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## DIGEST

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HB 456 Reengrossed

2017 Regular Session

Abramson

**Abstract:** Calls a limited constitutional convention preceded by study by an Evaluation and Drafting Committee to determine if a convention is needed. If the committee determines a convention is needed, provides that its report include a convention plan, including a proposed constitution. Calls convention to convene on Jan. 7, 2019, to be composed of 132 delegates, 105 elected from representative districts and 27 appointed. Requires convention to complete a new constitution by May 30, 2019. Limits convention to changes relative to state and local finance, raising revenue, allocation and expenditure of funds, education funding, higher education, accrual of retirement benefits by members of a state or statewide public retirement system hired after Dec. 31, 2019; the management of investments held by the state retirement systems; and the enactment of retirement benefit provisions.

Proposed law states legislative findings that there is a need to address a number of key policy areas that require constitutional change, that the constitution restricts the legislature in effectively addressing state and constituent needs, and that a serious analysis and revision of the state constitution is needed to conduct an examination of the state's critical needs, to consider reform proposals, and to craft provisions that allow legislative solutions.

### Evaluation and Drafting Committee

Proposed law creates the Evaluation and Drafting Committee. Provides that its purpose is to evaluate and determine if a constitutional convention is needed, and if it determines that a convention is needed, to develop and propose a plan for the conduct of an effective constitutional convention, including a draft of a proposed constitution with alternative provisions, subject to subject matter limitations applicable to the convention. (See Constitutional Convention section below)

- (1) Provides that the committee is composed of 27 members to be appointed by August 1, 2017, as follows:
  - (a) A member appointed with the concurrence of the Public Affairs Research Council of La., the Louisiana Budget Project, and the Council for a Better Louisiana.
  - (b) A member appointed with the concurrence of the La. Association of Business and Industry and the National Federation of Independent Business.
  - (c) A member appointed with the concurrence of Blueprint La. and the Committee of 100 for Economic Development.
  - (d) A representative of the La. AFL-CIO appointed by the La. AFL-CIO.
  - (e) A member of any La. chapter of the National Association for the Advancement of

Colored People appointed by the chairman of the national board of directors of the association.

- (f) A representative of elected parish officials appointed with the concurrence of the La. Sheriffs' Association, the La. Assessors' Association, and the La. Clerks of Court Association.
  - (g) A representative of local governmental bodies appointed with the concurrence of the La. Municipal Association, the Police Jury Association of La., and the La. School Boards Association.
  - (h) One representative of the La. State Law Institute appointed by the La. State Law Institute.
  - (i) A representative of the LSU Paul M. Hebert Law Center or the LSU E.J. Ourso College of Business appointed by the joint concurrence of the chancellor of the law center and the dean of the business college.
  - (j) A representative of the Southern University Law Center or the Southern University College of Business appointed by the joint concurrence of the chancellor of the law center and the dean of the business college.
  - (k) A representative of the Tulane University Law School or the Tulane University A.B. Freeman School of Business appointed by the joint concurrence of the dean of the law school and the dean of the business school.
  - (l) A representative of the Loyola University New Orleans College of Law or the Loyola University New Orleans Joseph A. Butt, S.J. College of Business appointed by the joint concurrence of the dean of the college of law and the dean of the business college.
  - (m) One member appointed with the concurrence of the La. District Judges Association and the Conference of Court of Appeal Judges.
  - (n) One member appointed by the chief justice of the La. Supreme Court.
  - (o) Four members of the La. House of Representatives appointed by the speaker of the House of Representatives.
  - (p) Four members of the La. Senate appointed by the president of the Senate.
  - (q) Four members appointed by the governor.
  - (r) One representative of the La. Tax Institute appointed by the board of the La. Tax Institute.
- (2) Requires the committee to hold its organizational meeting not later than Sept. 7, 2017, and elect a chairman, a vice chairman, and other officers it finds necessary. Provides for filling of committee vacancies in the manner of the original appointments.
- (3) Requires the committee to undertake studies necessary to evaluate if a constitutional convention is needed to address the needs of the state and its people and, based upon such study, to determine if a constitutional convention is needed.
- (4) Provides, if the committee determines that a constitutional convention is needed, that the committee prepare a plan for the conduct of an effective constitutional convention, such plan to include:

