

# PAR Guide to the 2016 Constitutional Amendments

An Independent, Non-Partisan Review

## Voter Checklist - November 8, 2016

YES NO

- Amendment 1** - Establishes new requirements for local registrars of voters
- Amendment 2** - Tuition and fee autonomy to college management boards
- Amendment 3** - Eliminates federal income tax deduction for corporations on state tax returns and sets a flat rate
- Amendment 4** - Property tax exemption for surviving spouses of persons killed in the line of duty
- Amendment 5** - Creates a Revenue Stabilization Trust Fund
- Amendment 6** - Adjusts threshold for tapping protected funds

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**An Independent, Non-Partisan Review**



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## Introduction

Voters statewide will be asked to decide yes or no on six proposed amendments to the Louisiana Constitution on the November 8, 2016, ballot. Amendments 2, 3 and 5 are particularly significant because of their impact on state policy. They address who will set college tuition levels, the rate and deductions for corporate income taxes and a new trust fund to address state revenue surges.

This PAR Guide to the 2016 Constitutional Amendments provides a review of each item in the order they will appear on the ballot. The Guide is educational and does not recommend how to vote. It offers concise analysis and provides arguments of proponents and opponents.

These proposals were passed during the first special session and the regular legislative session earlier this year. Each bill received at least a two-thirds vote in the House of Representatives and in the Senate and now needs a majority vote at the polls as required for passage of constitutional amendments. The governor cannot veto proposals for constitutional amendments.

A constitution is supposed to be a state's fundamental law that contains the essential elements of government organization, the basic principles of governmental powers and the enumeration of citizen rights. A constitution is meant to have permanence. Statutory law, on the other hand, provides the details of government operation and is subject to frequent change by the Legislature. Typically, constitutional amendments are proposed to authorize new programs, ensure that reforms are not easily undone by future legislation or seek protections for special interests. Unfortunately, as more detail is placed in the Constitution, more amendments may be required when conditions change or problems arise with earlier provisions.

Since its implementation in 1974, the Louisiana Constitution has been amended 183 times. Louisiana has a long history of frequent constitutional changes. Special interests often demand constitutional protection for favored programs to avoid future legislative interference, resulting in numerous revenue dedications and trust fund provisions. The concept of the constitution as a relatively permanent statement of basic law fades with the adoption of many amendments.

Through the House Committee on Civil Law and Procedure, the Legislature tries to make certain that each proposed amendment does, in fact, need to be posed to voters. The Legislature also has tried to make it easier for voters to determine what a given amendment would do if approved by requiring that the ballot language be written in a "clear, concise and unbiased" manner and that it be phrased in the form of a question.

Voters must do their part as well. In order to develop informed opinions about the proposed amendments, they must evaluate each one carefully and make a decision based on its merits. One important consideration should always be whether the proposed language belongs in the Constitution.



# 1. ESTABLISHES NEW REQUIREMENTS FOR LOCAL REGISTRARS OF VOTERS

## YOU DECIDE



### A VOTE FOR WOULD

Require standards of professional and educational experience for local registrars of voters and more public disclosure in their hiring process.

### A VOTE AGAINST WOULD

Leave the existing job requirements in place and allow local governing authorities greater discretion when filling registrar vacancies.

## CURRENT SITUATION

Registrars are responsible for the registration of voters in their parishes. State law requires a registrar for each parish appointed by the parish governing authority, which is the elected council or police jury. The state Constitution allows the Legislature to outline the various powers and duties of a registrar, appropriate compensation levels and the grounds for removal from the position. These statutory guidelines are in the Louisiana Election Code. While registrar candidates have no work or education requirements, each registrar must be a resident and qualified voter of the parish.

Present law details the manner in which local governing authorities are to fill open registrar positions. If a vacancy occurs, the parish has 30 days to fill the position with a new, permanent employee. While the search for this employee is taking place the chief deputy performs the duties of the registrar. If smaller offices have no chief deputy, the governing authority appoints someone to assume the responsibilities of the registrar within 48 hours of the vacancy occurring. If a parish fails to comply with these rules and is unable or unwilling to fill the position in accordance with law, the State Board of Election Supervisors is responsible for appointing a person to the role to act as registrar until the parish observes the appropriate statutes in making a selection.

During the 2015 regular session, legislators passed House Resolution 94 requiring the Committee on House and Governmental Affairs to examine the evaluation, compensation, appointment, and placement within the structure of government of registrars and make policy recommendations. The committee's recommendations became the basis of this proposed constitutional amendment and the companion statutes.

## PROPOSED CHANGE

This amendment would allow the Legislature to enact additional qualifications for those applying for vacant registrar positions and create guidelines for local governing authorities seeking and hiring a new registrar of voters. While the amendment itself is quite simple in allowing this new leeway, the companion legislation – Acts 414 and 360 - give it teeth and detail. Both laws – effective upon the adoption of this constitutional amendment – specify the new qualifications and guidelines permitted by the amendment. The amendment and associated legislation does not apply to any registrar already appointed.



Act 414 requires individuals applying for the position of registrar to meet ONE of the following requirements:

- ▶ A bachelor’s degree from an accredited college or university and at least two years of full-time, professional work experience; or,
- ▶ an associate degree from an accredited college or university and at least four years of full-time, professional work experience; or,
- ▶ seven years of full-time, professional work experience; or,
- ▶ five years of full-time employment in a Louisiana registrar’s office.

