



CABL Recommendations on 2014 Constitutional Amendments

October 16, 2014

This year there are 14 constitutional amendments on the November 4th ballot. While there are a couple of very substantive policy proposals among them, many of the rest are good examples of the problem we have with putting too much detail into our constitution.

In theory the constitution should be a framework for governance which the Legislature follows in enacting statutes. But over the years, our constitution has grown to include far too many provisions that restrict the Legislature from doing its job. Part of this, we acknowledge, stems from a lack of trust and a fear that revenues that were generated for one intent will be diverted for use toward another.

This has certainly happened in recent years and the desire to protect those revenues constitutionally is understandable. The flip side, though, is that when revenues are falling and there's little desire to do much in the way of increasing revenues, the Legislature is left with a difficult decision: do you temporarily divert statutorily dedicated dollars from one place to another, or do you keep those programs whole and make much deeper cuts into other things? And the way the budget is structured, those other things are usually higher education and health care. Unfortunately, that's the lose-lose environment we've been living in the last several years and we urge lawmakers to refrain from this practice in the future.

Given our concerns about the proliferation of constitutional amendments over the years, it might seem paradoxical that we are supporting a handful of amendments in 2014. For the most part, that's because they are not so much adding new language to the constitution as they are changing current provisions that can't be fixed in any other way.

We would prefer that as these types of issues arise the Legislature, instead of just changing existing language and keeping unnecessarily restrictive provisions in the constitution, would weed some of them out permanently and place them in statute where many of them belong. That's not what's happened, though, and in the meantime these proposals have been presented to voters to determine their fate. So with that in mind, here are CABL's recommendations for this year's constitutional amendments.

Amendment #1 Medicaid Assistance Trust Fund

What it Does

This amendment would provide constitutional protections to the Medical Assistance Trust Fund which is designed to provide funding for nursing homes, intermediate care facilities and pharmacies. It also establishes a minimum state reimbursement rate for these providers.

Background

Nursing homes, intermediate care providers such as group homes, and pharmacies currently pay a provider fee which is used as a match to draw down additional federal dollars. Those funds are then placed in the Medical Assistance Trust Fund and used to help those providers care for low-income individuals through the Medicaid program. The current assistance fund exists in state statute. This amendment would place that fund in the constitution and in doing so provide it with constitutional protections it does not now have.

One of those protections would require that those federal dollars drawn down through the provider fee be allocated only to those provider groups that have been paying the fee over the years. That means that generally those funds could be used to pay for things like nursing home care, group homes and some prescriptions, but could not be used for other types of care such as home and community-based services. It also says that rates paid to those providers cannot fall below the average rates paid in the 2013-14 fiscal year, though it does allow for exceptions by a two-thirds vote of the Legislature or its joint budget committee if lawmakers are not in session.

CABL Views

We believe this amendment is problematic for a number of reasons. The primary one is that it places more than \$120 million that the Legislature now has control of essentially out of its reach. At a time when both state policy and society are moving away from the emphasis on institutional care for seniors, this amendment would protect funding for institutional care in the constitution. In doing so we fear it would make things like home and community based care, physician services and hospice care more vulnerable to budget cuts – not to mention areas outside of health care such as higher education and public safety. In addition, this amendment not only directs funding to one set of providers, it also gives that group extraordinary protection from future rate reductions when dollars are tight.

We clearly understand where this amendment is coming from. It is trying to use the constitution to protect funding streams from the Legislature and ensure that fees that are paid by certain groups of providers to cover certain services go only to those provider groups and those services. Given the frequent raiding of various funds in recent years because of budget cuts more and more groups are also seeking constitutional protection of their revenue sources. It's totally understandable. But CABL believes the Legislature needs the flexibility to make all kinds of budget decisions when revenues are short and for that reason we oppose this amendment. **OPPOSE**

Amendment # 2 Hospital Stabilization Fund

What it Does

This amendment 1) creates a new fund in the constitution designed to stabilize reimbursement rates paid to hospitals through the Medicaid program, 2) allows for the enactment of a provider fee to generate additional federal matching dollars that would go into the fund, and 3) establishes a base reimbursement rate for the hospitals that can only be reduced by a two-thirds vote of the Legislature or its joint budget committee if the Legislature is not in session.

Background

Louisiana has a significant number of people who are uninsured and hospitals in the state end up providing care for many of them at substantially low reimbursement rates or sometimes no compensation at all. On top of that, health care providers have seen significant cuts in reimbursements for indigent care while the state has made the policy decision not to expand Medicaid coverage for the

uninsured through the Affordable Care Act. All of this has put a great deal of strain on many health care providers.

