

2015 Regular Session

SENATE BILL NO. 15

BY SENATOR NEVERS AND REPRESENTATIVE RITCHIE

TAX/TAXATION. Constitutional amendment to levy a tax on the use of hydrocarbon processing facilities and to dedicate the proceeds. (2/3 - CA13s1(A)) (1/1/16)

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A JOINT RESOLUTION

Proposing to amend Article VII, Section 4(A), (B), and (C), to add Article VII, Section 4.1, and to repeal Article IX, Section 9 of the Constitution of Louisiana, relative to taxes related to natural resources and the use of such taxes; to levy a tax on the use of hydrocarbon processing facilities; to dedicate such tax; to provide for a reduction of certain individual income tax rates; and to specify an election for submission of the proposition to electors and provide a ballot proposition.

Notice of intention to introduce this Act has been published.

Section 1. Be it resolved by the Legislature of Louisiana, two-thirds of the members elected to each house concurring, that there shall be submitted to the electors of the state, for their approval or rejection in the manner provided by law, a proposal to amend Article VII, Section 4(A), (B), and (C), to add Article VII, Section 4.1, and to repeal Article IX, Section 9 of the Constitution of Louisiana, to read as follows:

§4. Income Tax; Severance Tax; Political Subdivisions

Section 4.(A)(1) Income Tax. Equal and uniform taxes may be levied on net incomes, and these taxes may be graduated according to the amount of net income. However, the state individual and joint income tax schedule of rates and brackets

1 shall never exceed the rates and brackets set forth in Title 47 of the Louisiana
2 Revised Statutes on January 1, 2003.

3 (2) For all tax years beginning on and after January first of the fiscal
4 year after the Treasurer receives written certification that the retirement
5 systems' unfunded accrued liability has been eliminated as required by Article
6 X, Section 29(E)(2)(c) of this constitution, the state individual and joint income
7 tax schedule of rates shall be uniformly, permanently reduced to reflect the
8 savings to the state's general fund of both of the following:

9 (a) The payment required by Section 4.1(F)(2)(d) of this Article of two
10 hundred fifty million dollars each fiscal year from the Hydrocarbon Facilities
11 Tax Fund into the general fund as a replacement for revenue lost because of the
12 reduction in the tax rates provided for in this Paragraph.

13 (b) The revenue that will no longer be needed from the state general fund
14 each fiscal year to make the annual employer contributions actuarially required
15 by Article X, Section 29(E)(2)(c) of this constitution in order to eliminate such
16 liability. The amount of such savings upon which the reduction in the tax rates
17 provided for in this Paragraph shall be based on the average of the amount of
18 the last ten fiscal years' contributions made which were paid from the state
19 general fund.

20 (3) Federal income taxes paid shall be allowed as a deductible item in
21 computing state income taxes for the same.

22 (B) Severance Tax. Taxes may be levied on natural resources severed from
23 the soil or water, to be paid proportionately by the owners thereof at the time of
24 severance. Natural resources may be classified for the purpose of taxation. Such
25 taxes may be predicated upon either the quantity or value of the products at the time
26 and place of severance. ~~No~~ Except as provided in Section 4.1 of this Article, no
27 further or additional tax or license shall be levied or imposed upon oil, gas, or
28 sulphur leases or rights. No additional value shall be added to the assessment of land
29 by reason of the presence of oil, gas, or sulphur therein or their production therefrom.

1 when using facilities in the state to process them:

2 (i) Oil produced from a well classified as an oil well and determined to
3 be incapable of producing an average of more than twenty-five barrels of oil per
4 producing day during an entire month of operation, and which also produces
5 at least fifty percent salt water per day; however, the use of hydrocarbon
6 processing facilities to process oil from a multiple well lease or property shall
7 be taxable, unless all such wells are determined to be incapable.

8 (ii) Oil produced from a well classified as an oil well, and determined to
9 be a "stripper well", which is an oil well incapable of producing an average of
10 more than ten barrels of oil per producing day during an entire operating
11 month.

