Acts 190 and 384 of 1946.}

*Mental Health*

Act 303 of 1946 is a complete integrated statute providing for the discovery and treatment of mental disorders. The act provides in detail for the examination, admission, commitment
and detention of mental patients, as well as for their transfer and discharge from mental institutions. All previous laws relative to the commitment of the mentally incompetent have been repealed.

Microfilm

State departments, boards and commissions may now install microfilm machinery and apparatus for the recordation of all public documents. Provision is also made for the admission in evidence of microfilmed documents which are declared to have the same weight as originals.  

Parks and Playgrounds

Act 129 of 1946 authorizes the State Parks Commission to purchase a site on the West shore of Lake Bisteneau for development into a state park, and for the purpose, an appropriation of $25,000.00 was made; and by Act 138 of 1946, the purchase of the site of the battle of New Orleans at Chalmette was authorized, for the purpose of transferring it to the Federal Government for the construction of a National Park.

Public Officers and Employees

Sections 55 and 56 of Act 4 of 1942, made it unlawful for any officer or employee of the department of highways, or for a member of the legislature, to be in any way interested in any contract to be awarded by the department, under penalty of fine or imprisonment. These sections have been amended by Act 368 of 1946, to provide that officers of the executive department and members of the legislature who are licensed contractors, are not prohibited from bidding on, or from being awarded, contracts for the buildings of highways, or other public works constructed under the supervision of the highway department.

Public Utilities

Act 373 of 1946 declares the transportation of gas by pipeline is impressed with a public interest and as such, subject to regulation by the state. Authority is conferred on the Public Service Commission to adopt such regulations as are necessary for the control thereof.

State Employees

All honorably discharged veterans formerly employed by
the state may be reinstated, upon proper application, to their
former positions or employment held at the time of entering
the service. 5

**Tax Collectors**

Tax collectors are required to mail additional notices to each
tax debtor listed on the assessment rolls, stating the amount of
the tax due for the current year, requesting payment, and stating
the date on which the tax will become delinquent. 6

**Unfair Sales Act**

The unfair sales statute 7 which makes it unlawful to sell
goods below cost, as defined therein, has been amended to pro-
hibit absorption of the sales tax by retailers. 8

**Vital Statistics**

The vital statistics act 9 was amended to provide for a fee of
fifty cents to be paid to the clerk of court preparing certificates
in divorce and annulment cases. This fee is to be taxed as costs
against the party cast in the suit. 10

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7. La. Act 338 of 1940 [Dart’s Stats. (Supp. 1946) § 4931.1-4931.8].
9. La. Act 180 of 1942 [Dart’s Stats. (Supp. 1946) § 3484.1 et seq.].