



GUIDE TO THE CONSTITUTIONAL AMENDMENTS

OCTOBER 2, 2010, BALLOT

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INTRODUCTION

Louisiana voters will be asked to make decisions on two proposed constitutional amendments on the Oct. 2 ballot. Those amendments would:

1. Make regular legislative sessions begin earlier each year and change the date legislation would go into effect;
2. Exempt from classified civil service all employees in the Governor's Office of Homeland Security and Emergency Preparedness.

An additional 10 proposals will appear on the Nov. 2 ballot, making a total of 12 possible amendments to the Constitution in 2010.

Louisiana has a long history of frequent constitutional changes. The state leads the nation in the number of constitutions adopted and has been among the most prolific in adopting amendments. Louisiana's previous Constitution initially contained 49,200 words when it was adopted in 1921 but, with 536 amendments, grew to 255,500 words. Voters finally rebelled in 1970, defeating all 53 amendment proposals on the ballot that year.

The newly revised Constitution of 1974 was a brief 35,000 words after much of the excessive constitutional detail was moved to the statutes. Since then, another 221 amendments (excluding the 2010 proposals) have been proposed, of which 153 have been adopted. In 2006 alone, voters had to decide on 21 amendments, the largest number of proposed changes in a calendar year since the 1974 Constitution was adopted. In the past five election years, only nine of 43 proposed amendments have been defeated by voters.

Typically, constitutional amendments are proposed to deal with emerging issues, authorize new programs or policies, ensure that reforms are not easily undone by future legislation, seek exceptions or protections for special interests or correct errors in existing provisions. Unfortunately, as more

VOTER CHECKLIST

	For	Against		Page
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detail is placed in the Constitution, even more amendments may be required when conditions change or problems arise with the earlier provisions.

Too frequently, amendments are drafted for a specific situation rather than setting a guiding principle and leaving the Legislature to fill in the details by statute. In some cases very rigid principles are set, but then numerous exceptions are added by amendment. Occasionally, the Legislature approves amendment proposals hurriedly without considering all the potential costs or ramifications, requiring subsequent amendments to undo the unintended consequences. In addition, special interests and the general public frequently demand constitutional protection for favored programs to avoid future legislative interference, resulting in numerous detailed revenue dedications and trust fund provisions. The concept of the Constitution as a relatively permanent statement of basic law for governing the state fades with the adoption of many amendments.

While the idea of seeking voter approval for a wide range of policy issues may appear ideally democratic, low participation rates indicate that voters generally do not want that level of responsibility or involvement in lawmaking. Even in elections where there is a high voter turnout, many of those voting for candidates fail to vote on proposed amendments. Over the life of the current Constitution, the percentage of registered voters who have voted on proposed amendments has ranged from a low of 18 percent to a high of 55 percent. Thus a proposed amendment has never needed more than the votes of 28 percent of the registered voters, and sometimes as few as 9 percent, to pass.

In order for voters to develop informed opinions about each amendment, they must evaluate each one carefully and make a decision based on its merits. One important consideration should always be whether the proposed language belongs in the Constitution.

To reduce the burden on voters, PAR has suggested in the past that it might be useful to evaluate ways to improve the process of

proposing amendments. Some states make the process more difficult and thoughtful by requiring a three-fourths super-majority vote of the legislature (Louisiana requires a two-thirds), limiting the number of amendments that can be put on a single ballot, requiring passage in two sessions or even requiring adoption by a certain percentage of registered voters. However, the Constitution would have to be amended to impose any of those limits.

Constitution vs. Statute

A constitution is the fundamental law of a state and as such contains the essential elements of government organization and structure, the basic principles concerning governmental powers and the rights of citizens. A constitution is meant to have permanence. Statutory law, on the other hand, provides the details of government that are subject to frequent change.

Process

The process of amending Louisiana's Constitution is more difficult than passing or amending a statute. In general, a proposed statute requires only a majority vote in each house of the Legislature and the governor's signature to become law. A constitutional amendment requires a two-thirds vote of the members in each house (the governor's approval is not required) and approval by a majority of those voting on the issue in a statewide election. Any amendment affecting five or fewer parishes or municipalities requires voter approval in each affected area and statewide. A proposed constitutional amendment often has companion statutory legislation that provides more detail but becomes effective only upon adoption of the amendment.

