



# PAR Guide to the 2015 Constitutional Amendments

An Independent, Non-Partisan Review



## Voter Checklist – October 24, 2015

YES NO

- Amendment 1** – Creates a new transportation projects fund and restructures the rainy day fund
- Amendment 2** – Allows the state treasurer the option of investing in the state infrastructure bank
- Amendment 3** – Provides new guidelines for legislation in a fiscal session
- Amendment 4** – Allows local governments to tax property within their jurisdictions that is owned by local or state governments outside of Louisiana

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## Introduction

After facing 14 proposed amendments in 2014, voters might feel some relief in having only four on the ballot this year. Voters statewide will be asked to decide yes or no on the four proposed amendments to the Louisiana Constitution on the primary date of October 24.

This *PAR Guide to the 2015 Constitutional Amendments* provides a review of each item in the order they will appear on the ballot. All the amendments on this ballot deal with the management of public money. The *Guide* is educational and does not recommend how to vote. It offers concise analysis and provides arguments of proponents and opponents. Readers who want to explore in greater detail can refer to the background material provided in a special section -- *Want to go Deeper?* -- on page 12.

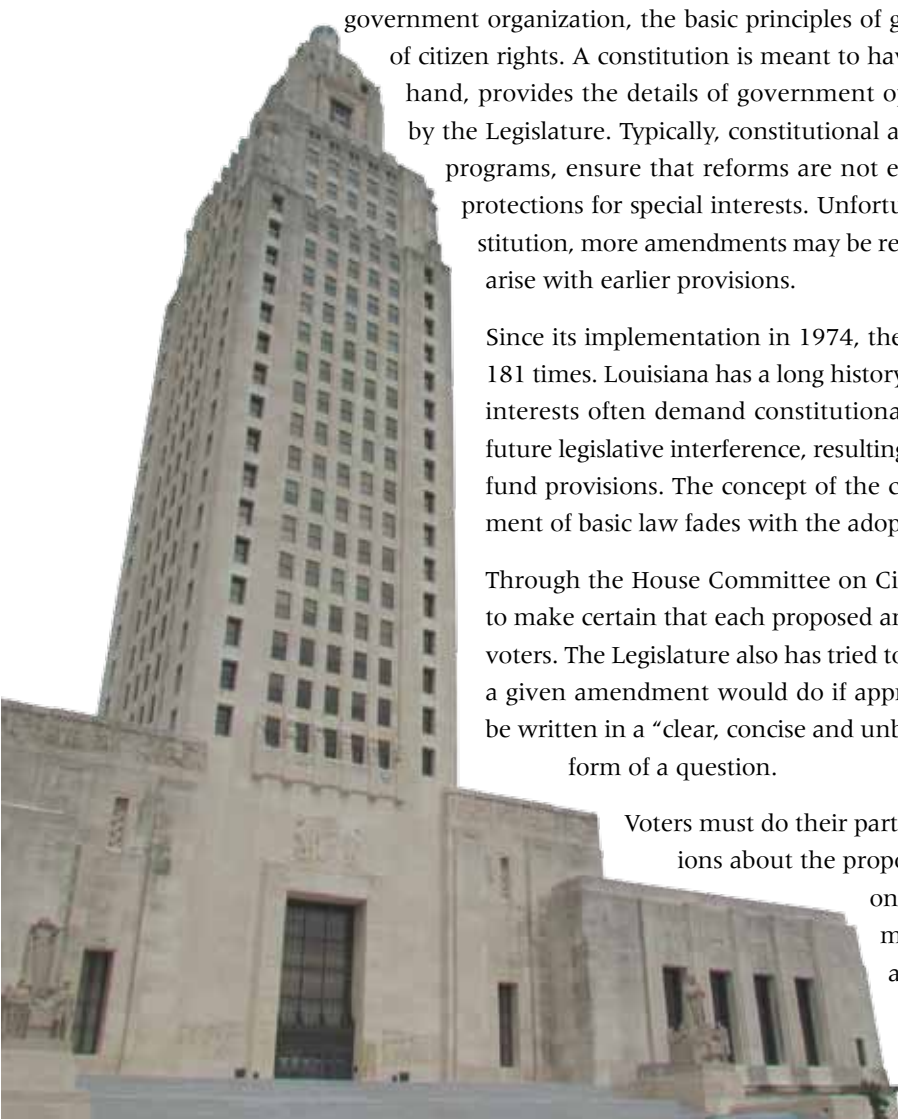
These proposals were approved by legislators during the 2015 regular session. As required for passage of constitutional amendments, each bill received at least a two-thirds vote in the House of Representatives and in the Senate and now needs a majority vote at the polls. The governor cannot veto proposals 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.

