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1952 Amendments to the Louisiana Constitution

Kimbrough Owen

One of the principal criticisms of the present Louisiana Constitution is the operation of the amending process and the difficulties it places upon the voter.¹ The thirty-four amendments proposed by the regular session of the 1952 Legislature and approved by the voters in the November 1952 election afford an excellent illustration of these difficulties. Louisiana had a longer Constitution than any other state before the adoption of the thirty-four recent amendments. The Constitution contained approximately one hundred thirty-seven thousand words as compared with sixteen thousand words for the average state constitution.² The 1952 amendments add forty-seven thousand more words. The United States Constitution contains approximately six thousand words or about one-eighth as many as were included in the thirty-four amendments.

The length, subject matter, complexity, and technical nature of most of the amendments would discourage even the most persevering citizen. One result of this condition is that many citizens do not vote at all on constitutional amendments. Some amendments have been adopted by less than ten per cent of the registered voters.³

Less than one out of every three registered voters voted either for or against the thirty-four amendments in the recent

1. For a discussion of the 1921 Constitution and the need for revision see Owen, *The Need for Constitutional Revision in Louisiana*, 8 *LOUISIANA LAW REVIEW* 1 (1947). PAR Legislative Bulletin No. 6, June 21, 1952. For a discussion of the history of constitutional revision in Louisiana see Louisiana State Law Institute, *Louisiana Constitutional Conventions, 1812-1921*. Secretary of State, Baton Rouge. Havard, *The Abortive Louisiana Constitutional Convention of 1951*, 13 *Journal of Politics* 697 (1951). See also Louisiana State Law Institute, *The Projet of a Constitution for the State of Louisiana*, August 1950, Secretary of State, Baton Rouge. See also *Notes and Studies for a Projet of a Constitution for the State of Louisiana*, manuscript.

2. Public Affairs Research Council of Louisiana, *Voter's Guide to the Amendments*, 8 (October 1952).

3. Public Affairs Research Council of Louisiana, *The Debt of the Louisiana State Government, 1950 and 1951*, Table 4; *Voter Participation in Authorization of Louisiana State Debt as of June 30, 1951*, p. 9.

election.⁴ Approximately half of the citizens who went to the polls and voted for presidential electors voted either for or against the amendments.⁵ Yet those who vote on the amendments tend to vote in favor of them. Of three hundred forty-seven amendments proposed since 1921, three hundred two or eighty-seven per cent have been adopted.⁶

A brief review of the thirty-four amendments will indicate the vast range as to subject matter and as to significance of these recent additions to the Louisiana Constitution.⁷

Four amendments were added to Article IV, "Limitations." Article IV, Section 2, provides for the establishment of the Royalty Road Fund to which are dedicated ten per cent of the royalties from mineral leases granted by the state. The royalties are credited to the parishes in which the minerals are leased for use in connection with roads, bridges, and ferries. This section is amended so that parishes may now issue bonds on the basis of this revenue, and so that tunnels are included in the projects which may be financed from the fund.⁸

Article IV, Section 11, prohibits appropriations by the Legislature within the last five days of a session. An additional paragraph is added to this section prohibiting, except by a three-fourths vote of the elected members, any appropriation by a special session of the Legislature convened within a period extending from ninety days before the date of any primary election for Governor to the expiration of the term of office of the incumbent Governor.⁹

Article IV, Section 12, prohibits the state from lending or pledging its credit. This section is amended to authorize the Commissioner of Agriculture to underwrite or guarantee the repayment of twenty-five per cent of an insured loan for a project of a recognized farm youth organization to provide additional

4. Public Affairs Research Council of Louisiana, Louisiana Voter Participation in the November 4, 1952, Election (January 1953).

5. *Ibid.*

6. Public Affairs Research Council of Louisiana, PAR Reporter No. 21, Constitutional Amendments Proposed and Adopted, 2 (January 1953).

7. For additional information on individual amendments see the following: New Orleans Bureau of Governmental Research, Thirty-four Amendments, October 28, 1952, New Orleans, Louisiana. Public Affairs Research Council of Louisiana, Voters Guide to the Amendments, October 1952, Baton Rouge, Louisiana.

