

1 However, the state individual and joint income tax schedule of rates and brackets
2 shall never exceed the rates and brackets set forth in Title 47 of the Louisiana
3 Revised Statutes of 1950 on January 1, 2003.

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

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

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

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

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 for 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 following types of wells shall be exempt from the payment of the tax when using
2 facilities in the state to process them:

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

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

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

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

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

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

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

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

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

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

23 (b) Any owner or operator of a hydrocarbon processing facility who
24 neglects, fails, or refuses to collect and remit the tax levied by this Section, and any
25 person purchasing hydrocarbons who fails to deduct and withhold the amount of
26 taxes due as required by this Section, shall be liable for the full amount of such taxes,
27 interest, and penalties that should have been collected and remitted, or deducted and
28 withheld.

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

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

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

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

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

24 (3) "Cubic feet of natural gas" means natural gas measured at a base pressure
25 of 15.025 pounds per square inch absolute and at a base temperature of sixty degrees
26 Fahrenheit; provided, that whenever the conditions of pressure and temperature
27 differ from the above bases, conversion of the volume from these conditions to the
28 above bases shall be made in accordance with the Ideal Gas Laws with correction for
29 deviation from Boyle's Law, which correction must be made unless the pressure at

1 the point of measurement is two hundred pounds per square inch gauge, or less, all
2 in accordance with methods and tables generally recognized by and commonly used
3 in the natural gas industry. For all purposes of computing standard cubic feet of
4 natural gas under this Subparagraph the barometric pressure shall be presumed to be
5 14.7 pounds per square inch absolute at the place of measurement.

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

9 (b) "Hydrocarbon" shall not mean petrochemicals, coal, lignite, materials
10 derived from agriculture or forestry products, or nitrogenous fertilizers.

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

14 (i) Absorption.

15 (ii) Adsorption.

16 (iii) Catalytic Reaction.

17 (iv) Chemical reaction or treatment.

18 (v) Compression.

19 (vi) Cooling.

20 (vii) Dehydration.

21 (viii) Depressurization.

22 (ix) Desulfurization.

23 (x) Emulsion treating.

24 (xi) Evaporation.

25 (xii) Expansion.

26 (xiii) Extraction.

27 (xiv) Filtration.

28 (xv) Fractionation.

29 (xvi) Heating or heat exchange.

1 (xvii) Isomerization.

2 (xviii) Liquefaction.

3 (xix) Nitrogen rejection.

4 (xx) Phase separation.

5 (xxi) Pressure, velocity, or flow measurement.

6 (xxii) Pressurization.

7 (xxiii) Pumping.

8 (xxiv) Purification.

9 (xxv) Refrigeration.

10 (xxvi) Regasification.

11 (xxvii) Sweetening.

12 (xxviii) Thermal reaction or treatment.

13 (xxix) Throttling.

14 (xxx) Refining.

15 (xxxix) Any use of a hydrocarbon in a manufacturing process in the
16 state.

17 (b) "Hydrocarbon processing" shall not include the direct venting or flaring
18 into the atmosphere of gas produced from oil or gas wells.

19 (6) "Hydrocarbon processing facility" means any plant, building,
20 construction, structure, or equipment located in Louisiana and used to perform all or
21 a part of the processes, procedures, or operations provided for in Subparagraph
22 (E)(5); however, such terms shall not include motor vehicles, railway cars, ships,
23 barges, or vessels.

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

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

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

3 (10) "Petrochemicals" means products other than refined petroleum products
4 and which are typically single chemical compounds produced from a chemical
5 process in which petroleum is used. Such products are used as materials in the
6 manufacture of other finished products. "Petrochemicals" shall include but not be
7 limited to the following: acetylene, ethylene, propylene, butylene, butadiene,
8 benzene, toluene, xylene, methanol, or any other mixture or derivative of such
9 petrochemicals.