12 (iii) Gas produced from an oil well which has been determined to have
13 a wellhead pressure of fifty pounds per square inch gauge or less under
14 operating conditions or, in the case of gas rising in a vaporous state through the
15 annular space between the casing and tubing of such oil well and released
16 through lines connected with the casinghead gas which has been determined to
17 have a casinghead pressure of fifty pounds per square inch gauge or less under
18 operating conditions for the entire operating month. For purposes of applying
19 this exemption, an oil well being produced by the method commonly known as
20 gas lift shall be presumed to have a wellhead pressure of fifty pounds per square
21 inch or less under operating conditions in the absence of a determination to the
22 contrary.

23 (iv) Gas produced from a gas well which has been determined to be
24 incapable of producing an average of two hundred fifty thousand cubic feet of
25 gas per day during an entire operating month.

26 B. Payment. The tax shall be paid in the manner provided for in this
27 Section by the owner or proportionately by the owners of the hydrocarbons at
28 the time hydrocarbon processing facilities located in this state are first used to
29 process them, and the rate of usage shall be measured at the first point of

1 processing.

2 C. Duplication. There shall be no duplication of the tax, in that:

3 (1) Once any owner has paid all or his proportionate share of the tax due
4 on the use of any hydrocarbon processing facility to process hydrocarbons
5 owned by him, no further tax shall be due from him or from any subsequent
6 owner of his interest for the use of facilities to process the same hydrocarbons
7 or derivatives of those hydrocarbons.

8 (2) In addition, a credit against the tax imposed by this Section shall be
9 granted to owners who have paid a similar tax to another state for using
10 hydrocarbon processing facilities to process hydrocarbons subsequently
11 imported into Louisiana. Such credit shall be granted only in the case where the
12 state to which a similar tax has been paid grants a similar credit. In no event
13 shall the credit be greater than the tax imposed by Louisiana upon use of
14 facilities to process the same amount of hydrocarbons.

15 D. Administration and Collection. (1) The taxes levied hereunder shall
16 be due and payable monthly. Every owner of hydrocarbons using hydrocarbon
17 facilities within this state shall pay the tax due on or before the fifteenth day of
18 the second month following the month in which the tax accrues, and shall
19 provide such information as may be required by law or regulation.

20 (2)(a) The tax due from owners of hydrocarbons shall be collected and
21 remitted by the owner or operator of the facility in which the hydrocarbons are
22 processed. In addition, every person purchasing hydrocarbons upon which the
23 tax levied by this Section has not been paid shall deduct from any amount due
24 any owner the amount of the tax levied by this Section before making such
25 payments.

26 (b) Any owner or operator of a hydrocarbon processing facility who
27 neglects, fails, or refuses to collect and remit the tax levied by this Section, and
28 any person purchasing hydrocarbons who fails to deduct and withhold the
29 amount of taxes due as required by this Section, shall be liable for the full

1 amount of such taxes, interest, and penalties that should have been collected and
2 remitted, or deducted and withheld.

3 (3) The taxes due shall operate as a first lien and privilege on the
4 hydrocarbons of the owner from whom the tax is due, which lien and privilege
5 shall follow such hydrocarbons into the hands of third persons whether in good
6 or bad faith, and whether the hydrocarbons are found in a manufactured or
7 unmanufactured state.

8 (4) The Department of Revenue, or its successor, shall administer,
9 enforce, and collect the tax in the same manner and according to the same
10 procedures provided by law and regulations to the department for the
11 administration, enforcement, and collection of other taxes, including but not
12 limited to laws concerning the imposition of interest and penalties. In addition,
13 the legislature may if approved by two-thirds of the elected members of each
14 house of the legislature specifically provide by law for the administration,
15 enforcement, and collection of the tax, including but not limited to the time of
16 payment of the tax and changes in the administration, enforcement, and
17 collection procedures provided for in this Paragraph. Except as provided for in
18 this Section, there shall be no other exemptions, deductions, credits, or refunds
19 allowed against the tax.

