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CABL SUPPORTS CONSTITUTIONAL AMENDMENTS ON NOVEMBER 4TH BALLOT

Constitutional Amendment #1

Term Limits for Boards & Commissions

Generally, there are no term limits for the major, constitutionally-created state boards or commissions. This constitutional amendment would place a limit of three consecutive terms on the following groups:

- Public Service Commission
- Board of Elementary & Secondary Education
- Board of Regents
- Board of supervisors for all three university management boards and the Louisiana Community and Technical College system
- Forestry Commission
- Civil Service Commission
- State Police Commission

In the event someone is appointed to a board to fill an unexpired term, service of half of the term or more would count as a full term toward the three-term limit. In addition, if an appointee reaches the term limit, they would be ineligible to serve on any of the other boards listed for a period of two years.

If passed, this amendment would not apply to anyone currently serving on a board or commission until the beginning of their next term. This amendment would also prevent “board hopping,” or allowing term-limited board members to move on to another board without a two-year break in service.

Comment: SUPPORT

The rationale behind the amendment was that citizens wanted the Legislature to have term limits, so it would make logical sense to extend that to some major boards and commissions. Opponents generally do not believe public service on boards – or the Legislature, for that matter – should be limited by law.

CABL has traditionally taken no position on the issue of term limits. In this case, CABL believes term limits for boards and commissions are worthy of support to inject new people with fresh ideas into public service and to create some uniformity with respect to term limits across various governmental entities. Depending on the board, this amendment still allows individuals to serve from 12-18 years. This change in the constitution will likely have only a limited impact on appointed boards since new governors tend to make their own appointments. The elected boards have had more instances of long-serving members. Since the term-limit clock would not start ticking until this amendment passes, there will be no impact for more than a decade.

Constitutional Amendment #2

Notice for the Governor to Call a Special Session

Current law requires that the governor must issue the call for a special legislative session, including the subject areas to be discussed, at least “five days prior” to the beginning of the session.

This constitutional amendment changes the notice to “at least seven calendar days prior” to the convening of the session.

Comment: SUPPORT

There was originally some confusion about what constituted “five days” and whether it might be interpreted as five business days or “24-hour” days. This clarifies that it is “calendar” days and also extends the time frame by two days to account for weekends, if needed.

This is not a major issue, and perhaps not necessary, but it does add some degree of clarity to existing law and would seem to give lawmakers and the public a little more time to digest and understand issues to be debated in a special legislative session.

Constitutional Amendment # 3 – Temporary Legislative Succession for Legislators on Active Duty

This constitutional amendment provides for a temporary appointment to fill the seat of a legislator serving on active duty in the armed services for more than 180 days. Details of how that process would work are spelled out in a separate law passed earlier this year. It says:

- The temporary appointee must have the same qualifications as a legislator.
- No immediate family member can be chosen.
- The legislator who will be on active duty should submit a list of three nominees to the presiding officer of the chamber.
- The names are submitted to the governmental affairs committees which will meet, interview the candidates and make recommendations, if desired, to the presiding officer.
- The presiding officer will choose a temporary successor.
- The temporary successor serves at the pleasure of the Legislature.
- The temporary successor will take the oath of office and exercise all of the powers and duties of the legislative office.

- The temporary successor will receive at least one hour of ethics training and will be required to file financial disclosure reports if serving in the position for more than six months.
- The temporary successor will receive normal legislative pay, though the legislator on active duty will not.
- Any temporary successor serving at the time of qualifying is ineligible to run for that office.

Comment: SUPPORT

The obvious concern was that constituents in some districts could be without representation during an extended period of time when a legislator is deployed on active duty in the military. This was seen as a somewhat unique circumstance that would be temporary, but one legislator in the state House of Representatives is in just this situation right now.

At the same time, it should be pointed out that if this amendment passes citizens in affected districts would be represented by someone they did not elect. That is somewhat of a rarity in the legislative branch of government, though not unprecedented. In Congress state legislatures are authorized to allow their governor to make temporary appointments to vacant seats in the U.S. Senate. It is not allowed in the House of Representatives.

There is currently no provision for any type of temporary replacement for any other circumstance. For instance, if a legislator has a protracted illness, he or she retains their seat and there is no mechanism for anyone else to perform the legislator's official duties. In the past, in instances like this legislators have sometimes opted to resign their seat.

This mechanism of making temporary legislative appointments is not something that will likely happen often, but CABL believes citizens should continue to have representation and the benefit of constituent services while a legislator may be serving on active duty in the military.

This is clearly charting new territory in Louisiana, but given the increased likelihood that legislators could find themselves unable to perform their elected duties because of military service, we believe this is a reasonable approach to take.

Constitutional Amendment # 4

Increase Severance Tax Distributions to Local Governments

Currently, state law allocates 20% of the severance taxes on oil and natural gas to the 30 parishes in which significant production occurs. That amount was capped at \$850,000 per year, but another law that recently passed allows that cap to grow each year based on the Consumer Price Index. This amendment would further increase the cap and create a new severance tax allocation for the Atchafalaya Basin Conservation Fund.

- Under this amendment the current cap would increase to \$1.85 million in 2009 and \$2.85 million in 2010.
- At least 50% of the new revenues received by raising the cap must go to the same uses as money received from the state's Parish Transportation Fund.

- The provision allowing future increases based on the Consumer Price Index would remain after 2010.
- This amendment also places 50% of the severance tax revenues received from state lands within the Atchafalaya Basin (after other obligations are met) into the Atchafalaya Basin Conservation Fund for certain stated uses. The amount going into the fund is capped at \$10 million.
- The Legislative Fiscal Office estimates that this amendment will have a negative impact on the State General Fund of \$36.9 million in 2009 and \$56.3 million in 2010 and beyond.