8. La. Act 212 of 1952, amending La. Const. of 1921, Art. IV, § 2.

9. La. Act 509 of 1952, amending La. Const. of 1921, Art. IV, § 11.

facilities for marketing, selling, or distributing livestock, poultry, or eggs.¹⁰

Section 16 concerning the creation of *fidei commissa* and trust estates was amended to exempt trusts created by employers for the benefit of their employees from the prohibitions of this section.¹¹ The amendment also extends the term of trust estates created for the benefit of a natural person to the death of the beneficiary or for ten years after the death of the donor.

Article VI, "Administrative Officers and Boards," received six amendments. Three of these involved major reorganization of state departments under the Governor's plan for placing the major spending agencies of the state under nonpolitical boards. The plan as incorporated in administration bills introduced in the Legislature involved the creation of constitutional boards for the departments of institutions, highways, public welfare, and wild life and fisheries. The members of the boards were to serve eight year overlapping terms and were to be nominated from a state boards panel consisting of names selected by citizen groups.¹² The proposals were so changed by the Legislature as to make the state boards panel almost meaningless, and the terms of board members were reduced so that a governor, by the exercise of his appointive power, can control all boards by the beginning of his third year in office.

Two of the four reorganization amendments are added as new sections of Article VI. The Board of Institutions is added as Section 30.¹³ The board consists of nine members, the Governor and eight members appointed by him. Vacancies in the board are to be filled by appointment by the Governor from nominations made by the remaining members of the board from the state boards panel. Members are appointed for six year staggered terms. The panel consists of names submitted by nonprofit organizations of the state and by any interested individual. The amendment states that the Governor will "normally" appoint from the list submitted by the remaining members of the board but may

10. La. Act 307 of 1952, adding a new section to La. Const. of 1921, Art. IV, § 12, to be designated as Section 12-c.

11. La. Act 208 of 1952, amending La. Const. of 1921, Art. IV, § 16.

12. For a discussion of the problems of administration and responsibility involved in this reorganization plan, see Bureau of Governmental Research, *Thirty-four Amendments*, 8-12, 14-17 (October 28, 1952). Public Affairs Research Council of Louisiana, *Voter's Guide to the Amendments*, 8 (October 1952). PAR Legislation Bulletin No. 1, 2-6 (May 17, 1952).

13. La. Act 48 of 1952, adding Section 30 to Article VI.

appoint anyone from the panel. If no list is submitted, the Governor may fill the vacancy. The amendment also restores the integration of the state's hospitals and correctional institutions into a single department that had been abolished by the 1948 Legislature. Some seventeen existing institutions are included under the board. The charity hospitals in New Orleans and Shreveport are, however, left under independent boards.

The Board of Highways is established by a new section, 19.1.¹⁴ Like the Board of Institutions it consists of the Governor and eight members appointed by him. Two of the members serve for four year terms and six for six year overlapping terms. A member must be appointed from each of the eight congressional districts. The state boards panel for vacancies on this board will consist of names submitted by the governing authorities of the parishes of the state and of the City of New Orleans. The Governor in making his appointments, however, will be confined neither to the recommendations of the board nor to the names on the panel. At the beginning of his second year in office, a Governor and his appointees will constitute a majority on the board.

The new highway board differs considerably from that established by the 1948 Legislature. The latter board consisted of the Chairman of the House Committee on Public Roads and Highways and eight members, one appointed by the Governor from each of the congressional districts. They served at the pleasure of the Governor and were paid as full-time employees of the state.

The Wild Life and Fisheries Commission is established by an amendment to Article VI, Section 1 (A).¹⁵ This commission follows the pattern established for the Board of Institutions except that it consists of only seven members, six appointed for six year terms and one for four years, and that three of the members must be from the coastal parishes and representative of the commercial fish or fur industry. There is no provision for a state boards panel.