To satisfy the work component, the experience must be “professional” in nature, meaning that the work required specialized and theoretical knowledge that typically comes through college or other work training programs.

Act 360, like Act 414, only becomes law if this constitutional amendment is adopted by voters in November. This statute amends the Louisiana Election Code by prohibiting the governor from issuing a commission to a registrar until the respective parish can provide documentation that it has taken the appropriate measures to make residents of the parish aware of the vacancy, interviewed all qualifying applicants, and followed existing procedures for filling an open position. Act 360 also specifies what a local governing authority must do to satisfy the public awareness requirement. These entities must issue press releases to local media outlets and make the notice available on official websites. Two separate notices with application information must be made at least a week apart in the governing authority’s official journal as well as a newspaper with a larger circulation within the parish if possible.



## **ARGUMENT FOR**

As technology continues to evolve, registrars of voters will need to have the skills and aptitude necessary to utilize innovative tools and instruments on the job. Voting and voter registration is becoming increasingly digital in nature and we must ensure that individuals in these positions can maintain voter registration lists, register voters appropriately, appoint and train staff and volunteers, and help conduct early voting. Some parishes have not posted jobs appropriately or have used nepotism to fill openings. These qualification requirements will help shake Louisiana's historic reputation of patronage and incompetence.

Requirements outlined in the legislation are not arbitrary. The subcommittee created by House Resolution 94 during the 2015 regular session received input from the Secretary of State, the commissioner of elections, the attorney general, the Louisiana Registrars of Voters Association, the Police Jury Association of Louisiana, and others in order to produce recommendations that were fair and fitting for the duties of registrars of voters and the expectations of local governing authorities responsible during the hiring process. The package of legislation was unopposed.

## **ARGUMENT AGAINST**

Although the Secretary of State and other stakeholders were part of the dialogue when the subcommittee recommendations were crafted, work requirements imposed by the new legislation tied to the amendment may still set the bar too high and prevent competent and capable individuals from serving as parish registrars. This problem may be particularly problematic in rural parishes where registrar offices consist of just the registrar and one assistant; because education and work requirements are lower for those having previously served in a registrar's office, an assistant may have a serious and unfair advantage when a sitting registrar retires.

This amendment may be unnecessary as registrars already have access to appropriate training after being appointed to the position. This training program is fairly intensive, requiring a minimum of 12 courses of 12 hours in length within five years, maintenance of a yearly rating of "excellent," and work experience requirements. Registrars and staff are schooled in strategies necessary to perform their duties effectively. If these educational standards are not met within a five-year time frame, the registrar will lose certification and the additional pay associated with it.

*Legal Citation: Act 677 (House Bill 459 by Rep. Danahay and Sen. Walsworth) of the 2016 Regular Session amending Article XI, Section 5.*

## 2. TUITION AND FEE AUTONOMY TO COLLEGE MANAGEMENT BOARDS

### YOU DECIDE



#### A VOTE FOR WOULD

Let higher education management boards set annual tuition rates and fee amounts for colleges and universities without legislative approval.

#### A VOTE AGAINST WOULD

Preserve the state Legislature's authority over tuition and fee levels.

### CURRENT SITUATION

Public higher education management boards had the autonomy to raise or lower tuition rates for schools in their systems until a 1995 constitutional amendment defined public college and university tuition as a “fee” imposed by state agencies and therefore subjected all rate changes to legislative scrutiny and consent. The four management boards oversee the Louisiana State University system, the University of Louisiana system, the Southern University system, and the Community and Technical College system. Each board is comprised of 15 members selected by the governor and confirmed by the Senate to serve staggered six-year terms as well as one student member chosen annually.<sup>1</sup> The Board of Regents has a broader mission of establishing higher education policy for all Louisiana colleges and of helping determine the allocation of resources.

Some tuition authority has been temporarily granted to higher education in recent years. In 2010, Governor Jindal signed the Louisiana Granting Resources and Autonomy for Diplomas Act, or LA GRAD Act. This law granted limited autonomy to public postsecondary institutions by permitting annual tuition increases of up to 10% if the respective management boards committed to (and continued to make adequate annual progress toward satisfying) a host of established performance objectives set by the Board of Regents. The objectives covered student retention, graduation rates, research productivity, and institutional efficiency and accountability. Additionally, the Regents would compile the information and annually present the results to the Legislature and governor. These contractual agreements between college management boards and the Board of Regents were six years in length, meaning that many university systems that originally contracted in the 2010-2011 academic year have reached the end of their initial performance agreements. The LA GRAD Act allows the management boards and the Board of Regents to negotiate subsequent six-year performance agreements if they choose to do so.<sup>2</sup>

Colleges receive revenue from legislative appropriations, tuition and fees, federal and private-sector grants, donations and various self-generated revenues such as dorm rent. Direct state general fund appropriations from the state to public postsecondary institutions have dropped precipitously. Since the 2008 fiscal year, direct support has fallen by approximately 71%, the largest proportional state reduction in the United States. The LA GRAD Act allowed colleges to compensate for this divestment by raising tuition. Even adding in other sources of increased financing such as tuition and dedicated funds, colleges on average took a 6% cut. Meanwhile, award amounts disbursed by the Taylor Opportunity Program for Students (TOPS) covered 100% of tuition for qualified students at public universities and colleges. Consequently, the state's cost of the scholarship program grew as the price of tuition grew. However, Act 18 of the

1. Article VIII Louisiana Constitution

2. The Grad Act, Act No. 741. Regular Session 2010

2016 regular session set TOPS award amounts at 2016-2017 levels, meaning that all college students, regardless of their TOPS award status, will be responsible for finding other means to pay for future tuition increases unless the Legislature decides to take further action. More immediately, cuts in the most recent budget mean that students will get 70% of what would normally be funded by TOPS for this academic year.

