

Constitutional Amendments for consideration in 2011

Prepared by House Legislative Services
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CONSTITUTIONAL AMENDMENT NO. 1

CA NO. 1 - TOPS and Health Care Excellence Funds
ACT NO. 423, Senate Bill No. 53, Regular Session, 2011



To dedicate funds for the TOPS program relative to the portion of the monies deposited in and credited to the Millennium Trust each year from the Tobacco Master Settlement, to provide that once the balance in the Millennium Trust reaches a total of one billion three hundred eighty million dollars, one hundred percent of the annual Settlement Proceeds shall be allocated to the TOPS Fund to support state programs of financial assistance for students attending Louisiana postsecondary education institutions; to provide relative to the rate of tax on certain tobacco products and beginning July 1, 2012, to dedicate such tobacco revenues to the Health Excellence Fund to be used for the purposes of the fund, including providing for the optimal development of Louisiana's children through the provision of appropriate health care and providing health care initiatives through innovation in advanced health care sciences; to provide for the deposit, transfer, or credit of certain monies in the Millennium Trust to the Health Excellence Fund, the Education Excellence Fund, and the TOPS Fund. (Amends Article VII, Section 10.8(A)(1)(c), (A)(2), (3), and (4), and (C)(1) and adds Article VII, Section 4.1)

The present constitution establishes the Millennium Trust as a special permanent trust. A portion of monies received as a result of the Tobacco Master Settlement Agreement executed in November of 1998, is deposited into the trust. Interest, dividends, and capital gains from the trust are allocated to three funds: the Education Excellence Fund, the Health Excellence Fund, and the TOPS Fund. Appropriations out of these three funds are limited to the amount of the estimated aggregate annual earnings from interest, dividends, and realized capital gains on investment of the trust, adjusted for inflation, and as recognized by the Revenue Estimating Conference.

This proposed constitutional amendment would reallocate funds from the Millennium Trust to increase deposits into the TOPS Fund. The proposed constitutional amendment and companion statutory legislation provide that future Tobacco Master Settlement Agreement proceeds received and deposited into the Millennium Trust and all such proceeds deposited into the trust since April 1, 2011, will be deposited into the TOPS Fund instead of the Millennium Trust. Annual earnings from interest, dividends, and realized capital gains on investment of money already in the trust would continue to be allocated among the Education Excellence Fund, the Health Excellence Fund, and the TOPS Fund.

The proposed constitutional amendment also provides that beginning July 1, 2012, the rate of four-twentieths of one cent of tax per cigarette levied on January 1, 2012, would remain in effect and such revenue would be dedicated to the Health Excellence Fund.

CONSTITUTIONAL AMENDMENT NO. 2

CA No. 2 - Unfunded Accrued Liability (UAL)

ACT NO. 422, House Bill No. 384, Regular Session, 2011



To require in Fiscal Years 2013-2014 and 2014-2015 that five percent of money designated in the official forecast as nonrecurring be applied toward the balance of the unfunded accrued liability which existed as of June 30, 1988, for the Louisiana State Employees' Retirement System and the Teachers Retirement System of Louisiana. To further require that in Fiscal Year 2015-2016 and every fiscal year thereafter that ten percent of such nonrecurring revenue be applied to such purposes. (Amends Article VII, Section 10(D)(2)(b))

The present constitution requires that nonrecurring revenues can only be appropriated for six purposes, one of which is providing for payments against certain portions of the unfunded accrued liability (UAL) of the four state retirement systems: the Louisiana State Employees' Retirement System, the Teachers' Retirement System of Louisiana, the Louisiana School Employees' Retirement System, and the State Police Pension and Retirement System. The other five constitutional uses of nonrecurring revenues are:

- Retiring or defeasance of bonds in advance of and in addition to the existing amortization requirements of the state.
- Providing funding for capital outlay projects in the comprehensive state budget.
- Providing for allocation or appropriation for deposit into the Budget Stabilization Fund.
- Providing for allocation or appropriation for deposit into the Coastal Protection and Restoration Fund.
- Providing for new highway construction for which federal matching funds are available, without excluding highway projects otherwise eligible as capital projects under other provisions of law.

The present constitution also requires that a minimum of 25% of nonrecurring revenues be deposited into the Budget Stabilization Fund unless the fund balance exceeds 4% of the previous fiscal year's total state receipt.

This proposed constitutional amendment would require that for Fiscal Years (FY) 2013-2014 and 2014-2015, a minimum of 5% of any money designated in the official forecast as nonrecurring must be used for payments toward the UAL which existed in the Louisiana State Employees' Retirement System and the Teachers' Retirement System of Louisiana as of June 30, 1988. For FY 2015-2016 and every fiscal year thereafter, the minimum amount applied toward payment of the balance of the UAL increases to 10%.