A fourth amendment to Article VI establishes the "Greater Baton Rouge Port Commission" somewhat on the pattern of the

14. La. Act 54 of 1952, adding a new section to La. Const. of 1921, Art. VI, § 19.1.

15. La. Act 57 of 1952, amending La. Const. of 1921, Art. VI, § 1(A). For extended arguments in favor of this amendment see *The Merits of Amendment No. 9*, Louisiana Wildlife Federation, Baton Rouge. See also New Orleans Bureau of Governmental Research, *Thirty-four Amendments* (October 28, 1952).

Port of New Orleans which is also provided for in Article VI.¹⁶ The Baton Rouge Port is to be governed by a commission of nine, one appointed by the Governor without nominations and eight appointed by the Governor from nominations made by the governing authorities of the parishes of East and West Baton Rouge and Iberville, and the governing authorities of the City of Baton Rouge and the town of Port Allen. Terms of the members are for six years.

The commission is authorized to regulate the commerce and traffic within the port area, to provide for the location and construction of port facilities, and to set charges for services. It is authorized to incur debt in the form of revenue bonds subject to approval by the Board of Liquidation of the State Department. The total outstanding indebtedness may not exceed fifteen million dollars. There are no limitations on the interest rate or maturity dates of the bonds; nor is sale solely on the basis of competitive bidding required. The full faith and credit of the three parishes and of the State of Louisiana are pledged for the bonds.¹⁷

The two other amendments to Article VI both affect Section 22. Section 22 provides for the General Highway Fund and is one of the most complicated and involved provisions to be found in any state constitution. It affords an excellent example of the practice of dedicating revenues to specific spending functions.¹⁸ Section 22 (g) provides for the establishment of Highway Fund No. 2 from vehicular license taxes collected in the parishes of Orleans, Jefferson, St. John the Baptist, St. Charles, Tangipahoa, and St. Tammany. The amendment changes the surplus in this fund, available after paying debt requirements, from the Lakeshore-Hammond highway and a causeway across Lake Pontchartrain to a variety of road, bridge, and causeway projects in the area affected including certain amounts to the Mississippi River Bridge Authority.¹⁹

The sixth amendment affecting Article VI repeals Section 22 (k).²⁰ This section authorized the Department of Highways

16. La. Act 9 of 1952, adding Section 29 to Article VI. La. Const. of 1921, Art. VI, §§ 16-17.

17. For a critical discussion of these provisions, see New Orleans Bureau of Governmental Research, *Thirty-four Amendments* (October 28, 1952).

18. For a discussion of this problem see PAR Legislation Bulletin No. 8, 3-6 (July 3, 1952). Louisiana Revenue Code Commission, *Preliminary Report of the Louisiana Code Commission to His Excellency James H. Davis Governor of the State of Louisiana and to the Honorables The Members of the Legislature of the State of Louisiana* (April 10, 1946).

19. La. Act 90 of 1952, amending La. Const. of 1921, Art. VI, § 22(G).

20. La. Act 275 of 1952, repealing La. Const. of 1921, Art. VI, § 22(k).

to construct a toll bridge between New Orleans and the west bank and to issue thirty million dollars in revenue bonds for this purpose. The Legislature has provided for a Mississippi River Bridge Authority to build this bridge and has provided in the amendment discussed above a method of securing the bonds.

Article VI-A, "Gasoline Tax for Ports," was affected by one amendment.²¹ Section 5 of Article VI-A provides for the dedication of nine-twentieths of one cent of the gasoline tax to the Port of New Orleans. The amendment authorizes the Department of Highways to issue bonds not to exceed thirty million dollars on the basis of a portion of the revenues from this tax. Proceeds from the bonds would be used for a free bridge or tunnel crossing the Industrial Canal in New Orleans, expressway and approach roads to the Mississippi River toll bridge, and roads and bridges on the federal aid primary and urban highways of the state.