In response, the industry was asked by legislative leaders to develop a plan that lawmakers could support to improve the situation and this amendment, which passed overwhelmingly, is the result of that effort.

CABL Views

This amendment has many good aspects to it. One is that it uses a mechanism most other states already use to help fund health care. That is, it allows for the assessment of a provider fee to draw down additional federal funds through the Medicaid program. In doing so, it also brings new dollars into the health care system which, besides helping the hospitals, also relieves some of the financial pressures in the overall state budget. That's a positive.

But like Amendment 1, it puts much of the mechanism for doing so in the constitution when it should more appropriately be done in statute, as it is in other states. It also provides these particular health care providers with a very high level of protection from future budget cuts that could limit some of the Legislature's options in times when revenues are scarce. We understand both the politics and practicalities of why leaders in the health care industry chose the constitutional approach to this issue. They were concerned about the notion of assessing new fees to bring new dollars into the health care system while running the risk that those dollars would be used to supplant existing state revenues. That's essentially what happened to higher education.

However, we remain concerned about the notion of putting this level of protection into the constitution, thus limiting the flexibility of the Legislature and perhaps making higher education more vulnerable to future budget cuts. We would encourage the Legislature to revisit this approach for enhanced health care funding by making the statutory changes needed to move forward with this approach. **OPPOSE**

Amendment #3 Tax Sales of Property with Delinquent Taxes

What it Does

In the event that a property owner owes delinquent taxes on a piece of property, the constitution allows local government tax collectors to sell all or part of the property at a tax sale to cover the amount of the delinquent taxes, interest and other costs. This amendment would allow the tax collector to utilize a third-party agent to sell the property on behalf of the local government and collect the taxes and other costs that are owed to the government. The fee for doing so is borne by the property owner.

Background

There is apparently some uncertainty in the constitution with regard to whether local governments can enter into an agreement with a third party to collect delinquent taxes. The Louisiana Municipal Association says 43 local government entities currently use outside collectors, but a recent state Supreme Court decision affecting only Orleans Parish has thrown the entire practice into legal question.

CABL Views

Given the growing prevalence of privatization of various governmental functions, it makes sense that local governments should have this option with regard to delinquent tax collections. There are often legal and procedural complexities involved in even routine transactions involving property. Maintaining

the professional and administrative capacity to do that work can be costly for local governments and practically impossible for small municipalities in rural areas. If this amendment passes, local governments would have the explicit authority to allow third parties to sell property and collect their tax debt for them with the cost of doing so borne by the property owner in the form of a collection fee of no more than 10% of the amount of taxes owed.

It seems reasonable to give local governments the flexibility they need to conduct their business, and since there is legitimate legal confusion about their authority to use outside agents for delinquent tax collections, CABL supports this clarifying amendment to the constitution. **SUPPORT**

Amendment #4 Investment of Public Funds in a State Infrastructure Bank

What it Does

This amendment would allow the state to invest public funds into a state “infrastructure bank” if it were to be created and allow it to loan money for authorized transportation projects.

Background

Obviously, Louisiana has many transportation needs and in recent years a number of ideas have been floated as ways to address many of them. One is a state infrastructure bank which would have a great deal of flexibility in financing various transportation projects. South Carolina has one that’s been in place almost 20 years and there is periodic talk at the national level of creating a federal infrastructure bank. There was a package of bills during the 2014 legislative session that would have created and set out the parameters for a state infrastructure bank. They didn’t all make it through the legislative process, but this amendment did. It basically allows the state to put money in, or capitalize, the bank if it were to be created. It does not provide a revenue stream or suggest where the funding for the bank would come from.

CABL Views

A measure to actually create a Louisiana infrastructure bank passed the Legislature without opposition last session. But there was a caveat. To take effect that legislation required that this amendment and another one that set up a funding stream to capitalize the bank must both be approved by voters. That other amendment ultimately failed to pass, but Amendment 4 survives. Based on the votes on this whole issue of an infrastructure bank, there is clearly a strong legislative interest in creating an infrastructure bank. This is only one piece of that puzzle and, though its passage has no direct impact on anything now, it’s a first step towards putting that concept in place. Louisiana needs as many tools as it can come up with to address our transportation needs. This is just one of them and we support its passage. **SUPPORT**

Amendment #5 Mandatory Retirement of Judges

What it Does

Currently the constitution prohibits candidates for judge who are 70 years of age or older from running for election. This amendment would repeal that provision.