Comment: SUPPORT

There is little in the way of opposition to the philosophical notion of local governments receiving more severance tax revenues for production occurring within their jurisdictions. The question has been whether the State General Fund can absorb another significant loss of revenue in the wake of the recent reduction and phase out of various taxes and the dedication of State General Funds to other areas. The recent international financial crisis and drop in the price of oil further suggest that state government will be in a much tighter financial situation next year.

This is a difficult issue in many respects because of the fiscal implications for the state in the current environment. But CABL supports this amendment based largely on the rationale the state used to convince Congress that we should get a larger share of federal offshore oil and gas revenues. That is, that the area that produced the revenue and experienced whatever negative impacts might have occurred from that production should have a reasonable share in the proceeds.

Constitutional Amendment #5

Extending the Special Property Tax Assessment to Other Property

Currently, Louisiana allows for what’s called a “special assessment” with regard to property taxes for certain people whose property is covered by the Homestead Exemption. It is limited in scope and generally available to citizens 65 years or older and certain disabled people. The special assessment freezes the assessed value of the person’s property to the level it was at when they applied for the assessment. In practical terms, that means their property taxes won’t go up if their property value increases.

If someone sells their property and buys new property, they can still qualify for a special assessment, but it would be based on the current value of the new property.

This constitutional amendment would allow a person whose property was expropriated by or sold to a federal, state or local governing authority to retain the same special assessment level they had on their old property if they purchase new property to replace it. There are three requirements:

- The new property must be acquired within two years of the sale of the old property.
- It is not valued at more than twice the fair market value of the old property.
- The property is similar in nature and intended to replace the property that was expropriated or sold.

Comment: SUPPORT

CABL has historically been opposed to creating new property tax exceptions to the tax code as each one tends to throw it a little more out of kilter. New exceptions seem to keep coming year after year with little end in sight. That said, the scope of this amendment appears to be extremely limited. The Legislative Fiscal Office says any financial impacts for local government would likely be small. We agree. This is a prime example of what happens when we place so much detail into our constitution. Someone can always find an unintended circumstance or consequence, and we have to amend our constitution, yet again.

Constitutional Amendment #6

Expropriated Property for Public Health or Safety

Current law allows for the expropriation of private property to remove a “threat to public health or safety,” as well as a number of other public purposes such as roads, bridges, ports, airports and parks. Generally, if the property is held for less than 30 years and the government wants to dispose of it, it must first offer it back to the original owner. The constitution also contains language stating that if all or some of that property is not used for the intended purpose it must be declared surplus and offered back to the original owner for re-sale before it can be sold to someone else.

This constitutional amendment deletes the requirement to give the original owner right of first refusal if the property was taken because it was a threat to public health or safety.

Comment: SUPPORT

When Louisiana passed two constitutional amendments in 2006 placing new limits on government’s ability to expropriate private property, it created some unintended consequences. Among other things, those amendments restrict what the state can do with property that is expropriated and requires that if the government is not using the property the original owner must be offered the right of first refusal.

That creates problems when you are dealing with property that is expropriated because of a threat to public health or safety. For one thing, it would seem to require the government to seize property that poses a health or safety risk, correct the problem and then offer to sell it back to the owner that allowed it to get into that condition in the first place. One could clearly see how this could hamper redevelopment in storm-ravaged areas, but also in neighborhoods anywhere that have large numbers of unsafe properties.

This amendment does not fix all the problems created by the passage of the constitutional amendments of 2006, but it does take a necessary first step to ensure that properties that are expropriated because of health and safety risks can be disposed of in ways that serve the best interests of the public.

Constitutional Amendment #7

Investment in Equities for Post-Employment Benefits

State and local governments in some instances continue to provide benefits (besides pensions) to their retirees. The most common is some sort of health care or life insurance benefit. Typically, governments fund these obligations on a pay-as-you-go basis. Because of some recent changes in

governmental accounting standards, the obligation to pay these benefits will now show up as a long-term liability on their accounting books. Without some kind of change in the way these payments are accounted for, this large unfunded liability could have a negative impact on the bond ratings of state and local governments and impair their ability to borrow money.

Last year, legislation was passed to try to address that by creating what are called “post-employment benefit funds.” This would allow governing authorities to deposit money in the funds to pay their post-employment benefits. It would also allow them to invest the assets of their funds in the hopes that they will grow and offset their long-term liabilities with a long-term asset.

However, in most cases the constitution prohibits the investment of public funds in private companies or stocks because of the risk associated with them, though there are several exceptions. The passage of this constitutional amendment would allow the investment of these post-employment benefit dollars in stocks subject to guidelines established in prior legislation.

Comment: SUPPORT

The state has several funds that allow limited investment in securities. Generally, the amount that can be invested in stocks is 35% of the fund’s assets, though in at least one fund it can go as high as 50% with legislative proposal. Under this amendment and prior legislation, the treasurer would be allowed to invest 35% of the assets of a state post-employment fund in stocks, though the Legislature could increase the amount to as much as 50%. Local post-employment benefit funds would be invested by the local authorities and they could put as much as 55% of the assets in stock investments. Supporters argue that this greater amount is needed to more aggressively grow these funds to offset their other liabilities, though it does increase the risk.

CABL believed 55% was a bit high before the recent financial crisis and it looks even riskier now. However, the 55% threshold is only permissive and not required and we believe recent events on Wall Street will curb much of the enthusiasm that may have once existed for overinvestment in securities. It should also be pointed out that local governments assume more financial risk at their own peril. Their real incentive is to grow the funds in prudent ways because collapse of these funds due to poor investment strategies would only create problems bigger than the one this measure is intended to fix.