## PROPOSED CHANGE

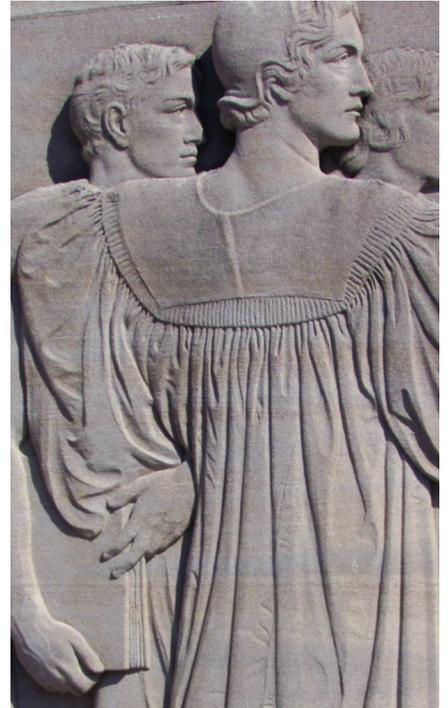
This amendment would allow the higher education management boards to set annual tuition and fee amounts without legislative approval. To provide a sense of scale, the Legislative Fiscal Office estimated that a 1% increase in tuition would generate approximately \$12 million in additional revenue for higher education. The actual increase would depend on how much each board increased tuition. Tuition and fee increases would cost more for students and their parents while also providing additional funding for colleges and universities if enrollments do not fall steeply.

## ARGUMENT FOR

Louisiana remains one of just two states that do not allow colleges to make autonomous decisions regarding tuition and fee levels at their respective universities. It is the only state that requires a two-thirds vote of the Legislature to change tuition and fees. Because the Legislature is sometimes slow to act, public universities across the state are often unable to price themselves in a competitive manner or raise enough tuition revenue to deliver appropriate education services to their students. Among the many considerations, the state's colleges must factor rising competition for students, mounting competition to recruit and retain superior faculty, growing expectations from industry for better prepared graduates, annually escalating pension liability payments, and the prospect of the state's general fund appropriation decreasing in the future. The Legislature may also allow political considerations to outweigh academic concerns when deliberating on tuition rates.

Louisiana can expect colleges and universities to be more efficient. Because Act 18 of the 2016 Regular Session sets TOPS awards at 2016-2017 levels, colleges will need to stretch dollars as far as possible before increasing tuition for students now paying more out of pocket. If granted the freedom to set tuition rates, colleges may elect to charge students in some degree programs different rates per course hour than those in other programs. The ability to impose differential tuition rates on degree programs with higher instructional costs (e.g., business, health care and engineering programs) will allow schools to match revenues more effectively with costs, improve program quality, and respond to market demand for various types of college degrees. For those who argue higher education should be more business-like, this authority would force colleges to reassess efficiency across their operations.

Additionally, the Legislature and governor would maintain control of board compositions after the adoption of the constitutional amendment. The governor currently appoints board members who are then subject to approval by the state senate. This mechanism ensures that the Legislature and governor are still able to respond to the implementation of injudicious fee and tuition schedules or severe board mismanagement.



## **ARGUMENT AGAINST**

There is little evidence in recent years that the Legislature would not raise tuition when appropriate. As stated earlier, tuition has almost doubled since 2007. If colleges still feel that tuition levels are too low, they can make a case to the Legislature.

The state Legislature has a responsibility to ensure that all Louisiana children have access to a quality and affordable learning experience. Instead of passing on tuition-raising autonomy to the boards of supervisors, legislators should focus on increasing direct investments to public colleges and universities to ensure that schools are able to provide the best education possible rather than allowing colleges to become less affordable.

Louisiana is not as different from other states as it might first appear. While Louisiana might be only one of two states that directly controls tuition, other state legislatures exert indirect influence.

Giving boards the ability to differentiate tuition rates between degree programs may also put valuable degrees out of reach for low-income and minority students. As the price of tuition increases in these fields, demand may drop and less revenue may actually materialize. Competitive programs in relatively more expensive programs such as business, engineering, and health care might also become further dominated by students from affluent families and could run counter to the state's workforce needs.

*Legal Citation: Act 680 (Senate Bill 90 by Sen. Morrish) of the 2016 Regular Session amending Article VIII, Section 7.2.*

### 3. ELIMINATES FEDERAL INCOME TAX DEDUCTION FOR CORPORATIONS ON STATE TAX RETURNS AND SETS A FLAT RATE

#### YOU DECIDE



#### A VOTE FOR WOULD

Eliminate the deduction for federal income taxes paid by corporations when calculating state income taxes while triggering a flat corporate tax rate of 6.5%.

#### A VOTE AGAINST WOULD

Allow corporations to continue receiving a state income tax deduction for federal income taxes paid and allow the existing corporate tax rates and brackets to remain.

#### CURRENT SITUATION

Louisiana, along with two other states, allows businesses filing as corporations on their state income taxes to deduct the amount paid in federal income taxes from their state income during the same year. According to the Louisiana Department of Revenue, this deduction collectively reduces the state tax liability of corporations in the state by approximately \$200 million annually. Presently, the state Constitution protects this deduction and prevents legislators from reducing, eliminating or manipulating the deduction.