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

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

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

24 (2) The money in the fund shall be used each fiscal year solely as provided
25 for in this Paragraph; however, the amounts provided for in this Paragraph shall be
26 proportionally increased or decreased each fiscal year to reflect tax collections above
27 or below the total amount of appropriations provided for by this Paragraph.

28 (a) Three hundred seventy million dollars shall be appropriated by the
29 legislature to the Board of Regents for distribution to public institutions of post

1 secondary education according to the formula for equitable distribution of funds to
2 such institutions provided for in Article VIII, Section 5(D)(4) of this constitution.
3 The money appropriated by the legislature shall not displace, replace, or supplant
4 appropriations from the general fund or other funds for such purposes made prior to
5 the appropriations required by this Subsubparagraph.

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

9 (aa) Adult disability and aging services.

10 (bb) Developmental disabilities services.

11 (cc) Primary and preventive health care services;

12 (dd) Public health services.

13 (ee) Substance abuse and mental health services.

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

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

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

21 (c) Eighty million dollars shall be appropriated by the legislature each fiscal
22 year to the state Department of Education for distribution to each school district in
23 the state in an amount sufficient to fund a board-approved early childhood or
24 prekindergarten program in all public elementary schools to educate children who
25 are younger than the minimum age provided by law for entrance to first grade. The
26 money appropriated by the legislature shall not displace, replace, or supplant
27 appropriations from the general fund or other funds for early childhood or
28 prekindergarten programs in public elementary schools made prior to the
29 appropriations required by this Subsubparagraph.

1 (d)(i) Two hundred fifty million dollars shall be appropriated by the
2 legislature to the Louisiana State Employees' Retirement System and the Teachers'
3 Retirement System of Louisiana for the amortization of the retirement systems'
4 unfunded accrued liability as required by Article X, Section 29(E)(2)(c) of this
5 constitution until the Public Retirement Systems' Actuarial Committee provides
6 written certification to the Treasurer that such unfunded accrued liability is
7 eliminated. This payment shall be in addition to any payments required by Article
8 X, Section 29(E)(2)(c) and Article VII, Section 10(D)(2)(b). The allocation between
9 the two systems shall be in proportion to the balance of the unfunded accrued
10 liability of each system. The payments to the public retirement systems shall not be
11 used to reduce the actuarially-required employer contributions to the systems, shall
12 not be included in system assets for purposes of determinations with respect to
13 cost-of-living increases, nor shall the payments be used, directly or indirectly, to
14 fund cost-of-living increases for retirees of the systems.

15 (ii) Beginning in the fiscal year after the Treasurer receives written
16 certification from the Public Retirement Systems' Actuarial Committee that such
17 unfunded accrued liability is eliminated, the Treasurer shall deposit two hundred
18 fifty million dollars each fiscal year in the general fund for the purpose of replacing
19 the revenue from the individual income tax and enabling the reduction of the burden
20 of such tax as provided for in Section 4(A) of this Article.

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

24 Section 2. Be it resolved by the Legislature of Louisiana, two-thirds of the members
25 elected to each house concurring, that there shall be submitted to the electors of the state of
26 Louisiana, for their approval or rejection in the manner provided by law, a proposal to repeal
27 Article IX, Section 9 of the Constitution of Louisiana.

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

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

8 Do you support an amendment to levy a tax on the use of hydrocarbon
9 processing facilities in Louisiana by the owners of the hydrocarbons
10 processed therein at the rate of 4% of the price or value of the hydrocarbons,
11 to dedicate the proceeds of the tax to public institutions of post secondary
12 education, to the maintenance and improvement of health care, to the funding
13 of an early childhood or prekindergarten program, to the reduction of the
14 state retirement systems' unfunded accrued liability, to the Transportation
15 Trust Fund, and, after the state retirement systems' unfunded accrued liability
16 is eliminated, to reduce the state individual income tax rates, and to repeal
17 the First Use Tax Trust Fund and create the Hydrocarbon Facilities Tax
18 Fund? (Amends Article VII, Section 4(A), (B), and (C); Adds Article VII,
19 Section 4.1; Repeals Article IX, Section 9)

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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)