- (a) A policy agenda for the convention which shall include (subject to subject matter limitations on the convention described below): identification of significant policy areas to be addressed; a draft of a proposed constitution, including provisions addressing significant policy areas and other necessary provisions; materials explaining the significant policy issue proposals; alternative proposals on significant policy areas, together with explanations and explanatory materials (to include multiple optional approaches and solutions); and pertinent background material and data on significant policy areas.
  - (b) Background and other materials useful to the convention.
  - (c) Proposals for elimination of statutory materials and recommendations for legislative action relative thereto.
  - (d) Recommendations for convention organization and deliberations, including significant rules of procedure.
  - (e) Recommendations for convention budget needs.
  - (f) Recommendations for procedures for submission of alternative proposals to the voters and ballot structure.
- (5) Authorizes the committee to create or appoint advisory committees or task forces to advise or assist in its studies, composed of representatives of the public or private sectors.
- (6) Requires the Evaluation and Drafting Committee to request the provision of staff including any professional, research, and other employees necessary to accomplish its duties timely; and personnel provided by the LSU, Southern University, Tulane University, and Loyola University law schools from the faculty as requested by the committee. Authorizes the committee to use personnel, facilities, and services of the legislative auditor, the legislative fiscal officer, and the staffs of the House of Representatives and the Senate, and to request and utilize counsel, assistance, personnel, facilities, and advice from public and private sources. Authorizes the committee to call upon the members or staffs of state departments or agencies for data and assistance and requires them to cooperate with the committee.
- (7) Requires the committee to complete its work and submit to the legislature by Feb. 26, 2018, its evaluation and determination of whether or not a constitutional convention is needed, and if it determines that a convention is needed, to also submit its plan for the conduct of an effective constitutional convention. Requires that a copy of such report be submitted to the governor and to the constitutional convention if and when it convenes.
- (8) Authorizes the committee to accept grants, donations, gifts, monies, aid, facilities, and services from public or private sources which shall be recorded with donor names in the records of the committee and the convention and shall be open to inspection by any person.
- (9) Makes committee members subject to the same limitations on other compensation as provided for convention delegates. (See Constitutional Convention section below). Provides that expenses of the committee may be paid from any funds available for the purpose and, with the approval of the presiding officers of the two houses of the La. Legislature, from funds available for expenses of the legislature.

- (10) Requires that legislative committee rooms in the state capitol be available for committee use, unless required for legislative committee meetings. Permits the committee to use facilities and services of any state or local department or agency and requires that they cooperate by furnishing services and facilities upon request. Also authorizes the committee to use the facilities and services of other persons and organizations.
- (11) Provides that the Evaluation and Drafting Committee shall be dissolved 30 days after submission of the plan for the conduct of the constitutional convention to the convention unless a different termination date is provided in convention rules. However, provides that if the committee determines that a convention is not necessary, it shall be dissolved upon adjournment sine die of the 2018 R.S.

### **Constitutional Convention**

Proposed law provides for a constitutional convention as follows:

- (1) Calls the convention to convene at noon on Jan. 7, 2019, to frame a new constitution for the state, subject to the terms, conditions, and provisions of the Act.
- (2) Provides for 132 delegates as follows:
  - (a) 105 delegates to be elected from House of Representatives 2015 election districts at the regularly scheduled congressional election in 2018.
  - (b) 27 delegates who shall be the members of the Evaluation and Drafting Committee (see above).
- (3) Requires that delegates be qualified electors of the state and that elected delegates be residents of the district from which elected. Excepts selection and service of members and staff of the Evaluation and Drafting Committee and delegates and staff of the convention from dual employment/dual officeholding laws. Members of the Evaluation and Drafting Committee, delegates, and staff are subject to the code of ethics, public bribery laws, and, in the case of elected delegates and candidates for delegate, the campaign finance laws. Attorney delegates are entitled to continuance of cases in which they are counsel of record while attending sessions and convention work.
- (4) Provides that the election for delegates shall be held at the primary election on Nov. 6, 2018, and if a general election is necessary, on Dec. 8, 2018. Candidates qualify without regard to party affiliation. Election is to be in accordance with provisions for election of candidates for public office in the La. Election Code.
- (5) Provides for conduct of the elections in accordance with the election code, except for any conflicts with the Act. Voters vote without regard to party affiliation. Provides for application of state law to tabulation of votes in delegates' election. Provides for election costs to be paid as provided by the La. Election Code as in the case of elections for the state legislature.

- (6) Provides for filling of vacancies in elected delegates' offices by joint appointment by the governor, the speaker of the House, and the president of the Senate of a qualified person from the same district. Provides for filling other vacancies in the same manner as the original selection within 30 days of vacancy.