Present law provides for a tiered system of rates and brackets used to calculate corporate income tax owed to the state. As the taxable income of the corporation grows, the percentage of total income owed increases until the top tax bracket is reached.

Corporations owe:

- ▶ 4% on the first \$25,000 of Louisiana taxable income;
- ▶ 5% on the next \$25,000;
- ▶ 6% on the next \$50,000;
- ▶ 7% on the next \$100,000; and
- ▶ 8% on any income above \$200,000.

#### PROPOSED CHANGE

The constitutional amendment and companion legislation would make a tradeoff: corporations would get a flat tax rate of 6.5% but give up the federal tax deduction. The main purposes of the change would be to establish a lower top tax rate for corporations in Louisiana and to partially delink state tax calculations from the federal tax system.

The constitutional amendment would remove the state income tax deduction for federal income taxes paid. The amendment does not affect individuals and families filing their state income tax returns. It retains the federal tax deduction for those filing state income taxes as individuals. If approved by the voters, the amendment would become effective on January 1, 2017, and would apply to all tax years thereafter.

Two laws passed during the 2016 First Extraordinary Session — Act 8 and Act 30 — would go into effect if this amendment is adopted. Act 8 eliminates the graduated tax bracket system used to calculate the tax liability of corporations in favor of a flat tax of 6.5% on all corporations with taxable net income in Louisiana. This rate would be applied to all taxable corporate income. The general intended effect is that a company's taxable income would increase under the constitutional amendment, while its overall tax rate would decrease under Act 8. Many companies would not see a major change in state taxes owed, but the new laws would create winners and losers depending on the specific company and the particular year of tax calculation.

Companies with smaller federal tax bills would tend to be positively affected while companies with larger federal taxes would tend to be adversely impacted. Also, companies with low profits could end up paying more state taxes under the flat rate than under the bracketed rates. Act 30 would change the state tax code to comply with the new constitutional amendment.

The Legislative Fiscal Office has attempted to estimate the overall impact on state revenue. Because corporate income tax collections tend to be volatile year to year, the estimates vary depending on the assumptions used. One estimate shows the new tax plan would increase state revenue by \$3.3 million in fiscal 2017 and up to \$30 million annually by fiscal 2019. However, other estimates show that overall revenue could decrease. Given the scale of the change and the volatility involved, this initiative could be considered roughly revenue neutral for the state in the aggregate over the long-term; but that outcome is uncertain. It could produce increases or declines in revenue depending on the state of the economy and federal tax policy.

## **ARGUMENT FOR**

A core principle of tax reform is to broaden the tax base by having fewer deductions and exemptions, while lowering the rates. This amendment eliminates one of the biggest corporate income tax deductions while lowering the top rate. As one of just three states that offer a full federal corporate income tax deduction, eliminating the deduction would bring the state in line with standards observed around the country.

The state's highest tax rate is currently 8%. That rate is higher than most other states, particularly in the southeast and central regions. Dropping the rate to 6.5% would make the state more competitive at the national level. While 27 other states use a corporate flat tax, just six (Montana, Utah, South Carolina, Florida, Arizona, and Colorado) would have lower rates than Louisiana after adoption of the amendment. The elimination of lower tax brackets and rates may mean some larger corporations would enjoy a tax break at the expense of some smaller corporations. However, most small business owners would continue to avoid the tax altogether as a large majority organize as limited liability companies (LLCs) and report business income as individual income instead.

Eliminating this deduction also distances our corporate tax system from the federal system. Under the current system, if federal taxes increase, businesses can take larger state income deductions. Thus, state revenue could decline because of actions outside of the state's control. Conversely, if federal taxes decrease, state revenue would grow, leading to government expansion. Repealing the deduction would reduce the influence of national politics on state finances, help stabilize revenue streams, and restore power over tax rates to Baton Rouge.

## **ARGUMENT AGAINST**

Few understand the real impacts of the proposed amendment on the Louisiana business climate. No action should be taken to raise taxes on those corporations making relatively less income currently and thus being taxed at the 4%, 5% and 6% levels. Some of these businesses do not have the luxury of building up large net operating losses to later claim against their taxes. Also, the amendment serves no purpose in either increasing or decreasing state revenue in any substantial direction.

The timing of the proposal is poor and should be reconsidered at a later time, if at all. This should be brought as part of an overall package that includes personal income tax and sales tax reforms. While estimates are difficult to make because of the volatile nature of corporate income tax, this bill would increase taxes on some corporations. Elimination of the federal income tax deduction for individual filers, many of which are LLCs and other business entities, was originally part of this initiative but the Legislature left that part out. Singling out C-corporations is unfair.

*Legal Citation: Act 31 (House Bill 31 by Rep. Leger) of the 2016 First Extraordinary Session amending Article VII, Section 4(A).*

## 4. PROPERTY TAX EXEMPTION FOR SURVIVING SPOUSES OF PERSONS KILLED IN THE LINE OF DUTY

### YOU DECIDE



#### A VOTE FOR WOULD

Give surviving spouses of military, fire protection officers and law enforcement personnel who died while on duty a full property tax exemption on their home.

#### A VOTE AGAINST WOULD

Leave existing ad valorem property tax exemption levels and eligibility requirements in place.