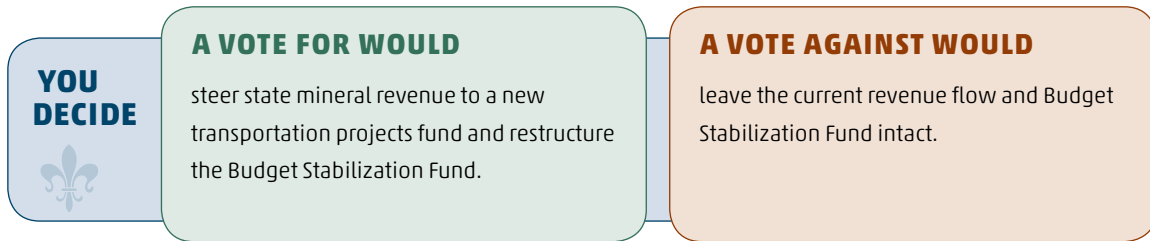
Since its implementation in 1974, the Louisiana Constitution has been amended 181 times. Louisiana has a long history of frequent constitutional changes. Special interests often demand constitutional protection for favored programs to avoid future legislative interference, resulting in numerous revenue 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. Creates a new transportation projects fund and restructures the rainy day fund



## SUMMARY

The main purpose of this proposed amendment is to create a constitutionally protected fund for state transportation projects. The amendment converts the state’s Budget Stabilization Fund, which is also known as the Rainy Day Fund, into two companion subfunds: one to fulfill the functions of a Budget Stabilization Fund and the other to become a new transportation fund. The amendment does not raise taxes. It does not change the state’s existing Transportation Trust Fund, which will continue to be the primary source of state infrastructure spending. Basically the amendment would take a portion of the state’s mineral revenue that would otherwise be placed in the Budget Stabilization Fund and send that money to the new transportation fund. This *PAR Guide* provides an explanation of how the money would flow and other changes in the proposed new system.

## CURRENT SITUATION

In response to the state budget instability caused by volatile oil and gas revenue in the 1980s, the voters amended the state constitution in 1990 to create a Revenue Stabilization/Mineral Trust Fund. This was the forerunner of the current Budget Stabilization Fund adopted in 1998. More commonly known as the Rainy Day Fund, its popular image is that of a piggy bank meant to rescue the state in times of financial decline. Credit-rating agencies view the piggy bank as one of many components of a state’s financial structure that help establish a credit rating for the state.

But that is not the fund’s only purpose. Its primary job is to stabilize the budget, as its name indicates. It does so by regulating the flow of mineral revenue to the state general fund. The idea is that the state can count on a certain portion of mineral revenue for the operating budget every year. When mineral revenue surges, the state operating budget gets its base share and the excess revenue flows into the Budget Stabilization Fund. For example, the current base amount of mineral revenue that flows to the general fund is \$950 million. Mineral revenue in excess of that amount flows into the Budget Stabilization Fund. (*See Special Section “Want to Go Deeper?” for fuller explanation.*)

The purpose of these limits is to help prevent the budget from growing rapidly to unsustainable levels based on volatile oil and gas revenue. Thus in good times some dollars are withheld from the general fund, reducing the impulse to grow government, and are put into a fund that can help sustain the budget during bad times. The stabilization fund has a cap. Once the fund reaches 4% of total state revenue receipts (not including federal disaster assistance), no more deposits are made. The current cap is approximately \$811 million, well above the \$517 million now held in the fund. If the fund were full, excess mineral revenue would flow to the general fund instead of the Budget Stabilization Fund.

## PROPOSED CHANGE

If this amendment is adopted, the Budget Stabilization Fund will be renamed the Budget and Transportation Stabilization Trust. Under this new Trust would be two separate subfunds. The first would be the Budget Stabilization Subfund. It would function much like the current Budget Stabilization Fund except that mineral revenue would fill the subfund to a cap of no more than \$500 million. The second would be the Transportation Stabilization Subfund, also capped at \$500 million. Its purpose would be to pay for roads and other transportation infrastructure projects, with a specific emphasis on state highways and bridges. This subfund would be separate from the state's Transportation Trust Fund, which mainly relies on fuel taxes.