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LEGISLATIVE SESSION DATES

YOU DECIDE

- ❑ A vote **for** would establish earlier starting dates for all regular legislative sessions from the final Monday in the month in which they begin to the second Monday. It also would make legislation effective on Aug. 1 instead of Aug. 15 unless a different date is specified in the bill.
- ❑ A vote **against** would continue to require that regular legislative sessions begin on the last Monday in March (*even-numbered years*) or the last Monday in April (*odd-numbered years*), and that legislation passed take effect on Aug. 15 of the year in which it passed unless a different date is specified in the bill.

CURRENT SITUATION

Louisiana’s Constitution establishes the rules for determining the start and end dates of legislative sessions and the dates on which bills become law following each session. The start dates and session durations are different for odd- and even-numbered years. Legislation takes effect on Aug. 15 in all years, unless some other effective date is specified in the bill.

In even-numbered years, sessions begin on the final Monday in March and last no longer than 60 legislative days within an 85-calendar-day period. In odd-numbered years, the sessions are shorter and start later. They last no longer than 45 legislative days within a 60-calendar-day period.

Forty-five days prior to each session, the executive branch must submit its proposed budget to the Legislature for consideration. The executive budget is based on revenue estimates that are released in December, in addition

to expenditure estimates developed by state departments.

Soon after each session ends the state’s new fiscal year begins (July 1) and government agencies must implement the budget approved by the Legislature. Typically, legislative sessions do not end until the final days of June.

PROPOSED CHANGE

Beginning in 2012, the starting dates of legislative sessions and the effective dates for legislation passed would occur earlier.

Table 1. Legislative Schedule Changes

	Current	Proposed
Start Date (odd years)	last Monday in April	second Monday in April
Start Date (even years)	last Monday in March	second Monday in March
Effective Date	Aug. 15	Aug. 1

The proposed change would reduce the time that the executive branch has to consider the year-end fiscal data on which it will establish its executive budget; however, the change would increase the time between the end of each session and the beginning of a new fiscal year.

COMMENT

Louisiana and Florida are the only states that begin regular sessions as late as March; most states start their sessions in January. The fiscal year begins on July 1 in all but four states.

In 1990, Louisiana voters approved a constitutional amendment that ensured sessions would end prior to July 1. But sessions still routinely last until late June, leaving little time between the passage of a new budget and the start of a new fiscal year. An earlier start date would force the Legislature to adjourn earlier than it currently does and would give public bodies more time to adjust to last-minute changes in their operating budgets before the next fiscal year begins. The deadline for submitting the Governor’s Executive Budget to the Legislature

would be advanced by 15 days so that the new dates would be in late January in even years and late February in odd years.

LEGAL CITATION

Act 537 (Senator Riser) of the 2009 Regular Session, amending Article III, Sections 2(A)(3)(a) and (4)(a) and 19.

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CIVIL SERVICE STATUS FOR GOHSEP EMPLOYEES

YOU DECIDE

- A vote **for** would make all of the positions in the Governor’s Office of Homeland Security and Emergency Preparedness (GOHSEP) a part of the unclassified civil service.
- A vote **against** would leave a conflict between the statutes and the Constitution on the matter of whether employees of the Governor’s Office of Homeland Security and Emergency Preparedness (GOHSEP) are members of the classified or unclassified civil service.

CURRENT SITUATION

Louisiana’s Constitution requires that all state employment (besides state police positions) fall under the authority of the Civil Service Commission. For classified positions, the Civil Service Commission establishes minimum job qualifications, salary guidelines, promotion parameters and job protections for those who are hired. Classified employment rules are designed to ensure that persons who work for the state are hired, promoted and/or fired for work-related reasons instead of personal or political agendas.

The Civil Service Commission also is responsible for including or exempting positions from “classified” service. Unclassified positions have

no centrally established minimum qualifications. Persons hired into unclassified positions serve at the pleasure of the appointing authority, may be paid any salary approved by the Legislature and may participate in political activity.

By default, civil service employees are in the classified category unless their positions are deemed unclassified in the Constitution or by specific permission granted by the Civil Service Commission. The Constitution lists 12 categories of unclassified positions, including elected and appointed officials; employees of the Legislature; and members of the military and naval forces.

The Constitution authorizes the Civil Service Commission to exempt positions from the classified service, but is silent on whether the Legislature can do so. Currently, the Governor’s Office of Homeland Security and Emergency Preparedness (GOHSEP) has 425 employees whom the Legislature has statutorily determined to be members of the unclassified service without approval by the Civil Service Commission, creating a conflict between the statutory and constitutional classification of those employees.

PROPOSED CHANGE

This amendment would add employees of GOHSEP as a 13th category in the unclassified service.

