

First Extraordinary Session, 2002

SENATE BILL NO. 27

BY SENATORS HAINKEL AND MALONE

PUBLIC EMPLOYEES. Constitutional amendment to authorize legislature to provide for the removal of any state or local employee upon commission or conviction of a felony. (2/3-CA13s1(A))

## 1 A JOINT RESOLUTION

2 Proposing to enact Article X, Section 25.1 of the Constitution of Louisiana,  
3 relative to state and local public employees; to require that the  
4 legislature provide by law for the removal of a state or local public  
5 employee upon conviction of a felony; and to specify an election for  
6 submission of the proposition to electors and provide a ballot  
7 proposition.

8 Section 1. Be it resolved by the Legislature of Louisiana, two-thirds of  
9 the members elected to each house concurring, that there shall be submitted  
10 to the electors of the state, for their approval or rejection in the manner  
11 provided by law, a proposal to add Article X, Section 25.1 of the Constitution  
12 of Louisiana, to read as follows:

13 §25.1. Removal by Suit; State, District, Parochial, Ward, or Municipal  
14 Employees

15 **Article X, Section 25.1 is all proposed new law.**

16 Section 25.1. Notwithstanding any provision of this Article to

1 the contrary, the legislature shall provide by general law for the  
 2 removal of any state, district, parochial, ward, or municipal employee,  
 3 whether classified or unclassified, from his position of employment, for  
 4 commission or conviction, during his employment, of a felony as  
 5 defined by law. "Conviction", as used in this Section, means a  
 6 conviction that is final and all appellate review of the original trial  
 7 court proceedings is exhausted.

8 Section 2. Be it further resolved that this proposed amendment shall be  
 9 submitted to the electors of the state at the statewide election to be held on  
 10 November 5, 2002.

11 Section 3. Be it further resolved that on the official ballot to be used  
 12 at the election there shall be printed a proposition, upon which the electors of  
 13 the state shall be permitted to vote FOR or AGAINST, to amend the  
 14 Constitution of Louisiana, which proposition shall read as follows:

15 To require that the legislature provide by general law for the  
 16 removal of any state or local public employee, whether  
 17 classified or unclassified, from his position of employment for  
 18 commission or conviction, during his employment, of a felony  
 19 as defined by law. (Adds Article X, Section 25.1)

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The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Jerry J. Guillot.

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Hainkel (SB 27)

DIGEST

Present constitution requires that the legislature provide by general law for the removal by suit of any state, district, parochial, ward, or municipal official, except the governor, lieutenant governor, and judges of the courts of record, for commission or conviction, during his term of office, of a felony.

Present law provides for the removal of a public officer from office for conviction, during his term of office, of a felony. Defines "public officer" as

any person holding a public office, whether state, district, parochial, ward, or municipal, whether the person is elected or appointed except judges of the courts of record.

Present constitution provides that a classified state employee subjected to discipline has a right of appeal to the State Civil Service Commission. (Const. Art. X, Sec. 8(A) and 12(A))

Present law provides for termination of state employees both classified or unclassified and removal of such employee from his position of employment with the state upon conviction, during his employment, of a felony as defined by state or federal law. (R.S. 42:1414)

The La. Supreme Court in *AFSCME, Council # 17 v. State ex rel. Dept. of Health and Hospitals*, 789 So. 2d 1263(La. 2001), held that present law (R.S. 42:1414) violated the separation of powers principle as applied to classified state employees.

Proposed constitutional amendment requires that the legislature provide by general law for the removal of any state, district, parochial, ward, or municipal employee, whether classified or unclassified, from his position of employment for commission or conviction, during his employment, of a felony as defined by law. "Conviction" as used in this Section, means a conviction that is final and all appellate review of the original trial court proceedings is exhausted.

Specifies submission of the amendment to the voters at the statewide election to be held on 11/5/02.

(Adds Const. Art. X, Sec. 25.1)

#### Summary of Amendments Adopted by Senate

##### Committee Amendments Proposed by Senate Committee on Senate and Governmental Affairs to the original bill.

1. Authorizes removal of a local public official and local employee upon conviction of a felony during his term of office or employment.

##### Senate Floor Amendments to engrossed bill.

1. Deletes reference to public officials and changes reference from "local employees" to "district, parochial, ward, or municipal employees"
2. Includes application to commission as well as conviction of a felony during employment.
3. Clarifies "conviction" to mean a final conviction.