Under this amendment, the stabilization subfund is the first in line to receive any excess mineral revenue. Once the stabilization fund is full at \$500 million, then excess mineral revenue would flow into the transportation subfund. If the transportation subfund reaches \$500 million, then any additional mineral revenue would flow into the state general fund. (*See chart on page 4.*)

If the amendment passes, the new stabilization subfund would be full immediately. The current Budget Stabilization Fund has \$517 million, so this could mean as much as \$17 million would move into the new transportation subfund if voters approve the amendment. (That action may depend on how the amendment language is interpreted. The legislation sets the subfund caps according to the amount of mineral revenue, not necessarily according to the other forms of deposits that can be placed into the Budget Stabilization Fund. *See Special Section.*) As long as oil and gas prices remain low, state mineral revenues would not be expected to contribute more than a few million dollars per year to the newly created transportation subfund.

## ADDITIONAL CHANGES

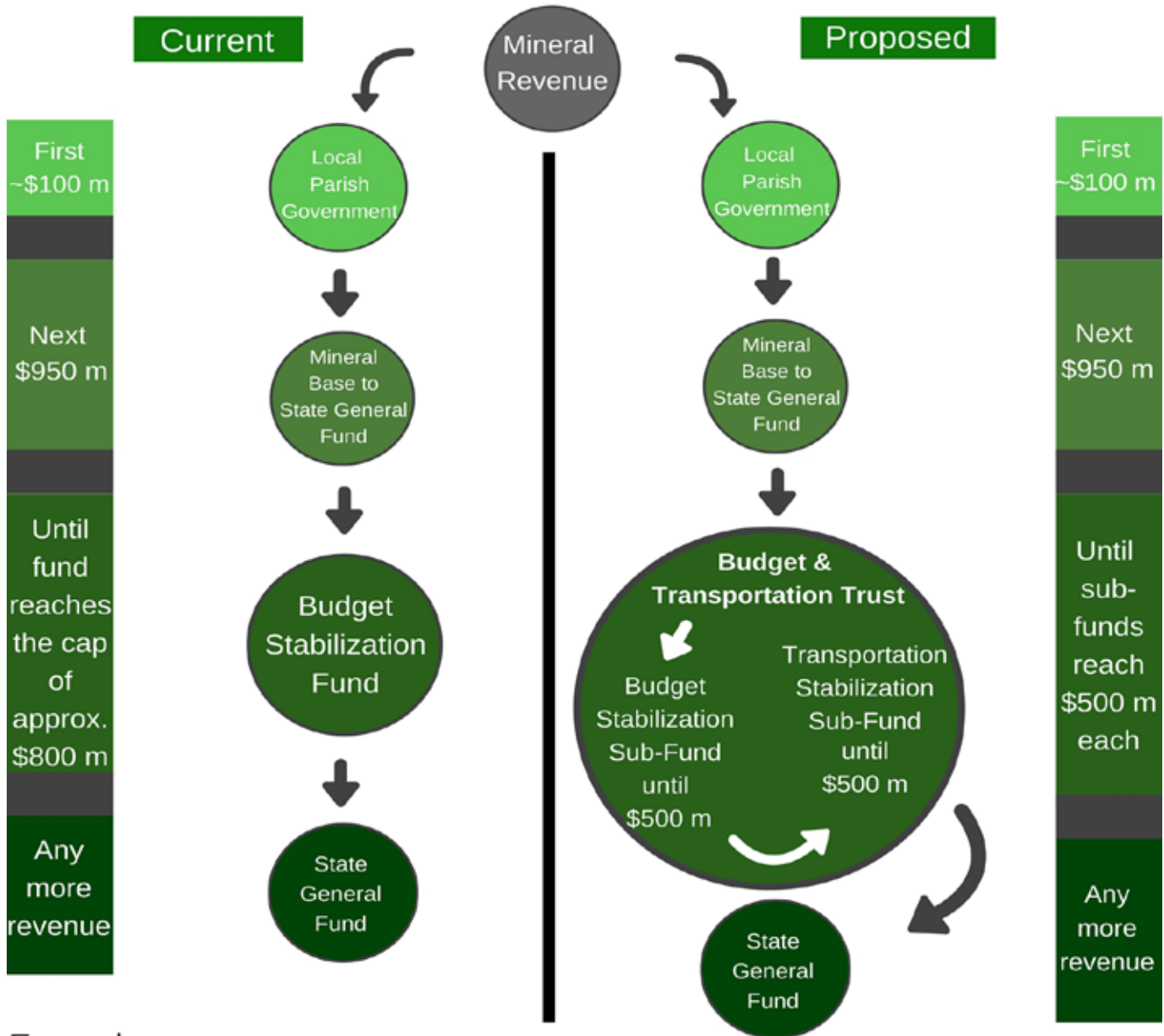
The proposed amendment would make a significant change by addressing what many view as a quirk in the current system of tapping the fund for a rainy day. Under current law, if the Budget Stabilization Fund is tapped for a rainy day bailout of the state budget, the next stream of excess mineral revenue has to go toward replacing the amount that was drawn out. For budget crafters, this is a dilemma. Fund money taken for the operating budget has the effect of reducing the mineral revenue that would have gone to the same operating budget. So taking money out of the stabilization fund could result in an equal amount being cut from the general fund. This situation limits the usefulness of the rainy day option.