### CURRENT SITUATION

The state constitution currently allows all citizens an exemption from most parish property taxes up to \$75,000 of the value of the homestead if they reside in the home. It also allows most surviving spouses of deceased veterans with a service-connected disability rating of 100% unemployability or disability to receive a homestead exemption of \$150,000 on their property taxes. The Constitution also prevents parishes and other taxing bodies from imposing additional taxes on surviving spouses to make up the losses from the exemption.

### PROPOSED CHANGE

The proposed amendment adds another exemption to the state constitution for a surviving spouse of a person who died while on active duty. It applies in cases of death by members of the U.S. armed forces or the Louisiana National Guard or while performing their duties as a state police, law enforcement or fire protection officer. The spouse would receive a 100% exemption on the full assessed value of the home.



Widows or widowers are not able to retroactively receive the exemption – the benefit is only available beginning in the tax year the person died or 2017, whichever is later, and will then be awarded every subsequent year in which the surviving spouse remains eligible. In order to qualify for the exemption, surviving spouses must provide documentation that the death occurred while on duty and that he or she has not remarried since the incident. The deceased spouse must have claimed the property as his or her primary residence prior to death in order for the property to be eligible for the full exemption. If the unmarried surviving spouse later moves to another residence after qualifying, that person could carry over the exemption amount awarded for the value of the previous family home and subtract that total from the property tax on the new home. Local assessors would have the authority to require recipients of the exemption to reapply annually and provide sworn statements that they had not remarried.

### **ARGUMENT FOR**

This amendment is a good gesture of support towards widows and widowers with spouses that have paid the ultimate sacrifice to protect our country and local communities. Surviving family members may also have a difficult time making ends meet after losing a substantial portion of the household's annual income. The impact on local taxing bodies would be minimal as the population of eligible recipients is small.

### **ARGUMENT AGAINST**

Although this expansion of the homestead exemption is relatively minor, the combination of this and other special homestead exemptions has a large impact on the local revenue base. While no single exemption is a significant problem, the trend toward creating more of these exceptions adds up to a negative impact and should be stopped.

*Legal Citation: Act 678 (House Bill 505 by Rep. M. Johnson) of the 2016 Regular Session adding Article VII, Section 21(M).*

## 5. CREATES A REVENUE STABILIZATION TRUST FUND

### YOU DECIDE



#### A VOTE FOR WOULD

Create the Revenue Stabilization Trust Fund to receive a portion of revenues from corporate and mineral taxes and to spend the money on infrastructure and pension liabilities.

#### A VOTE AGAINST WOULD

Continue to allow corporate tax and mineral revenue above a certain threshold to flow into the state general fund for appropriation by the legislature.

### CURRENT SITUATION

Two of Louisiana government's most volatile sources of funding are mineral revenue and corporate taxes. Unlike steadier sources of revenue like individual income or sales taxes, mineral revenue and corporate taxes can vary wildly. For example, in fiscal 2015 the state brought in more than \$1 billion in mineral revenue, but projections for fiscal 2017 predict less than \$500 million.

Some of the volatility in mineral revenue is handled by the current Constitution. Mineral revenue is divided into a variety of trusts, funds and programs before the remaining amount goes into the state general fund. Annual revenue from mineral production – including severance taxes, royalty payments, bonus payments and rentals – above \$950 million goes to the Budget Stabilization Fund (also known as the Rainy Day Fund) after certain portions are diverted to the Conservation Fund and the Louisiana Education Quality Trust Fund. Also, an amount is taken out for revenue sharing with local governments.

The Budget Stabilization Fund, intended to provide lawmakers with a cushion in times of financial hardship, can be tapped when revenue forecasts fall below certain levels. The amount that can be siphoned from the fund is capped; lawmakers cannot take a total from the fund greater than the projected deficit or more than one-third of the total fund balance. Employing this budget maneuver requires the support of two-thirds of each house of the Legislature.<sup>1</sup>

The current Budget Stabilization Fund has an imposed cap. When this cap is reached, revenue is no longer deposited into the fund. Upon reaching an amount equal to 4% of total state revenue (excluding disaster relief money from the federal government) in the previous fiscal year, the fund is considered full and dollars are redirected back into the general fund for discretionary spending. In fiscal year 2016, the cap for the fund was set at \$804.8 million and the current balance is \$487.4 million.

Corporate income and franchise taxes flow into the state general fund to be appropriated as the Legislature sees fit. There is no current mechanism to siphon off unusually high corporate tax revenue.