COMMENT

Louisiana’s first entity devoted to emergency preparedness—the Department of Civil Defense and Emergency Preparedness—was established in the Military Department in 1974. At that time, employees were unclassified as designated by language in the Constitution regarding members of the military or naval forces.

In 1976, the functions of the Department of Civil Defense and Emergency Preparedness were moved to the Office of Emergency Preparedness (OEP) within the Department of Public Safety. Since OEP was located in the Department of Public Safety instead of the Military Department, employees joined the classified service.

In 1990, the functions of OEP were moved back to the Military Department. The Military Department and Civil Service Commission agreed that all new hires who were active or retired military members should be unclassified, as previously had been the rule for members of the military.

In 2006, emergency preparedness functions were moved once again when the Governor's Office of Homeland Security and Emergency Preparedness (GOHSEP) was created within the Office of the Governor. GOHSEP assumed functions that previously were handled by OEP. The legislation creating GOHSEP provided that all current and future GOHSEP employees would be unclassified as they had been in the Military Department.

In 2009, the Civil Service Commission filed suit and asked the court to declare unconstitutional the blanket unclassified determination, because Civil Service contends that the Legislature does not have authority to create unclassified positions without approval by the Civil Service Commission. Parties to the suit agreed to put the legal proceedings on hold pending voters' decision on this proposed constitutional amendment.

Proponents of this amendment argue that the GOHSEP operating model would not work well within the confines of civil service requirements. GOHSEP's director testified during the 2009 regular session that although GOHSEP is mindful of civil service guidelines, the strict civil service rules and time restraints on hiring and firing employees effectively would tie the hands of management during times of emergency when swift changes may need to be made. GOHSEP prefers to follow an "incident command" model similar to the military. The incident command model would allow GOHSEP officials the flexibility to move people into emergency field positions when needed, even if those positions required activity that was not normally part of their job responsibilities. The governor's office supports GOHSEP's argument.

Opponents remind voters that the classified civil service system provides fundamental checks and balances to protect employees from powerful appointed or elected officials who may ignore the value of a stable public workforce and make decisions for personal or political gain. Unclassified positions are subject to turnover with each change in state administration, so the concern is that sufficient expertise could be lost with each new governor. Finally, opponents argue that many state agencies move workers around during times of emergency and they manage to do so within the confines of the civil service system, which provides equal protection and due process for workers while ensuring a qualified workforce. Because the Constitution gives Civil Service the authority to exempt positions from "classified" service, and Civil Service rules provide a reasonable process for establishing new unclassified positions, opponents argue that it is not necessary to amend the Constitution in order to meet GOHSEP's needs.

LEGAL CITATION

Act 538 (Senator Walsworth) of the 2009 Regular Session, amending Article X, Sections 2(B)(11) and (12), and adding Section 2(B)(13).

Table 2. Voting Results for Louisiana's Proposed Constitutional Amendments (1921-2008)

	Number of Amendments		Average Percent of Registrants Voting
	Proposed	Approved	
1921 Constitution	802	536	--
1974 Constitution	221	153	--
November 7, 1978	1	1	29.9
October 27, 1979	3	3	37.5
November 4, 1980	4	4	55.7
September 11, 1982	8	4	24.9
October 22, 1983	3	3	44.2
November 6, 1984	5	0	53.7
September 27, 1986	7	2	39.3
November 21, 1987	5	5	32.3
October 1, 1988	1	0	27.5
April 29, 1989	1	0	46.8
October 7, 1989	13	5	28.3
October 6, 1990	15	14	46.9
October 19, 1991	8	5	47.1
October 3, 1992	5	2	29.4
November 3, 1992	7	0	53.7
October 16, 1993	6	6	18.1
October 1, 1994	4	4	30.9
October 21, 1995	15	13	46.9
November 18, 1995	1	1	53.2
September 21, 1996	2	2	36.1
November 5, 1996	3	3	54.4
October 3, 1998	18	14	19.6
November 3, 1998	2	2	26.4
October 23, 1999	10	5	31.9
November 20, 1999	6	6	23.1
November 7, 2000	4	0	51.0
November 5, 2002	12	6	35.7
October 4, 2003	15	11	38.1
September 18, 2004	1	1	27.8
November 2, 2004	4	4	50.6
September 30, 2006	13	13	22.3
November 7, 2006	8	8	28.7
October 20, 2007	4	3	46.6
November 4, 2008	7	3	53.5

SOURCE: Louisiana Secretary of State



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