The proposed amendment says that if money is taken from the Budget and Transportation Stabilization Trust, no excess mineral revenue can be deposited in the Trust in either the current or ensuing year. This provision would delay the mandatory refilling of Trust withdrawals. The amendment refers to both subfunds regarding this rule, although the author intended for the payback rule to apply only to the stabilization subfund. (*See Special Section.*)

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# AMENDMENT 1

The following graphic demonstrates the flow of money from mineral revenue through the current system and the proposed system from Constitutional Amendment 1.



## Examples

The following two scenarios show how the money flowing through the proposed system is dependent on that year's mineral revenue. In Scenario 1, a hypothetical \$900 million is earned. Therefore after the approx. \$100 million is designated to local government, only \$800 million would remain. The entirety of this would be deposited into the State General Fund. In Scenario 2, a hypothetical \$1.3 billion is earned. Therefore after the approx. \$100 million to local government, the next \$950 million would be deposited into the State General Fund, leaving \$250 million for the Budget and Transportation Sub-Funds.

	Annual Mineral Revenue	Local Government	Mineral Base to State General Fund	Money available to Budget & Transportation Sub-Funds	SGF
Scenario 1	\$ 900 Million	~\$ 100 Million	\$800 Million	\$0 Dollars	\$0
Scenario 2	\$ 1.3 Billion	~\$ 100 Million	\$950 Million	\$250 Million	\$0

## ARGUMENT FOR

This amendment preserves the basic purpose of a budget stabilization fund while putting idle money to use toward state infrastructure projects. The current state savings account is put to use too rarely and inadequately, which is a bad deal for taxpayers. Although the plan likely will contribute only scarce resources to highways in the next several years, it provides a good long-term solution to state transportation needs. Texas recently adopted a similar reform for its rainy day fund to free up money for transportation work.

By comparison, the new highway funding would be better protected than the money in Louisiana's other major infrastructure source -- the Transportation Trust Fund (TTF) -- which has been raided for other purposes. This additional funding would supplement transportation funding along with the TTF.

The new Trust can still be tapped on a "rainy day" to bailout the state budget. The current fund has been tapped only five times. Also, the amendment would allow the new stabilization subfund to be tapped without having to redirect money from the general fund immediately. That new rule patches a major problem with the current rainy day system.

## ARGUMENT AGAINST

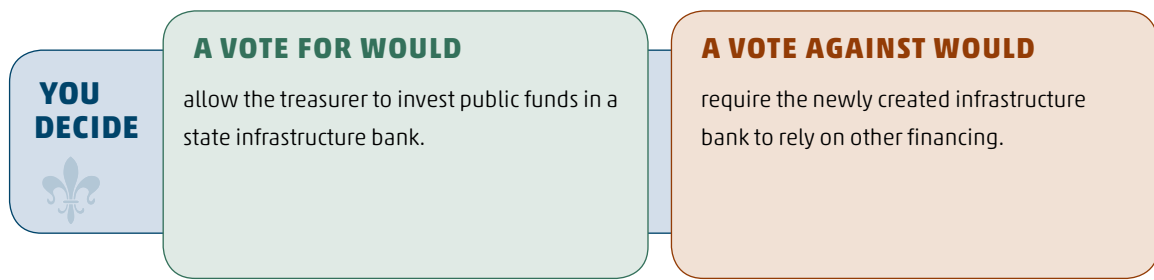
The amendment shortchanges the state on fiscal stability while delivering only limited new funding to transportation for years to come. The amendment's transportation spending restrictions unnecessarily limit the state's flexibility in choosing priority highway projects as well as overall budget priorities.