Six amendments were added to Article VII, "The Judiciary." Section 31, providing for judicial districts, is affected by two amendments. One creates the thirtieth judicial district and the other creates both the thirtieth and thirty-first judicial districts.²² It is assumed that the passage of both of these amendments will nullify those provisions of the first dealing with other districts than the thirtieth. The thirtieth district consists of Vernon and Beauregard Parishes; the thirty-first of Jefferson Davis and Allen. These districts are carved from the former eleventh and fourteenth districts. The eleventh district now consists of DeSoto and Sabine and the fourteenth of Calcasieu and Cameron.²³

Section 69 requires an election to fill vacancies in the office of district judge, district attorney, sheriff, or clerk of the district court where the unexpired portion of the term is one year or more. Where the unexpired term is less than a year, the vacancy is to be filled by the Governor with senatorial consent. This section has been amended to make the provision applicable to the assessor.²⁴

Three amendments concern the courts of New Orleans. Sections 90 and 91 are amended to increase the salaries of each of

21. La. Act 284 of 1952, amending La. Const. of 1921, Art. VI-A, § 5.

22. La. Act 31 of 1952, amending La. Const. of 1921, Art. VII, § 31; La. Act 318 of 1952, amending La. Const. of 1921, Art. VII, § 31.

23. La. Const. of 1921, Art. VII, § 31.

24. For an extended discussion of the background of this provision, see New Orleans Bureau of Governmental Research, *Thirty-four Amendments (October 28, 1952)*. La. Act 576 of 1952, amending La. Const. of 1921, Art. VII, § 69.

the three judges of the First City Court from eight thousand five hundred dollars to ten thousand dollars and to increase the concurrent jurisdiction of this court with the Civil District Court of Orleans Parish to include cases involving up to one thousand dollars exclusive of interest, attorney fees, and penalties.²⁵ Since the Second City Court is given the same jurisdiction as the First City Court by another section of the Constitution, the effect of this provision is to increase the concurrent jurisdiction of both courts.²⁶

Section 94, providing for the Municipal Court of New Orleans, is amended to authorize the establishment of a traffic court by action of the Commission Council of the City of New Orleans.²⁷

Section 95, providing for the judicial expense fund for the Parish of Orleans, is amended to permit an increase up to fifty per cent in the fees making up the fund and to permit contributions from the fund to any pension or retirement system for officers and employees paid from the fund.²⁸

Article X, "Revenue and Taxation," received four amendments. Two of these concern the property tax and are of general interest. Household furniture not permanently attached to the building is now exempt from all ad valorem taxes by an amendment to Section 4.²⁹ In view of the fact that only twelve parishes reported any assessments for household property in 1951 and the total assessed valuation was only one million, thirty-three thousand, seven hundred ten dollars, the amendment is a recognition of the fact that this type of property has for the most part been ignored by assessors.³⁰ Section 4 has also been amended to extend the veterans homestead exemption to those persons who have served in Korea and to extend the time of application for the exemption from 1954 to 1959.³¹

Section 10 of Article X, which sets limitations on tax rates for local public improvements, was amended to permit two additional taxes for Jefferson Parish, one an additional tax of five mills for the Fourth Jefferson Drainage District, subject to approval at an election, and the other a parish-wide one mill tax for the establishment and maintenance of a coroner's office and

25. La. Act 437 of 1952, amending La. Const. of 1921, Art. VII, §§ 90, 91.

26. La. Const. of 1921, Art. VII, § 92.

27. La. Act 376 of 1952, amending La. Const. of 1921, Art. VII, § 94.

28. La. Act 230 of 1952, amending La. Const. of 1921, Art. VII, § 95.

29. La. Act 448 of 1952, amending La. Const. of 1921, Art. VII, § 4.

30. Report of the Louisiana Tax Commission, 1950-1951.

31. La. Act 346 of 1952, amending La. Const. of 1921, Art. X, § 4(9b).

emergency ambulance unit.³² Although these two amendments appear to affect only Jefferson Parish, the operation of the property tax relief fund in connection with homestead exemption makes the taxes of Jefferson Parish of concern to the entire state. Jefferson Parish has about three and nine-tenths per cent of the state's population but received about eleven and eight-tenths per cent of the payments paid from the property tax relief fund last year, or almost two million dollars of the sixteen million, six hundred thousand dollars paid out.³³