Proposed law grants to the convention the authority to frame a new state constitution, including such alternative provisions as it deems appropriate. However, provides that the convention may propose substantive changes only with respect to matters of state and local government finance, higher education, and retirement, which authority regarding such matters shall be limited to proposals regarding the raising of revenue; the allocation and expenditure of funds; the review, limitation, or control of the expenditure of funds; education funding; the management and control of higher education institutions; the manner in which retirement benefits are accrued by members of any state or statewide public retirement system hired after Dec. 31, 2019; the management of investments held by the state retirement systems; and the enactment of retirement benefit provisions. Specifies that the convention may propose such substantive changes, including alternative provisions, with respect to matters contained in the following provisions of the Constitution of La. of 1974, as amended, and no other:

- (1) Article VI (Local Government) but only Part II (Finance) and Part III (Levee Districts and Regional Flood Protection Authorities).
- (2) Article VII (Revenue and Finance).
- (3) Article VIII (Education), but only with respect to Sections 5, 6, 7, 7.1, 8, 12, and 13 (MFP & Higher Ed management & funding).
- (4) Article X (Public Officials and Employees), but only with respect to Paragraphs 29(E) and (F) (actuarial soundness of state and statewide retirement systems and retirement benefit provisions).
- (5) Article XIV (Transitional Provisions), but only as necessary to provide an orderly transition for proposed changes pursuant Paragraphs (1), (2), and (3) above.

Prohibits the convention from proposing substantive changes to any provisions of the constitution not listed above. Further prohibits any changes that will:

- (1) Change or affect Article I (Declaration of Rights) in any way.
- (2) Cause indebtedness of the state or of any parish, municipality, district, or other political subdivision or authority to be impaired.
- (3) Cause the term of office of state or local elected officials to be reduced prior to the expiration of the term held at the time of the adoption of the new constitution, or cause the salary of any such official to be reduced prior to the expiration of such term.

- (4) Remove or permit the removal of the state capital from Baton Rouge.

Further permits the convention, solely for the purposes of orderly arrangement, style and conformity, to incorporate nonsubstantive changes in other provisions of the constitution but only to the extent that they are: (1) germane to the specified matters and (2) essential in order to conform to the substantive changes being proposed. Also permits the convention, for the same purposes, to: (1) renumber or rearrange provisions, (2) transfer or divide provisions, (3) change reference designations to conform to redesignated provisions, and (4) make any other purely formal or clerical changes in keeping with the purpose of the revision.

Provides that any action by the convention in contravention of the provisions relative to substantive restrictions shall be null and void and of no effect.

Provides the procedure for judicial determination of the scope of the authority of the convention, questions relating to the construction and validity of the Act, or conformity of any action of the convention with the provisions of the Act and also provides for expedited hearings and decisions.

Proposed law provides for convention organization:

- (1) Includes provisions for oath for delegates; adoption of rules; election of chairman, vice chairman, chief clerical officer, and other officers deemed necessary by the convention; and election of an executive committee which shall include all of the elected officers of the convention; and other actions necessary to organize.
- (2) Provides for House and Senate staff designated by the presiding officers of the legislature, prior to the convention, to prepare rules of procedure for adoption by the convention, based on the 1973 convention rules, such rules to be subject to change and adoption by the convention. Prohibits proxy voting. Limits committee membership to 17 members.

Proposed law provides for the initial meeting of the convention on Jan. 7, 2019. Provides that after organizational activities are completed, the convention may meet either as a full body or in committees until it completes its duties.

Proposed law provides for convention staff, budget, committees, meeting site, and other assistance:

- (1) Requires the executive committee to request the provision of professional, research, technical, and clerical staff from public or private sources as deemed necessary.
- (2) Provides that staff may include but not be limited to a research director, research assistants, personnel provided by the four law schools from the faculty as requested by the committee, and such other staff as deemed necessary by the executive committee. Allows the staff of the convention and of the Evaluation and Drafting Committee to continue to receive compensation from the staff person's regular bona fide employment.
- (3) Requires the executive committee to prepare a budget of anticipated expenses of the

convention, based on the amount of the appropriation for the convention and any other funds available for expenditure.

- (4) Authorizes the executive committee to establish any substantive or procedural committees it deems necessary. Provides that the chairman of the convention appoint the chairman, vice chairman, and membership of each such committee.
- (5) Requires that the House Chamber and the legislative committee rooms in the state capitol be available for convention use, unless the legislature is in session. Authorizes the convention to meet elsewhere in Baton Rouge as determined by the chairman when state capitol facilities are not available or are insufficient.
- (6) Authorizes convention use of facilities and services of state departments and agencies and of political subdivisions and requires their cooperation in furnishing services, facilities, and employees. Authorizes the convention to accept grants, facilities, and services from public and private sources, with such to be recorded in convention records which shall be open for inspection.

