

April 5, 2010

LABI OPPOSES PROPOSED CHANGES TO CONSTITUTIONALLY DEDICATED TRUST FUNDS AND STATUTORILY DEDICATED FEE FUNDS

LABI has long-standing positions in opposition to raiding the “8(g)” education trust fund, the Budget Stabilization Fund, and transferring statutorily dedicated fees to the state general fund. LABI strongly backed the creation of the 8(g) fund in 1985 when the state received hundreds of millions of dollars in a settlement with the federal government regarding offshore oil and gas revenues. Since that time, millions of dollars have gone for enhancements in K-12 and post-secondary education. Several Senate bills would allow the body of the 8(g) fund to be raided to fund ongoing education expenses.

LABI was also strongly involved in the key budget reforms of 1990 that, among other things, created the Budget Stabilization Fund (BSF). The primary purpose of the fund was to capture highly volatile oil and gas revenues, currently above the \$850 million level, so those funds could not be spent for recurring purposes. Past experience had shown that budgeting of these excess mineral revenues led to critical budget shortfalls when oil and gas prices subsequently dropped. The 1990 constitutional amendment allowed the Legislature to use up to one-third of the fund when *state* revenues experienced an unexpected decline. Legislation has been introduced that would remove the requirement that excess oil and gas revenues—if available—be deposited into the fund in any year the BSF is tapped. The legislation would also allow the fund to be tapped if there were a decline in *federal*—not *state*—revenues.

LABI has also long opposed taking money from statutorily dedicated fees and putting them in the state general fund. Those fees are used to provide specific state services. The fact that they are fees and not taxes is supposed to legally prevent them from being used for any purposes except the provision of the services they were created to supply.

If the above mentioned funds are raided to provide one-time money for recurring expenditures in future state budgets, it will cause budgetary chaos later on when the state has to finally balance expenditures with truly recurring revenues. The state’s budget problems should be addressed now, not put off (and likely exacerbated) by raiding the dedicated funds to provide one-time “fixes” for recurring problems.

To read the letter from Dan Juneau to Governor Jindal regarding LABI’s position on these dedicated funds, click [here](#).

BILLS TO EXPAND EMPLOYER LAWSUITS FILED AGAIN

HB 673 by Rep. Barbara Norton (D-Shreveport), HB 832 by Rep. Cedric Richmond (D-New Orleans), and SB 249 by Sen. Yvonne Dorsey (D-Baton Rouge) were introduced to create a new cause of action in cases of alleged pay discrimination based on gender. Comparable legislation

failed to clear the House last session. LABI strongly opposes these bills to allow workers to sue their employers when paid less than others of the opposite sex working in a similar capacity.

If the bills become law, employers with perfectly sound reasons for their pay differentials will be drug into court to prove it. Furthermore, enactment of the bills would retard Louisiana's economic development at a time when our economy is struggling. Businesses do not locate in states where they are more likely to be sued. An adequate federal remedy already exists, and it applies to every employer in the U.S. So, these bills are not necessary.

CIVIL JUSTICE REFORMS THREATENED

A bill that could kill one-third of the civil justice reform of 1996, moving that system backward instead of forward, and presenting the threat of punitive damages to all citizens, has been filed by Sen. Rob Marionneaux (D-Livonia), a plaintiff attorney. In a state that favors very few and very targeted punitive damages, SB 547 would provide for punitive damages in addition to the awarding of general and special damages. LABI has long opposed the expansion of punitive damages and will work diligently to stop this legislation.

A bounty hunter bill that would allow private citizens to share the attorney general's job has been filed by Sen. Dan Claitor (R-Baton Rouge). SB 531 allows a whistle blower to sue on behalf of himself and the state practically anyone conducting financial business with state departments or other public entities. As an incentive, these *qui tam* plaintiffs, as they are legally designated, can receive 10 to 30 percent of the damages. LABI opposes this bill.

It will be more difficult for Louisiana citizens to get a jury trial in civil cases if HB 61 by Rep. Patrick Connick (R-Marrero) becomes law. In order for a civil suit to be heard by a jury, the amount of the petitioner's cause of action must exceed \$50,000, exclusive of penalties and costs. This bill would add penalties to those exclusions. LABI opposes this bill.

However, HB 573 by Rep. Nickie Monica (R-LaPlace) would make it much easier to get a jury trial. The present threshold is \$50,000. This legislation, supported by LABI, would lower that amount to \$10,000.

SCHOOL BOARD REFORMS INTRODUCED AGAIN

Once again, Rep. Steve Carter (R-Baton Rouge) introduced legislation that would reform the way local school boards operate in the state. LABI supports both bills. **HB 942** proposes to stop individual school board members from inappropriately interfering in personnel matters, but retains the entire board's authority to rule on personnel recommendations submitted to them by the local superintendent. Additionally, it would require a majority vote to hire a superintendent, and to offer or opt to not offer an existing superintendent a new contract, but requires a two-thirds vote to remove a superintendent prior to the expiration of the contract.

HB 410 would set a November 2, 2010 election in every school district to determine whether their school board members will be limited to three consecutive four-year terms. The term limits apply to board members who began terms on or after January 1, 2010. This would bring school

boards, a creation of the state Legislature (unlike city and parish governing bodies) in line with members of the Board of Elementary and Secondary Education, the Louisiana Legislature, and most boards and commissions.

LABI SUPPORTS TAXPAYER FAIRNESS BILLS

SB 567, Morrish (Right to Independent Appeal). Under current law, taxpayers in local sales tax cases have no right to an independent appeal of their tax issues. Taxpayers should have the same right to an independent appeal in local sales tax cases as is afforded them in state cases to the Board of Tax Appeals (BTA).

HB 667, Nowlin (Arbitrary Assessments). Tax collectors should not be allowed to extend the prescriptive period by forcing the execution of a waiver or issuing an arbitrary assessment. Three years is a sufficient amount of time for the tax collector to conduct its audit or other investigation. The tax collector should not be allowed to use the assessment procedure to effectively erase the three year prescriptive period out of our state constitution.

HB 605, Ellington/HB 666, Nowlin (Private Counsel Attorney Fees in local sales tax cases). Local sales tax laws limit the award attorney fees to only to the tax collector – so, the taxpayer may not be awarded his attorney fees even if he is successful in the tax case. Fairness dictates that attorney fee provisions should apply equally to the tax collector and the taxpayer.

HB 845 (Private Contract Auditors (local sales tax)). There are no specific rules or standards in place for this program, and several areas need to be addressed, including: (1) minimum standards for educational and professional auditing experience or certification; and (2) the protection of taxpayer confidentiality and privacy of taxpayer records and related information.