Background

Thirty-one states have some sort of mandatory retirement age for judges. In 21 of them, that age is 70, as it is in Louisiana. The others are generally in the range of 72-75 with Vermont topping out at age 90.

The oddity is that state judges are just about the only government officeholders with a mandatory retirement age, yet federal judges, with lifetime appointments, never have to retire if they don't want to. The argument for mandatory retirement seems to be a concern about some sort of diminished capacity after a certain age while the other side argues life expectancies have changed and an arbitrary retirement age is discriminatory and penalizes experienced judges.

CABL Views

The U.S. Supreme Court has four justices over age 70 including one who's over 80 and two approaching 80. When people complain about that court, it's not about the age of the justices, it's usually about ideology which cuts across all age groups. This provision in our constitution seems outdated and arbitrary. CABL believes removing this language is a good idea. **SUPPORT**

Amendment #6 Police and Fire Millage Rates in New Orleans

What it Does

This amendment would allow the voters of Orleans Parish to increase their property tax millages for police and fire protection if they choose to do so.

Background

The constitution currently limits the general property tax millage in a parish to four mills. In New Orleans, however, the maximum is seven mills. But Orleans Parish is also authorized to levy five additional mills for police protection and five mills for fire protection purposes. This amendment would increase the ceiling on police and fire millage rates to 10 mills for each. It is important to note, passage of this amendment does not raise any taxes. It simply allows the city council, if it chooses, to ask voters in New Orleans to decide for themselves at an election, whether they want to increase their property taxes to pay for additional police and fire protection.

CABL Views

Public safety in New Orleans is a huge issue and one that deserves the attention of that community. For voters in New Orleans to decide what level of property taxes they want to pay to support police and fire protection services this amendment must pass statewide. Local taxing decisions belong at the local level and should not be dictated by the constitution. But in this case restrictive language is already in the constitution and this local decision is contingent on the statewide passage of this amendment. Though CABL has no position on police and fire taxes in New Orleans, we believe local voters are entitled to decide that matter without interference or obstructions from the state. We support this amendment.

SUPPORT

Amendment #7 Property Tax Exemption Eligibility for Disabled Veterans

What it Does

Currently, the constitution allows a more generous Homestead Exemption for property owners in parishes that choose to offer it if the U.S. Department of Veterans Affairs certifies that they have a service-connected disability rating of 100%. This amendment adds to that property owners with a service-connected unemployment rating of 100%.

Background

In 2010 the constitution was amended to allow voters in each parish to determine if they wanted to give veterans who were considered totally disabled because of a service-connected injury a more generous

Homestead Exemption. In parishes that chose to do that, the exemption doubled from \$75,000 of assessed value to \$150,000 for those veterans. Louisiana views someone who is 100-percent disabled as also being 100-percent unemployable. However, the federal Department of Veteran's Affairs distinguishes between those two categories which means someone could be considered 100-percent unemployable by Louisiana standards, but not 100-percent disabled by the federal standards. This amendment addresses that issue.

CABL's Views

Obviously, CABL supports veterans and we are appreciative of their service. But over the last several years, there has been a proliferation of constitutional amendments that have continued to erode the tax base of local governments. Each of these tax breaks is relatively small in the scheme of things, but when taken together, they do have a more significant impact on the local tax base and in so doing increase the likelihood that local governments will continue to look to the state for additional support.

CABL opposed that original constitutional amendment in 2010 as we have other "special exemptions" from local property taxes. That said, voters approved the amendment anyway, and it was no doubt the intent of its supporters to have it include a disabled veteran who was totally unable to work. So, while we continue to oppose these amendments that allow the state to micromanage local property taxes, we understand the particular intent of this effort and will leave this issue up to voters to decide if they want this clarification. **NO POSITION**

Amendment #8 Artificial Reef Development Fund

What it Does

This amendment takes the existing Artificial Reef Development Fund and places it in the constitution to prevent the Legislature from using any of the funds for other purposes.

Background

There are many funds in state government where revenues are placed and dedicated for a specific purpose. If the revenues are dedicated to the fund by statute, they can still be subject to use for other purposes. If the Legislature, for example, wants to use them to help balance the budget during difficult financial times, it can and has. If the revenues are dedicated to the fund constitutionally, then the Legislature basically can't do that.