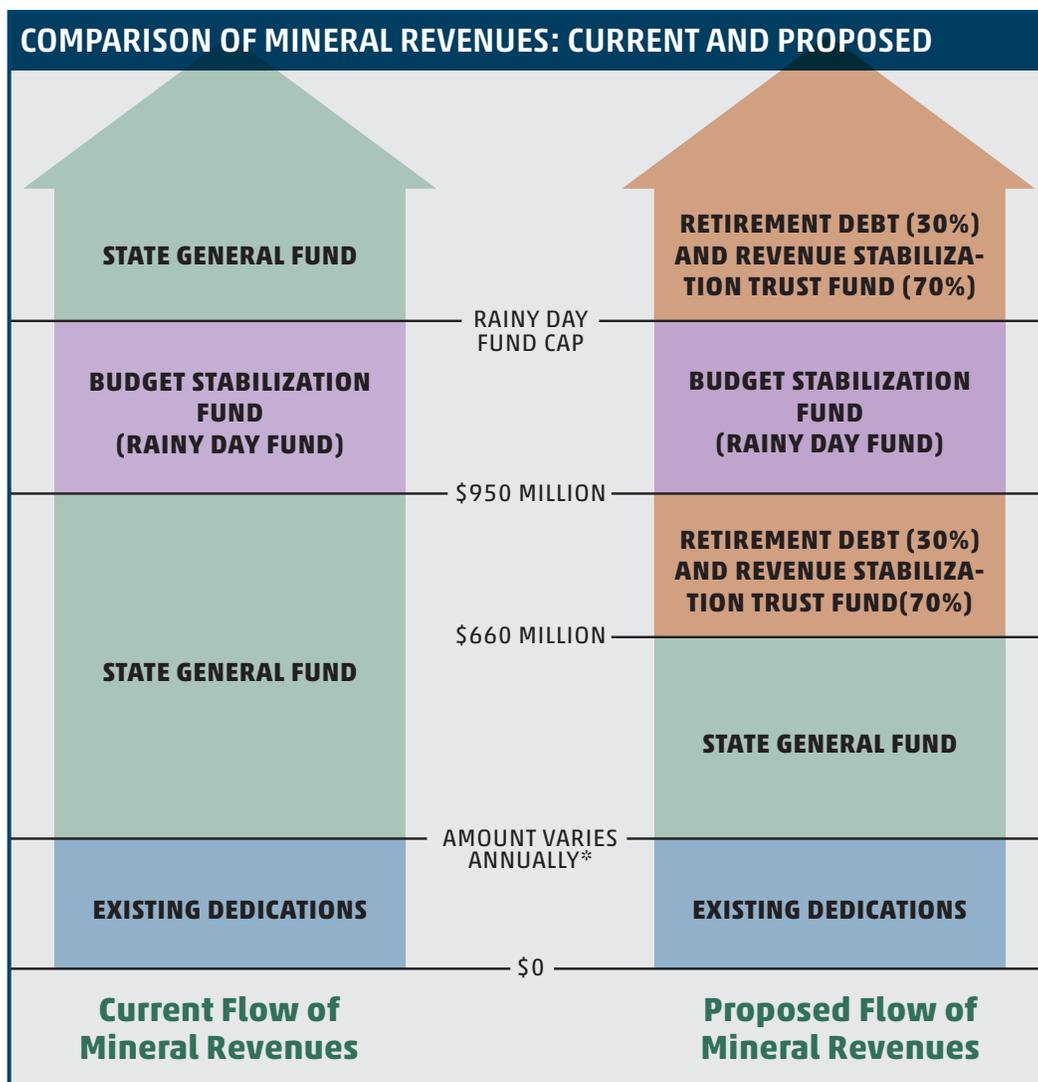
### PROPOSED CHANGE

The amendment would leave in place the Budget Stabilization Fund and create a new pot called the Revenue Stabilization Trust Fund. The purpose of the new fund is to smooth the volatility of corporate and mineral tax receipts from year to year and create a long-term asset for the state of Louisiana. Passage of the amendment also would put into effect Act 639 of the 2016 regular session. This companion legislation defines the functions of the new constitutional trust fund.

1. Budget Stabilization Fund, RS 39:94

All recognized annual corporate income and franchise tax revenue above \$600 million would be deposited into the new fund. Applicable mineral revenues between \$660 million and \$950 million would be set aside to pay state retirement system unfunded accrued liabilities (UALs) and fill the Revenue Stabilization Trust Fund as follows: 30% would be used to pay UAL until it has been paid in full and the remaining 70% of this balance would be placed into the newly created fund. Any mineral revenue over the \$950 million mark in any given year would flow back into the Budget Stabilization Fund until the cap set by the Treasury was reached. At that point, the money would return to the Revenue Stabilization Trust Fund and be allocated to the UAL. The amendment specifically prevents dollars deposited into the retirement systems from being used for cost-of-living (COLA) increases for state pensioners.

It is projected that the threshold amount of revenue for the volatile corporate and mineral revenues would not be met in the next five fiscal years. While the establishment of the fund will occur with approval of the voters, it would not begin to be filled unless revenues return to higher levels.



\* Best estimate is approximately \$200 million in FY15 (House Fiscal Division)

In any given year, the Legislature could use the interest earnings or other income derived from the investment of the trust fund for appropriation. However, the expenditure of the corpus of the trust fund shall be limited. The amount that the Legislature may appropriate from the fund, as well as the procedure for doing so, is largely determined by the existing balance of the account. If more than \$5 billion is in the account at the beginning of the fiscal year, lawmakers may appropriate up to 10% of the total balance to fund budgeted projects for capital outlay and transportation infrastructure, but not for general fund expenditures.

In order to provide for emergency situations, which might include budget shortfalls, a two-thirds vote by the Legislature would permit the funds to be appropriated for any time or any use even if the total fund total is below the minimum balance of \$5 billion. Exactly what constitutes an “emergency” is not defined. The minimum fund balance of \$5 billion and the use limit of 10% of the fund balance could be changed by the Legislature by a two-thirds vote. This procedure was adopted to allow changes to this fund by a future Legislature rather than through the lengthy constitutional amendment procedure requiring statewide voter approval.

## **ARGUMENT FOR**

Louisiana’s spending problem stems from the fact that the Legislature appropriates nearly every dollar it receives every fiscal year. This amendment will stop that practice by introducing forced fiscal restraint as it relates to the volatile revenue sources of corporate income tax and mineral revenues. It will have the added benefit of recognizing that credit rating agencies assess the strength of Louisiana’s trust funds when calculating the state’s fiscal health and the reliability of the state to make good on its commitments. Irresponsible spending and fiscal mismanagement could cause these entities to further downgrade the state’s bond ratings, driving up the cost of borrowing money to finance important programs or long-term construction projects.