CONSTITUTIONAL AMENDMENT NO. 3

CA No. 3 - Patient's Compensation Fund

ACT NO. 421, House Bill No. 341, Regular Session, 2011



To authorize the legislature to establish a private custodial fund, designated as the Patient's Compensation Fund, for the use, benefit, and protection of medical malpractice claimants and private health care provider members; to provide that assets of the fund shall not be state property. (Adds Article XII, Section 16)

Present statutory law (R.S. 40:1299.44) establishes the Patient's Compensation Oversight Board and the Patient's Compensation Fund and specifies that the fund's revenue is self-generated and not to be considered a budget unit of the state. Additionally, this statutory law was recently amended (Act No. 263 of the 2011 Regular Session) to further specify that the funds are not state property, not subject to appropriation by the legislature, nor required to be deposited in the state treasury.

This proposed constitutional amendment elevates the Patient's Compensation Fund to constitutional status, along with the protective language regarding the nature of its funds.

CONSTITUTIONAL AMENDMENT NO. 4

CA No. 4 - Rainy Day Fund

ACT NO. 424, Senate Bill No. 147, Regular Session, 2011



To provide that if at any time mineral revenues exceed the base provided by law and monies are withdrawn from the Budget Stabilization Fund, no deposit of mineral revenues shall be made to the Budget Stabilization Fund in the same or ensuing fiscal year in which monies in the fund are appropriated or incorporated into the official forecast, except by specific legislative appropriation, and thereafter deposits of mineral revenues into the fund shall resume except in an annual amount not to exceed one-third of the most recent amount appropriated or incorporated into the official forecast. (Adds Article VII, Section 10.3(C)(5))

The present constitution establishes the Budget Stabilization Fund (aka the Rainy Day Fund). Certain revenues are automatically deposited into the fund until the balance of the fund reaches four percent of total state revenue of the previous fiscal year. One of the sources of revenue deposited into the fund is mineral revenue in excess of a base currently set at \$850 million.

Monies may be appropriated out of the fund to cover a revenue shortfall in the current or next fiscal year.

The proposed constitutional amendment changes the requirement of the automatic deposit of excess mineral revenue into the fund. Under the proposed constitutional amendment, excess mineral revenues would not be deposited into the fund in either the year money is appropriated out of the fund or the ensuing fiscal year. For each of the next three years, excess mineral revenue, up to one-third of the amount appropriated, would be automatically deposited into the fund until the amount appropriated out of the fund is deposited back into the fund, or the fund reaches its maximum, whichever is less.

CONSTITUTIONAL AMENDMENT NO. 5

CA No. 5 - Tax Sales in New Orleans

ACT NO. 43 – House Bill No. 30, First Extraordinary Session, 2011



To amend provisions relative to tax sales in order to maintain an existing exemption from the minimum bid requirements for tax sales in the city of New Orleans due to changes in populations according to the 2010 census. (Amends Article VII, Section 25(A)(2))

The present constitution establishes the conditions for and procedures by which property may be sold for nonpayment of taxes. This constitutional amendment proposes an update to a specific reference in the Louisiana Constitution relative to the minimum bid required for the sale of property which failed to sell at a previous tax sale. Currently, the applicability of this provision is limited to "a municipality with a population of more than 450,000 persons as of the most recent federal decennial census". The proposed constitutional amendment changes the applicability from a generic population reference to the city of New Orleans.

November 19, 2011

CONSTITUTIONAL AMENDMENT NO. 1

CA No. 1 - Costs associated with the sale of immovable property

ACT NO. 425, House Bill No. 135, Regular Session, 2011



To prohibit the levy of new taxes or fees upon the sale or transfer of immovable property, including documentary transaction taxes or fees, or any other tax or fee, by the state or any of its political subdivisions after November 30, 2011. (November 30, 2011) (Adds Article VII, Section 2.3)

The present constitution provides for the power to tax and sets forth certain limitations.

This proposed constitutional amendment is an additional limitation upon the taxing power by prohibiting, beginning November 30, 2011, the levying of new taxes or fees upon the sale or transfer of immovable property. This limitation specifically prohibits the state or any political subdivision from levying a documentary transaction tax or fee or any other tax or fee. A documentary transaction is defined in the proposed amendment as any transaction pursuant to any instrument, act, writing, or document which transfers or conveys immovable property.

Excluded from the prohibition of new taxes or fees are fees for the cost of recordation, filing, or maintenance of documents, or records effectuating the sale or transfer of immovable property, impact fees for development of property, annual parcel fees, and ad valorem taxes.