Given the fact that the Legislature has had to deal with budget shortfalls in the neighborhood of a billion dollars each year for the last six years, it has looked to these funds for cash to help make ends meet. As that has happened, supporters of many of these dedicated funds have sought constitutional protection. That's what happened with the Artificial Reef Development Fund. It's been raided in the past and those that support its purposes seek to end that practice by giving it constitutional protection.

CABL Views

Louisiana has far too much of its revenue base dedicated for one purpose or another leaving the things that do not have dedications, like higher education, more vulnerable to significant cuts when the budget gets tight. The program to develop artificial reefs and enhance Louisiana's fisheries is a tremendous asset to our state and CABL strongly believes the Legislature should use the dollars placed in the reef fund for its intended purposes. But we are wary of taking the added step of totally protecting them in the constitution when areas such as higher education and health care remain vulnerable. It's an

unfortunate circumstance, but the Legislature does need some flexibility to meet the state's priority needs when budgets are being slashed. **OPPOSE**

Amendment #9 Tax Exemption Reporting for Permanently Disabled Residents

What it Does

Louisiana currently has a "special exemption" for property owners who are permanently disabled which allows them to freeze the assessed value of their property to protect them from future property tax increases. This tax break only applies if their adjusted gross income is below a certain level which is currently just under \$70,000. This amendment would eliminate the requirement that the property owner certify each year that he or she still meets that income criteria.

Background

As noted earlier, this is one of many "special exemptions" that have been placed into the constitution in recent years to provide property tax breaks for certain groups of people. The original intent seemed to be to offer this tax break to property owners in a limited variety of circumstances, but only if their income did not exceed a certain level. Senior citizens have already been exempted from the constitutional requirement to recertify their income each year. This would add permanently disabled individuals to that list.

CABL's Views

While we sympathize with those who are disabled, disability does not necessarily correlate to household income. If it did, that would assume that a person with a disability, even though serious, could never work or earn a good income. And presumably, the same would be true of their spouse. That's simply not the case. It is not difficult to certify one's income on an annual basis. If we are going to have this "special exemption," then we should ensure that it is fair and accountable to all taxpayers. We oppose this amendment. **OPPOSE**

Amendment # 10 Redemption Period for Certain Property Sold at Tax Sale

What it Does

Currently, the constitution allows property on which taxes have not been paid to be sold at a tax sale. It can, however, be repurchased by the owner within three years of the sale if the taxes and various associated costs are paid back. In New Orleans there is an exception to this law. Vacant property which is blighted or abandoned is subject to a buy back period of 18 months rather than three years. This amendment would apply that same 18-month buyback period in every parish to vacant property that is blighted and abandoned.

Background

New Orleans came to the game early in its efforts to fight blight and clear rundown or abandoned properties from neighborhoods by winning approval to speed up the process 20 years ago. Clearly, given issues with public safety and the value of adjacent properties, there are sound reasons for cities to try deal with blight and revitalize neighborhoods. It is important to note, that this constitutional amendment deals only with vacant properties that are blighted. If a homeowner simply falls behind on paying taxes and is still occupying the property, the three-year buy-back window remains.

CABL Views

While we strongly value the rights of property owners, CABL also recognizes the problems blighted properties cause in neighborhoods that are dealing with crime and other safety issues. We believe 18 months is a reasonable time period for property owners to reclaim their property if they choose, that time frame has worked well in New Orleans and we support this change. **SUPPORT**

Amendment # 11 Increase the Number of Executive Branch Offices

What it Does

This amendment increases the maximum number of executive branch or cabinet-level departments from 20 to 21.

Background

In 2013 legislation was passed authorizing creation of a new cabinet-level state Department of Elderly Affairs, but there was one major catch. The constitution limits the number of such departments to 20, which the state already has. For that reason the implementation of that law was contingent upon either the abolition of one of the 20 current executive branch departments or the passage of a constitutional amendment like this one adding an additional department. Services to the elderly are already being provided through the governor's Office of Elderly Affairs, as well as other state agencies. It was the intent of the legislation to consolidate those efforts into a single, cabinet-level department.