Article XI, on "Homestead Exemptions," was amended to change the requirement for recordation of homesteads so as to apply only to municipalities of over two hundred fifty thousand population. The provision applied to municipalities of one hundred thousand. When incorporated in the Constitution the provision applied only to New Orleans. The population growth of Baton Rouge and Shreveport would have brought these two cities under the requirement had the amendment not been adopted.³⁴

Article XIV, "Parochial and Municipal Affairs," was affected directly by ten different amendments including three of the most far reaching importance, Civil Service, BAWI (Balancing Agriculture with Industry), and Home Rule.

Section 12 of Article XIV authorized the Legislature to adopt laws providing adequate pensions for employees of municipalities having a population of thirteen thousand or more. The municipalities were authorized by this section to levy up to a one mill tax for pension purposes if approved by a vote of the people. The section was amended so as to delete the authority of municipalities of thirteen thousand or over to levy the tax and to delete the directive to the Legislature.³⁵ The amendment authorized municipalities between fifteen thousand and twenty thousand population to establish a municipal pension system and to levy a tax of not more than one and a half mills without approval by a vote of the people. The New Orleans Bureau of Governmental Research in disapproving this amendment, commented, "It is a proposal

32. La. Act 125 of 1952, amending La. Const. of 1921, Art. X, § 10; La. Act 527 of 1952, amending La. Const. of 1921, Art. X, § 10.

33. Report of the Louisiana Tax Commission, 1950-1951. See also Public Affairs Research Council of Louisiana, Voter's Guide to the Amendments, 38-39 (October 1952). Preliminary Report of the Louisiana Code Commission to His Excellency James H. Davis Governor of the State of Louisiana and to the Honorables The Members of the Legislature of the State of Louisiana, April 10, 1946.

34. La. Act 101 of 1952, amending La. Const. of 1921, Art. XI, § 4.

35. La. Act 537 of 1952, amending La. Const. of 1921, Art. XIV, § 12.

which is not only limited in its application to three cities, not only purposely omits such an essential requirement as actuarially sound pension systems, and not only attempts to levy additional taxes without the approval of the people concerned, but it does violence to the existing legislative authority covering the establishment of pension systems for cities over twenty thousand population on sound actuarial bases."³⁶

Section 14 of Article XIV is one of the most frequently amended provisions of the Constitution. This one section authorizing the subdivisions of the state to incur debt has been amended nineteen times since 1921.³⁷ At the recent election four more amendments were added. The so-called BAWI amendment authorizes any parish, ward, municipality, or industrial district to incur debt for the purpose of encouraging the location or expansion of industry.³⁸ Approval of the voters at a taxpayers election is required before the debt can be incurred. Other safeguards include the requirement of approval of the State Bond and Tax Board, of the Board of Commerce and Industry, of competing industries within the area, and limitation of interest rates and terms of the bonds.³⁹

Section 14 (c) was amended to permit the Legislature to authorize the separate governing authorities of sewerage districts to incur debt.⁴⁰ Before this amendment the Legislature might authorize the police juries and the municipalities to incur debt as the governing authority of the districts but could not authorize the separate governing authorities to do so.

Section 14 (d-1) was amended to permit the Legislature to authorize fire protection districts to levy a ten mill rather than a five mill tax.⁴¹ The tax must be approved at a taxpayers election. however.

Section 14 (f) was amended to increase the authorized debt limit for school districts from fifteen to twenty per cent of the assessed valuation of the property within the district.⁴²

36. New Orleans Bureau of Government Research, *Thirty-four Amendments*, 43 (October 28, 1952).

37. Louisiana State Law Institute, *Projet of a Constitution for the State of Louisiana*, 187-191.

38. La. Act 426 of 1952, amending La. Const. of 1921, Art. XIV, § 14(b).

39. For some of the dangers involved in a BAWI program, see Public Affairs Research Council, *Louisiana Government in the News* (January 15, 1953). PAR Legislation Bulletin No. 5, 5-6 (June 14, 1952).