Paying down state retirement unfunded accrued liabilities would reduce the amount needed to keep these systems solvent in the future and remove a substantial drag on Louisiana’s economy. This amendment helps pay down retirement liabilities and shows credit rating agencies that the state is prepared for economic cycles. It also would show that the state has a plan for stabilizing the revenue made available for general fund expenditure in a given year. It sets aside money in the long term for capital improvements and transportation infrastructure without losing sight of the potential need for emergency spending, all seen as positives by rating agencies.

Accounts similar to the Revenue Stabilization Trust Fund already exist in several other states like Wyoming, with a heavy reliance on oil and fossil fuels. In 2015, Wyoming’s Trust Fund of about \$6.9 billion generated about \$390 million in interest to help fund government while maintaining a healthy fund balance as a safety net for the state. The fund would help the state find solid financial footing despite the booms and busts of the global oil industry and volatility of corporate tax receipts. Adopting this amendment now is critical because the Legislature is likely to lack the willpower necessary to reintroduce such legislation when times are better and revenue receipts are up. Legislators will have an additional tool at their disposal to address budget crises without having to impose new taxes on citizens or businesses. The fund would reduce political pressure on elected officials to spend new money on pet projects and other priorities that would derail comprehensive, long-term budget reform and create greater uncertainty in future budget years.

## ARGUMENT AGAINST

This proposal further ties the hands of the people's elected legislators and reduces the flexibility needed to fund priorities appropriately. In order to govern effectively officials need every tool possible at their disposal to capitalize on opportunities or address downturns.

If the Legislature is serious about making government more transparent and stabilizing the state's budget, simpler solutions exist that do not require the creation of yet another trust fund that would further complicate an already convoluted system of transfers, thresholds, and other mechanisms. Reforming the existing Budget Stabilization Trust Fund by removing the cap on the total fund balance or adjusting the types of revenue channeled into the reserve may be more prudent. This amendment is an overly complicated fix.

Additionally, the lack of limitations on what might constitute an "emergency" and the two-thirds vote authorization to sweep money from the fund undermines the ability of this account to serve its stated purpose. When lawmakers are forced to cut popular programs, raise taxes, or tap into reserves of one-time money, transferring cash from accounts such as the Revenue Stabilization Trust Fund would likely be the path of least resistance. The proposal put forward in this amendment fails to establish the trust fund needed to promote real fiscal responsibility.

*Legal Citation: Act 679 (House Bill 603 by Rep. Leger) of the 2016 Regular Session adding Article VII, Section 10(F)(4)(h), 10.15, and 10.16.*



## 6. ADJUSTS THRESHOLD FOR TAPPING PROTECTED FUNDS

### YOU DECIDE



#### A VOTE FOR WOULD

Provide legislators a new way to tap into constitutionally protected funds during revenue downturns and also extends protection to five existing funds.

#### A VOTE AGAINST WOULD

Keep in place the existing trigger which allows the Legislature to tap into otherwise protected funds.

### CURRENT SITUATION

In times of severe financial stress and revenue shortfalls, the governor and lawmakers have the ability to tap some funds that typically are protected through statute or the state constitution. Specifically, here's how it works:

The trigger can be pulled if the official forecast of recurring state revenue for the next fiscal year is at least 1% below the total revenue projected to be brought in by the state during the current fiscal year. In that case, an amount equal to up to 5% of each otherwise-protected fund's appropriation for the current fiscal year can be tapped for general purposes. For example, if this year's state revenue were going to be \$10 billion and the estimate for next year's revenue was at least 1% less, or \$9.9 billion, then the Legislature could tap the funds to help fix next year's budget. The total taken from these funds can never amount to more than the projected deficit between the current year's official forecast and the ensuing year's budget forecast.

Currently, most constitutionally and statutorily dedicated funds are available to be tapped under this trigger mechanism, but certain funds remain protected even if the trigger standards are met. These extra-protected funds include the Bond Security and Redemption Fund, the Louisiana Education Quality Trust Fund, the Millennium Trust Fund, some unfunded accrued liabilities in the pension systems, the Medicaid Trust Fund for the Elderly, and a variety of existing severance tax and royalty tax revenue dedications.

### PROPOSED CHANGE

The proposed amendment would add a new trigger letting the Legislature use otherwise protected and dedicated funds. It adds five other funds and trusts to the list of accounts exempted from the present and proposed triggers. It also allows fund balances to be diverted.

Specifically, the amendment would allow the following:

The trigger can be pulled if the official revenue estimate for the next fiscal year falls 1% or more below the previous official revenue forecast for next year. This is a significant new trigger because it can be pulled even if revenue is expected to increase in the coming year. The new trigger is based simply on comparing a new estimate to the previous estimate for next year, not on whether revenues are actually declining.

For example, let's say this year's revenue is going to be \$10 billion but next year's is officially estimated to reach \$11 billion. If that official estimate for next year is changed to \$10.5 billion instead of \$11 billion, then the trigger requirement would be met and the Legislature would be free to tap the funds, even though next year's revenue was still estimated to rise.