20 E. Definitions. The following terms shall have the meaning ascribed to
21 them in this Paragraph unless the context clearly indicates otherwise:

22 (1) "Barrel" means a volumetric unit of measure for crude oil and
23 petroleum products equivalent to forty-two U.S. gallons.

24 (2) "Crude oil" means any liquid hydrocarbon naturally occurring at
25 atmospheric temperature and pressure, and any natural gas liquids or
26 condensate contained therein.

27 (3) "Cubic feet of natural gas" means natural gas measured at a base
28 pressure of 15.025 pounds per square inch absolute and at a base temperature
29 of sixty degrees Fahrenheit; provided that whenever the conditions of pressure

1 and temperature differ from the above bases, conversion of the volume from
2 these conditions to the above bases shall be made in accordance with the Ideal
3 Gas Laws with correction for deviation from Boyle's Law, which correction
4 must be made unless the pressure at the point of measurement is two hundred
5 pounds per square inch gauge, or less, all in accordance with methods and
6 tables generally recognized by and commonly used in the natural gas industry.
7 For all purposes of computing standard cubic feet of natural gas under this
8 Subparagraph the barometric pressure shall be assumed to be 14.7 pounds per
9 square inch absolute at the place of measurement.

10 (4)(a) "Hydrocarbon" means a chemical compound containing atoms of
11 both carbon and hydrogen, including but not limited to crude oil, condensate,
12 natural gas, and natural gas liquids.

13 (b) "Hydrocarbon" shall not mean petrochemicals, coal, lignite,
14 materials derived from agriculture or forestry products, or nitrogenous
15 fertilizers. "Petrochemicals" means products other than refined petroleum
16 products and which are typically single chemical compounds produced from a
17 chemical process in which petroleum is used. Such products are used as
18 materials in the manufacture of other finished products. "Petrochemicals" shall
19 include but not be limited to the following: acetylene, ethylene, propylene,
20 butylene, butadiene, benzene, toluene, xylene, methanol, or any other mixture
21 or derivative of such petrochemicals.

22 (5) "Hydrocarbon processing" means any process, procedure, or
23 operation by which a hydrocarbon or mixture of hydrocarbons undergoes any
24 one or more of the following:

25 (a) Absorption.

26 (b) Adsorption.

27 (c) Catalytic Reaction.

28 (d) Chemical Reaction or Treatment.

29 (e) Compression.

- 1 **(f) Cooling.**
- 2 **(g) Dehydration.**
- 3 **(h) Desulfurization.**
- 4 **(i) Depressurization.**
- 5 **(j) Emulsion treating.**
- 6 **(k) Evaporation.**
- 7 **(l) Expansion.**
- 8 **(m) Extraction.**
- 9 **(n) Filtration.**
- 10 **(o) Fractionation.**
- 11 **(p) Heating or heat exchange.**
- 12 **(q) Isomerization.**
- 13 **(r) Liquefaction.**
- 14 **(s) Nitrogen rejection.**
- 15 **(t) Phase separation.**
- 16 **(u) Pressure, velocity, or flow measurement.**
- 17 **(v) Pressurization.**
- 18 **(w) Pumping.**
- 19 **(x) Purification.**
- 20 **(y) Refrigeration.**
- 21 **(z) Regasification.**
- 22 **(aa) Sweetening.**
- 23 **(bb) Thermal Reaction or Treatment.**
- 24 **(cc) Throttling.**
- 25 **(dd) Refining.**
- 26 **(ee) Any use of a hydrocarbon in a manufacturing process in this state.**
- 27 **(ff) "Hydrocarbon processing" shall not include the direct venting or**
- 28 **flaring into the atmosphere of gas produced from oil or gas wells.**
- 29 **(6) "Hydrocarbon processing facility" means any plant, building,**

1 construction, structure, or equipment located in Louisiana and used to perform
2 all or a part of the processes, procedures, or operations provided for in
3 Subparagraph (E)(5); however, such terms shall not include motor vehicles,
4 railway cars, ships, barges, or vessels.