40. La. Act 494 of 1952, amending La. Const. of 1921, Art. XIV, § 14(c).

41. La. Act 122 of 1952, amending La. Const. of 1921, Art. XIV, § 14(d-1).

42. La. Act 468 of 1952, amending La. Const. of 1921, Art. XIV, § 14(f).

The most popular of the thirty-four amendments in terms of voter participation was civil service, which replaces Section 15 of Article XIV.⁴³ This amendment establishes a civil service system for the executive branch of the state and the City of New Orleans. It provides substantially the same civil service system that was repealed by the 1948 Legislature except that a stronger prohibition against political activity of employees has been added, local commissions are to be appointed locally, and the whole law has been written into the Constitution to protect it from change.⁴⁴ A fire and police civil service system has been written into the Constitution as Section 15.1 of Article XIV.⁴⁵ This amendment, the longest of the thirty-four amendments, contains thirty-nine subsections. It affords an example of a legislative act written in full into the Constitution.

Article XIV was further amended to authorize public improvement districts in Jefferson Parish to undertake reclamation projects and to borrow up to thirty million dollars for such projects, as well as to authorize consolidated drainage districts in Jefferson Parish to incur debt.⁴⁶

The amendment of greatest importance to the development of municipal government in Louisiana was undoubtedly the home rule amendment.⁴⁷ The Legislature is now authorized to provide and has, in fact, already provided a uniform system whereby any Louisiana municipality may draw up and adopt its own charter.⁴⁸ The Legislature is prohibited from passing local or special acts creating municipalities or amending or repealing their charters, except for municipalities operating under special legislative charters.⁴⁹ Every municipality is also authorized by the amendment to adopt and enforce local police, sanitary and similar regulations and to do and perform all other acts pertaining to its local affairs, property, and government which are necessary or proper in the legitimate exercise of its corporate powers and municipal

43. La. Act 18 of 1952, amending La. Const. of 1921, Art. XIV, § 15. See Public Affairs Research Council of Louisiana, *Louisiana Voter Participation in the November 1952 Election* (January 1953).

44. La. Act 12 of 1948 (E.S.).

45. La. Act 302 of 1952, adding La. Const. of 1921, Art. XIV, § 15.1.

46. La. Act 529 of 1952, amending La. Const. of 1921, Art. XIV, § 38. See *supra* p. 226 for comments on the implication of Jefferson Parish taxation for the entire state. La. Act 525 of 1952, adding La. Const. of 1921, Art. XIV, § 43.

47. La. Act 245 of 1952, adding La. Const. of 1921, Art. XIV, § 40.

48. La. Act 325 of 1952.

49. For a list of such municipalities and a general discussion of home rule in Louisiana, see Public Affairs Research Council of Louisiana, *Home Rule for Louisiana Municipalities* (1952).

functions. In case of conflict any general law passed by the Legislature is paramount to any local charter provision.

The degree of home rule to be expected under this provision will depend upon local initiative and a favorable judicial interpretation of the general language of the amendment, but in any event a turning point has been reached in the development of municipal government in Louisiana.

Article XVI, on "Levees," was amended to permit a seven hundred eight-five thousand dollar bond issue for the completion of projects already begun by the Pontchartrain Levee District.⁵⁰

Article XVIII, on "Pensions," was amended to establish the Board of Public Welfare on a constitutional basis.⁵¹ The composition of the board, the method of appointment, and terms of the members follow closely the provisions creating the Board of Institutions discussed in connection with Article VI.

CONCLUSION

No one interested in the effectiveness of representative government in Louisiana can fail to be concerned by the continued transformation of the basic document of the state into a hodgepodge of legislative materials. Constitutional revision becomes a more and more pressing item on the agenda of governmental progress in Louisiana.

50. La. Act 521 of 1952, amending La. Const. of 1921, by adding Art. XVI, § 8a.

51. La. Act 56 of 1952, amending La. Const. of 1921, Art. XVIII, § 7.