Proposed law provides for compensation of delegates and payment of convention expenses:

- (1) Prohibits a delegate from accepting any compensation for work performed as a delegate to the convention, but allows a delegate to continue to receive compensation for the delegate's regular bona fide employment while a delegate.
- (2) Requires that the legislature make adequate appropriations to the convention for the payment of the necessary expenses of the convention such as supplies, materials, equipment, and printing for so long as the convention remains in existence and for so long thereafter as is necessary to pay the expenses of the convention. Provides that the convention is not a state budget unit. Specifies that the convention is subject to audit by the legislative auditor.
- (3) Requires that funds appropriated be withdrawn from the state treasury in accordance with warrants signed by the convention chairman and that checks be signed by the chairman and vice chairman, or the chairman or vice chairman and such other person as designated by the convention.

### **Submission to Voters/Effectiveness**

Proposed law provides that the final draft of a proposed constitution be completed not later than May 30, 2019. Requires the convention, upon completion of its work and subject to the subject matter limitations on the convention, to submit to the governor the proposed constitution and any alternative provisions agreed upon no later than June 12, 2019. Provides that the constitution and any alternative provisions proposed for submission shall be submitted to the people for their adoption or rejection at a special election. Provides for the convention to determine the manner for submission of alternative proposals. Requires the governor to call the election within 15 days after the draft is submitted, to be held at the same time as the gubernatorial primary election in 2019 (Oct. 12, 2019).

Provides for the election to be held and the results thereof promulgated in accordance with the La. Election Code and for costs to be paid as provided in the election code for elections in which a constitutional amendment appears on the ballot. Voters are allowed to vote without regard to party affiliation. Requires a majority vote to approve the constitution and any alternative proposals.

Proposed law, requires, upon promulgation of the results of the election by the secretary of state if the constitution is ratified and adopted by the people, that the governor proclaim the constitution, including alternative provisions adopted, to be the Constitution of La. Provides that the constitution and any such alternative provisions adopted shall become effective at midnight on Dec. 31, 2019, except as otherwise provided in the constitution or in any alternative provisions adopted.

Proposed law provides that if any provision or application of the Act which authorizes the convention to consider only certain subject matters and certain provisions of the constitution and prohibits the convention from considering other subject matters and provisions is held invalid then this entire Act shall be invalid and of no effect. Specifies, however, that if any other provision of this Act or the application thereof is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application.

Effective upon signature of governor or lapse of time for gubernatorial action.

**Timetable for Major Provisions of Bill**

<i>What</i>	<i>Date</i>
Evaluation & Drafting Committee members appointed by	8/1/17
Evaluation & Drafting Committee organizational meeting by	9/7/17
Evaluation & Drafting Committee to complete work by	2/26/18
Dissolution of Evaluation and Drafting Committee	If committee finds convention not needed – adjournment sine die of 2018 R.S. of legislature  Otherwise, 30 days after submission of plan for convention to convention (or other date in convention rules)
Election of 105 convention delegates	11/6/18 & 12/8/18
Convention to convene	1/7/19 (noon)
Convention to complete final draft	5/30/19
Convention to submit draft constitution to the governor by	6/12/19
Election for submission of proposed constitution	10/12/19 (Gubernatorial primary election)



<i>What</i>	<i>Date</i>
Constitution becomes effective if adopted	12/31/19 (midnight)

## Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on House and Governmental Affairs to the original bill:

1. Reduce the number of members of the Evaluation and Drafting Committee appointed by the La. State Law Institute from two to one.
2. Add to the membership of the Evaluation and Drafting Committee one representative of the La. Tax Institute appointed by its board.
3. Add provisions authorizing the convention to propose substantive changes with respect to the manner in which retirement benefits are accrued by members of any state or statewide public retirement system hired after Dec. 31, 2019; the management of investments held by the state retirement systems; and the enactment of retirement benefit provisions.
4. Add Art. X, Section 29(E) and (F) to the list of specific constitutional provisions with respect to which the convention may propose substantive changes.
5. Make technical changes.

The Committee Amendments Proposed by House Committee on Appropriations to the engrossed bill:

1. Remove provisions for the payment of per diem of delegates and members of the Evaluation and Drafting Committee.
2. Remove provisions for the employment of staff, including provisions for the secretary of state to advertise and take applications for such staff positions, and for the payment of staff salaries.
3. Provide for the committee and the convention to request the provision of staff from any public or private sources and specifically allow the staff of the convention and of the Evaluation and Drafting Committee to continue to receive compensation from the staff person's regular bona fide employment.
4. Specify that the chief clerical officer shall be selected from among the chief clerical officers of the House of Representatives and the Senate and their assistants.