5 (7) "Natural gas" means naturally occurring mixtures of hydrocarbon
6 gases and vapors, including but not limited to methane and ethane, that exist in
7 either a gaseous state or in a solution with crude oil.

8 (8) "Owner" means the person or persons having title to hydrocarbons
9 at the time the hydrocarbons are processed in hydrocarbon processing facilities
10 in Louisiana.

11 (9) "Person" or "taxpayer" means an individual, firm, association of
12 persons, partnership, corporation, or other entity.

13 (10) "State" means a state of the United States.

14 (11) "Use of hydrocarbon processing facilities" or "use of facilities"
15 means processing, or causing to be processed, hydrocarbons in a hydrocarbon
16 processing facility in Louisiana.

17 F. Dedication. (1) All funds received related to the levy of the tax
18 provided for in this Section shall be deposited immediately upon receipt into the
19 state treasury and shall be credited to a special fund hereby created in the state
20 treasury to be known as the Hydrocarbon Facilities Tax Fund. Notwithstanding
21 any other provision of this constitution, such money shall be deposited as
22 provided for in this Section and the money in the Hydrocarbon Facilities Tax
23 Fund shall be used solely as provided in Subparagraph (F)(2). All unexpended
24 and unencumbered money in the fund at the end of the fiscal year shall remain
25 in the fund to be invested by the treasurer in any manner which may be
26 provided by law, and the income earned on such investments shall be credited
27 to the fund.

28 (2) The money in the fund shall be used each fiscal year solely as
29 provided for in this Paragraph. However, the amounts provided for in this

1 Paragraph shall be proportionally increased or decreased each fiscal year to
2 reflect tax collections above or below the total amount of appropriations
3 provided for by this Paragraph.

4 (a) Three hundred seventy million dollars shall be appropriated by the
5 legislature to the Board of Regents for distribution to public institutions of post
6 secondary education according to the formula for equitable distribution of
7 funds to such institutions provided for in Article VIII, Section 5(D)(4) of this
8 constitution. The money appropriated by the legislature shall not displace,
9 replace, or supplant appropriations from the general fund or other funds for
10 such purposes made prior to the appropriations required by this
11 Subsubparagraph.

12 (b)(i) Two hundred fifty million dollars shall be appropriated by the
13 legislature for the maintenance of and in an effort to improve health outcomes
14 in the following health care areas:

15 (aa) Adult disability and aging services.

16 (bb) Developmental disabilities services.

17 (cc) Primary and preventive health care services.

18 (dd) Public health services.

19 (ee) Substance abuse and mental health services.

20 (ff) Health care services provided via the Medicaid program operated by
21 the Department of Health and Hospitals.

22 (gg) Health care services provided at the current and former state
23 hospitals operated by the Louisiana State University Health Care Services
24 Division.

25 (ii) The money appropriated shall not displace, replace, or supplant
26 appropriations from the state general fund for such health care services below
27 the amounts appropriated to provide such services in Fiscal Year 2015-2016.

28 (c) Eighty million dollars shall be appropriated by the legislature each
29 fiscal year to the state Department of Education for distribution to each school

1 district in the state in an amount sufficient to fund a board-approved early
2 childhood or prekindergarten program in all public elementary schools to
3 educate children who are younger than the minimum age provided by law for
4 entrance to first grade. The money appropriated by the legislature shall not
5 displace, replace, or supplant appropriations from the general fund or other
6 funds for early childhood or prekindergarten programs in public elementary
7 schools made prior to the appropriations required by this Subsubparagraph.

8 (d) Two hundred fifty million dollars shall be appropriated by the
9 legislature:

10 (i) To the Louisiana State Employees' Retirement System and the
11 Teachers' Retirement System of Louisiana for the amortization of the
12 retirement systems' unfunded accrued liability as required by Article X, Section
13 29(E)(2)(c) of this constitution until the Public Retirement Systems' Actuarial
14 Committee provides written certification to the Treasurer that such unfunded
15 accrued liability is eliminated. This payment shall be in addition to any
16 payments required by Article X, Section 29(E)(2)(c) and Article VII, Section
17 10(D)(2)(b). The allocation between the two systems shall be in proportion to
18 the balance of the unfunded accrued liability of each system. The payments to
19 the public retirement systems shall not be used to reduce the actuarially-
20 required employer contributions to the systems, shall not be included in system
21 assets for purposes of determinations with respect to cost-of-living increases,
22 nor shall the payments be used, directly or indirectly, to fund cost-of-living
23 increases for retirees of the systems.