CABL Views

While a single Department of Elderly Affairs might be more efficient in coordinating services to senior citizens, CABL has concerns about the creation of another new cabinet-level department in the executive branch. While its current supporters certainly see it as a way to reorganize that area of government rather than grow the size of government, bureaucracies have a tendency to take on a life of their own and expand. The various agencies that provide services to the elderly are already in the executive branch and it would seem preferable to use existing executive authority to ensure effective coordination of those functions rather than creating a new cabinet-level department. In times of fiscal stress with billion dollar shortfalls occurring on a regular basis, it does not seem prudent to add yet another bureaucracy to state government. CABL opposes this amendment. **OPPOSE**

Amendment # 12 Wildlife & Fisheries Commission Membership

What it Does

This amendment requires that two of the at-large positions on the seven-member Louisiana Wildlife and Fisheries Commission be appointed from a geographical area that represents roughly the northern two-thirds of the state.

Background

As its name implies, the Wildlife and Fisheries Commission is a state board that makes policy decisions regarding fishing and wildlife issues. It has seven members, all appointed by the governor. Three of those positions must be filled by someone from the coastal parishes and be representatives of the commercial fishing and fur industries. The other four are appointed at-large from any part of the state. There are apparently concerns that areas of north Louisiana are not well represented on the commission so this amendment would require that at least two appointees come from areas north of the parishes of Beauregard, Allen, Evangeline, Avoyelles and Pointe Coupee.

CABL Views

Clearly this is an item of detail that should not be in the constitution in the first place. The smarter constitutional amendment would have been to remove the existing constitutional language altogether and let the Legislature deal with commission appointments statutorily. If that were the case, the Legislature could make adjustments as it saw fit without having to place more and more detail in the constitution. CABL opposes this amendment. **OPPOSE**

Amendment #13 Sale of Property in Lower Ninth Ward of New Orleans

What it Does

The constitution generally prohibits the state and local governments from donating property to other entities. This includes selling properties at prices below market value. This would allow a public agency in New Orleans to sell property in the Lower Ninth Ward to buyers at below market value.

Background

As everyone knows, the Lower Ninth Ward was devastated by Hurricane Katrina. Even today, nine years later, many blighted and abandoned properties remain. Many of them have been acquired by the New Orleans Redevelopment Authority, a public agency that handles redevelopment issues for the city. In an effort to put these properties back into the market, this amendment would generally allow NORDA to sell these properties to certain buyers at a cost of \$100.

CABL Views

Blighted and abandoned property is certainly an issue in the Lower Ninth Ward and this legislation is no doubt well-intended. However, NORDA, the agency charged with disposing of the properties has expressed some very pointed concerns about whether a program like the one envisioned in this amendment and companion legislation would be in line with federal requirements involving those properties.

In addition, the statutory language accompanying the amendment allows the sale of the property only to buyers who fall into certain categories. Those include residents of the Lower Ninth Ward, veterans, teachers and emergency responders. It does not include developers or corporations. These restrictions seem a bit arbitrary. Locally, concerns have been raised in New Orleans about various aspects of this amendment. While we know redevelopment of that neighborhood is an important issue, this amendment does not appear to be the vehicle to most effectively accomplish that. We oppose this amendment. **OPPOSE**

Amendment #14 Legislative Consideration of Tax Rebates, Incentives and Abatements

What it Does

Currently there are two kinds of legislative sessions, a “general” session held in even-numbered years and “fiscal” sessions during odd-numbered years. Generally, legislation regarding increases in taxes, fees, tax exemptions, tax deductions, etc. can only be considered during a “fiscal” session. This amendment would add tax rebates, incentives and abatements to that list of issues restricted to consideration in “fiscal” sessions.

Background

The constitution currently says that no legislation dealing with tax exemptions, exclusions, deductions, or credits, which generally reduce revenues coming into the state, can be considered during a “general” session. Those matters can only be debated in a “fiscal” session. The constitution does not mention tax rebates, incentives or abatements, which fall in the same overall category of those revenue reducing approaches allowed only in “fiscal” sessions. That means they can be debated in any session. This amendment would basically say that any type of tax break can only be considered during a “fiscal” session.

CABL Views

It was probably an oversight that allowed for some tax breaks to be considered in any legislative session while others were restricted to debate in only “fiscal” sessions. It makes sense to limit the discussion of all tax breaks to “fiscal” sessions because if lawmakers want to offer a tax rebate to some group of taxpayers, they might also want to offset the loss of state revenues by eliminating some exemptions or deductions to ensure that the move is revenue neutral. That allows for a more holistic discussion. The constitution shouldn’t treat tax deductions or exemptions any differently than tax rebates or incentives. They’re basically the same things and should be handled consistently within the constitution. CABL supports this amendment. **SUPPORT**