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## DIGEST

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HB 55 Original

2015 Regular Session

Ritchie

**Abstract:** Authorizes the levy of a tax beginning Jan. 1, 2016, on the use of hydrocarbon processing facilities in this state and dedicates the proceeds of such tax.

Present constitution prohibits the levy of a tax other than severance tax on "oil, gas, or sulphur leases or rights." Proposed constitutional amendment changes present constitution by authorizing the levy of a tax on the use of hydrocarbon processing facilities.

Proposed constitutional amendment provides that the tax on the use of hydrocarbon processing facilities shall begin to be collected on Jan. 1, 2016. Further defines "hydrocarbon" as a chemical compound containing atoms of both carbon and hydrogen, including but not limited to crude oil, condensate, natural gas, natural gas liquids, and any refined petroleum products. The term "hydrocarbon processing facility" is defined as any plant, building, structure, or equipment located in La. used to perform all or a part of a very broadly defined list of processes, procedures, or operations which encompass every aspect of the production, treatment, transportation, refining, and processing of hydrocarbons.

Proposed constitutional amendment exempts motor vehicles, railway cars, ships, barges, and vessels from the definition of "facilities". In addition, the direct venting or flaring into the atmosphere of gas produced from oil or gas wells is specifically excluded from the definition of "hydrocarbon processing".

Proposed constitutional amendment levies the tax at a rate of 4% of the price or value of condensate, crude oil, including natural gas liquids or condensate, and natural gas and natural gas liquids which undergo hydrocarbon processing in a hydrocarbon processing facility within the state.

A credit against the tax is granted to owners who have paid to this state or any other state a tax on the severance of hydrocarbons, if the severance tax is based upon the value of the hydrocarbons at the time and place of severance.

Proposed constitutional amendment exempts oil and gas from stripper and incapable-type wells whether in or outside of the state.

Proposed constitutional amendment provides for the tax to be paid by the owner or proportionately by the owners of the hydrocarbons at the time facilities located in this state are first used to process them, and the rate of usage is measured at that point.

Duplication of the tax is prohibited, in that:

- (1) Once any owner has paid all or his proportionate share of the tax due on hydrocarbons owned by him, no further tax is due from him or from any subsequent 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 U. S. for using hydrocarbon processing facilities to process hydrocarbons subsequently imported into this state. 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, the purchasers are 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 Dept. of Revenue administers the tax in the same manner and according to the same procedures provided by law and regulations for the administration of other taxes, including laws concerning the imposition of interest and penalties. Authorizes the legislature to approve, by a vote 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 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 hydrocarbon processing facilities.

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 certain enumerated health care areas.

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 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 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 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 receiving 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 1st 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 as a replacement for revenue lost because of 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.

Provides for submission of the proposed amendment to the voters at the statewide election to be held Oct. 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)