24 (ii) Beginning in the fiscal year after the Treasurer receives written
25 certification from the Public Retirement Systems' Actuarial Committee that
26 such unfunded accrued liability is eliminated, the Treasurer shall deposit two
27 hundred fifty million dollars each fiscal year in the general fund for the purpose
28 of replacing the revenue from the individual income tax and enabling the
29 reduction of the burden of such tax as provided for in Section 4(A)(1)(b) of this

1 Article.

2 (e) One hundred fifty million dollars shall be deposited in the
3 Transportation Trust Fund provided for in Article VII, Section 27 of this
4 constitution to be used as in the manner authorized by that provision.

5 Section 2. If any provision or item of this amendment or the application thereof is
6 held invalid, such invalidity shall not affect other provisions, items, or applications of this
7 amendment which can be given effect without the invalid provisions, items, or applications,
8 and to this end the provisions of this amendment are severable.

9 Section 3. Be it further resolved that this proposed amendment shall be submitted
10 to the electors of the state of Louisiana at the statewide election to be held on October 24,
11 2015.

12 Section 4. Be it further resolved that on the official ballot to be used at said election
13 there shall be printed a proposition, upon which the electors of the state shall be permitted
14 to vote YES or NO, to amend the Constitution of Louisiana, which proposition shall read as
15 follows:

16 Do you support an amendment to levy a tax on the use of hydrocarbon
17 processing facilities in Louisiana by the owners of the hydrocarbons
18 processed therein at the rate of 4% of the price or value of the hydrocarbons
19 and to dedicate the proceeds of the tax to public institutions of post
20 secondary education, to the maintenance and improvement of health care, to
21 the funding of an early childhood or prekindergarten program, to eliminating
22 the state retirement systems' unfunded accrued liability, to the Transportation
23 Trust Fund, and, after the state retirement systems' unfunded accrued liability
24 is eliminated, to reduce the state individual income tax rates?

25 (Amends Article VII, Section 4(A), (B), and (C); adds Article VII, Section
26 4.1; repeals Article IX, Section 9)

owner of his interest for the subsequent use of facilities to process the same hydrocarbons or derivatives of those hydrocarbons.

- (2) A credit against the tax is granted to owners who have paid a similar tax to another state of the United States for using hydrocarbon processing facilities to process hydrocarbons subsequently imported into Louisiana. The credit is granted only if the state grants a similar credit.

Proposed constitutional amendment requires owners or operators of processing facilities to collect the tax. Purchasers of hydrocarbons upon which the tax has not been paid are required to deduct the amount of the tax before making payments to the owner. If they are not collected or withheld, they are themselves liable for the tax.

The taxes operate as a first lien and privilege on the hydrocarbons, and the lien follows the hydrocarbons into the hands of third persons whether in good or bad faith, and whether the hydrocarbons are found in a manufactured or unmanufactured state.

The Department of Revenue administers the tax in the same manner and according to the same procedures provided by law and regulations to the department for the administration of other taxes, including but not limited to laws concerning the imposition of interest and penalties. In addition, the legislature is authorized by approval of two-thirds of the elected members of each house of the legislature to provide by law for the administration, enforcement, and collection of the tax, including but not limited to laws providing for time of payment of the tax, and changes in the administration, enforcement, and collection procedures set forth above. No other exemptions, deductions, credits, or refunds are allowed against the tax.

Proposed constitutional amendment prohibits political subdivisions from levying a tax "on or related to hydrocarbon processing or the use of facilities for such processing".