The Legislature would be able to tap up to 5% of each fund’s current year budget allocation. But the amendment adds a new wrinkle: the Legislature also could take up to 1% of a constitutionally created fund’s existing balance. Approximately \$167 million is estimated to be available to tap through 5% cuts to funds based on current year allocations. But another \$53 million would be available by scraping 1% of existing constitutionally created fund balances.

In addition to the exceptions outlined in the present constitution, this amendment would add several other funds that would be permanently protected from cuts in times of budget deficits. The proposed amendment would add the Coastal Protection and Restoration Fund, Oilfield Site Restoration Fund, Conservation Fund, fees or assessments placed into the Hospital Stabilization Fund, and supplemental pay for full-time local law enforcement or fire protection officers to the list of items that cannot be touched during a shortfall.

**Hypothetical Trigger Scenarios**

Current Year Forecast	Ensuing Year Forecast	Updated Ensuing Year Forecast	Trigger Hit under existing constitution?	Trigger Hit under proposed amendment?
\$10b	\$11b	\$11.5b	No	No
\$10b	\$11b	\$9b	Yes	Yes
\$10b	\$11b	\$10.5b	No	Yes

*The triggers refer to whether funds could be accessed to deal with ensuing year budget problems.*

*In the first scenario, no funds can be accessed under either the current constitution or with the proposed amendment since the forecasted revenue grew. In the second scenario, the funds could be accessed even under the present constitution since next year’s projected revenue would be less than the current year’s. The third demonstrates the purpose of this amendment. Under the current constitution, no funds could be accessed since, even though next year’s forecast went down, it was still greater than the current year forecast. The proposed amendment would allow funds to be accessed for the ensuing year since next year’s forecast dropped from \$11 billion to \$10.5 billion.*

**ARGUMENT FOR**

While it is important to have a trigger high enough to discourage legislators from using protected funds in every instance a budget deficit occurs, the existing trigger for handling ensuing year shortfalls is too high and was crafted in such a manner that it was never intended to be activated. Because official forecasts for the current fiscal year and subsequent fiscal years are often revised up or down at the same time, obtaining a 1% drop in projected revenue between the two forecasts would be unusual. The new trigger threshold remains high but allows public officials to access these dedicated funds in more realistic scenarios.

Granting access to most constitutionally and statutorily protected funds during severe budget deficits would also allow the Legislature to more equitably distribute necessary cuts across a variety of state programs and reserves. Because many parts of the state budget have been locked up through laws or the state constitution, deep cuts must often be made to health care services, higher education, and other parts of the discretionary budget. Spreading the pain of cuts across several areas would reduce the severity of the reductions made to any one particular component of the budget. The adoption of this amendment would also buy the Legislature more time to produce comprehensive budget solutions in years in which large budget deficits exist but the Legislature has no way to raise substantial amounts of additional revenue. Because tax reform bills can only be considered in odd years or in extraordinary legislative sessions, using funds from a variety of state accounts would give lawmakers more flexibility to protect Louisiana’s institutions and programs and prevent deep and profound cuts to a handful of important budget items like higher education.

The amendment also exempts a larger list of funds and trusts from cuts, meaning that important accounts like the Coastal Protection and Restoration Fund will remain fully protected during severe budget shortfalls. Because many of these shielded funds receive federal dollars or are underwritten by special groups, this change puts forward a positive message that it is committed to funding important projects. This commitment will assure investors and federal agencies that Louisiana will continue to steward their dollars well in the future.

## **ARGUMENT AGAINST**

This amendment discourages the development and adoption of long-term and comprehensive budget reform as it allows legislators to rely on additional one-time money to paper over underlying systemic problems with the state's recurring revenue streams and spending patterns. Giving officials another instrument to kick the can down the road should be avoided. Leaving the existing trigger in place will preserve the integrity of dedicated funds and force officials to find other means of reducing budget gaps.

There is also uncertainty about what would happen if revenue forecasts changed multiple times during the year. Would funds still be available for sweeping even if a later forecast did not project a revenue shortfall for next year? Without a clear answer, future legislatures and governors would probably take the most flexible interpretation possible.

Tapping into protected accounts is also a rejection of the primary concerns Louisiana voters have expressed through the adoption of previous constitutional amendments. By electing to shield some funds from the threat of discretionary cuts, constituents have voiced their support for various causes and initiatives and told lawmakers to look elsewhere to plug budget shortfalls. Adoption of this amendment would allow the Legislature to more frequently take money from these priorities.

Adding the new trigger would increase the possibility that, in the future, the Revenue Estimating Conference could abuse the new authority to access protected funds. This amendment would increase the pressure on the state's official forecasting body to put politics above sound judgment when making revenue estimates.

This amendment creates greater constitutional protection to certain funds while purporting to provide additional budget flexibility. This amendment limits the ability to eliminate a deficit in the current year by adding several funds that could not be cut such as coastal funding and supplemental pay. As such, it serves as a wolf in sheep's clothing that will reduce flexibility rather than increase it.

*Legal Citation: Act 681 (Senate Bill 201 by Sen. Allain) of the 2016 Regular Session amending Article VII, Section 10(F)(2)(b); and adding Article VII, Section 10(F)(4)(h), (i), (j), (k), and (l).*

*Note: The state also can tap protected funds for a current-year budget crisis. During a current fiscal year, the trigger can be pulled if total state general fund allocations are reduced by at least 7/10 of 1%. In that case, up to 5% of the total amount allocated for each protected fund in the current year may be redirected to the state general fund. Also, up to 1% of the total Minimum Foundation Formula allocation can be tapped.*