Proposed constitutional amendment repeals the First Use Tax Trust Fund provisions and establishes the Hydrocarbon Facilities Tax Fund and requires the money in the fund to be used each fiscal year solely for the following purposes, however, the amounts required must be proportionally increased or decreased each fiscal year to reflect tax collections above or below the total amount of appropriations required as set forth below.

- (1) \$300 million must be appropriated to the Board of Regents for distribution to public institutions of post secondary education according to the formula for equitable distribution of funds to such institutions provided for in Const. Art. VIII, Sec. 5(D)(4) of the constitution. The money appropriated by the legislature must not displace, replace, or supplant appropriations from the general fund or other funds for such purposes made prior to the appropriations required by this part of the proposed constitutional amendment.
- (2) \$250 million must be appropriated for the maintenance of and in an effort to improve health outcomes in the following health care areas:
- (a) Adult disability and aging services.
 - (b) Developmental disabilities services.
 - (c) Primary and preventive health care services.
 - (d) Public health services.
 - (e) Substance abuse and mental health services.
 - (f) Health care services provided via the Medicaid program operated by DHH.

- (g) Health care services provided at the current and former state hospitals operated by the LSU Health Care Services Division.

The money appropriated must not displace, replace, or supplant appropriations from the state general fund for such health care services below the amounts appropriated to provide such services in the 2015-2016 Fiscal Year.

- (3) \$80 million must be appropriated each fiscal year to the state Department of Education for distribution to each school district in the state in an amount sufficient to fund a board-approved early childhood or prekindergarten program in all public elementary schools to educate children who are younger than the minimum age provided by law for entrance to first grade. The money appropriated must not displace, replace, or supplant appropriations from the general fund or other funds for early childhood or prekindergarten programs in public elementary schools made prior to the appropriations required by this part of the proposed constitutional amendment.
- (4) \$250 million must be appropriated by the legislature to the Louisiana State Employees' Retirement System and the Teachers' Retirement System of Louisiana for the amortization of the retirement systems' unfunded accrued liability as required by Const. Art. X, Sec. 29(E)(2)(c) until the Public Retirement Systems' Actuarial Committee provides written certification to the Treasurer that such unfunded accrued liability is eliminated. The payment must be in addition to any payments required by Const. Art. X, Sec. 29(E)(2)(c) and Art. VII, Sec. 10(D)(2)(b). The allocation between the two systems must be in proportion to the balance of the unfunded accrued liability of each system. The payments to the public retirement systems cannot be used to reduce the actuarially-required employer contributions to the systems, cannot be included in system assets for purposes of determinations with respect to cost-of-living increases, nor can they be used, directly or indirectly, to fund cost-of-living increases.
- (5) \$150 million must be deposited in the Transportation Trust Fund to be used as in the manner authorized by that provision.

Proposed constitutional amendment requires the Treasurer to deposit \$250 million each fiscal year in the general fund beginning in the fiscal year after he receives written certification from the Public Retirement Systems' Actuarial Committee that the unfunded accrued liability is eliminated. For all tax years beginning on and after January first of the fiscal year after the Treasurer receives such written certification, the state individual and joint income tax schedule of rates must be uniformly, permanently reduced to reflect the savings to the state's general fund of both of the following:

- (1) The payment required above of \$250 million each fiscal year replacement for revenue lost because of such reduction in the tax rates.
- (2) The revenue that will no longer be needed from the state general fund each fiscal year to make the annual employer contributions actuarially-required by Const. Art. X, Sec. 29(E)(2)(c) in order to eliminate such liability. The amount of such savings upon which the reduction in the tax rates is to be based must be the average of the amount of the last 10 fiscal years' contributions made which were paid from the state general fund.

All unexpended and unencumbered money in the fund at the end of the year remains in the fund and income earned on investments of the money is credited to the fund.

Proposed constitutional amendment contains a severability clause.

Specifies submission of the amendment to the voters at the statewide election to be held on

October 24, 2015.

(Amends Const. Art. VII, Sec. 4(A), (B) and (C); adds Const. Art. VII, Sec. 4.1; repeals Const. Art. IX, Sec. 9)