The amendment would create confusion because it was not drafted clearly. For example, the amendment creates a trust with two subfunds but leaves unclear whether the Constitution's rules for appropriations apply to one or both. Adding further problems, the amendment does not specify how non-mineral revenue that currently is designated for the Budget Stabilization Fund would be distributed under the new Trust and its subfunds. (*See Special Section.*) The conflicting legal interpretations might be resolved as the new law is implemented or else might create difficulties in making the new Trust work as imagined.

The maximum size of the stabilization fund would shrink from more than \$800 million to just \$500 million. That \$500 million is a static number that would not increase as the state budget grows. The potential insufficiency of the new stabilization subfund could threaten the state's credit rating. Just as potential homebuyers must demonstrate to lenders they have the ability to pay their mortgage, states must show lenders they will be able to pay back bonds even if times get tough. A strong rainy day fund helps make that case. Credit rating agencies will be evaluating whether this amendment, combined with ongoing concerns about the state's pension obligations and fiscal structural issues, could result in a credit re-evaluation and higher interest rates for the state.

*Legal Citation: Act 473 (Senate Bill 202 by Sen. Robert Adley) of the 2015 Regular Session, amending Article VII, Sections 10(D)(2)(d), 10.3 and 10.5(B).*

## 2. Allows the state treasurer the option of investing in the state infrastructure bank



### CURRENT SITUATION

The Legislature has created a Louisiana State Transportation Infrastructure Bank modeled after programs used in some other states. The bank is designed to provide a revolving loan program to local governments seeking low-cost financing for transportation projects. The bank needs deposits to get started. The Legislature may appropriate or dedicate money to the bank.

### PROPOSED CHANGE

This amendment would provide another option for financing the infrastructure bank. It would allow the state treasurer to invest with the bank. The state always has money that needs to be invested, such as cash in dedicated funds or tax revenue that is not immediately spent. The treasurer already invests these state monies in interest-earning bonds or other financial tools, and this amendment would give the treasurer a new option by allowing investments in the new infrastructure bank.

Because the Constitution restricts the transfer and investment of public funds, the drafters of this amendment believe this exception should be made to allow the treasurer to invest state funds with the new bank. The Constitution contains a number of exceptions, such as allowing the use of public funds to support pensions, bonds, property expropriations and for the investment in stocks for college endowments and the Medicaid Trust Fund for the Elderly.

Start-up funding for the infrastructure bank could come from a variety of sources, including a one-time appropriation for a pool of money that would be loaned out, paid back and then loaned out again. This amendment does not determine what those other sources might be. It neither creates nor prohibits a tax or a dedication supporting the bank. It does not require the treasurer to invest in the bank. It simply gives the treasurer the option to do so.

Voters last year rejected a similar proposed amendment; however, the Legislature at the time had not yet created an infrastructure bank. The difference this year is that the Legislature established an infrastructure bank during the 2015 session. Regardless of whether this amendment passes or fails, the infrastructure bank will exist and can make loans once it has deposits. This amendment just provides another potential funding source for the bank.

### ARGUMENT FOR

The state already has created the infrastructure bank. This amendment just takes the prudent step of providing another option for financing it. With this amendment, the state could use its own funds to invest in itself and loan money for roads. Every means should be sought to provide options for the new infrastructure bank. New financing options are needed to address Louisiana's many needs for road improvements and infrastructure that would provide safer and less congested

driving conditions and stimulate the economy. The state has deteriorating roads and a severely underfunded infrastructure. The current fuel tax, based on the volume of fuel sales, is not keeping up with the growing costs and needs of highway work. Local governments would save money with infrastructure bank loans by avoiding the more expensive interest rates and fees that come with normal state bonding costs. This would allow them to stretch their limited infrastructure dollars further. Other states, such as South Carolina, have used a similar program to great advantage. According to a 2012 Brookings Institution report, 23 states have active infrastructure banks.

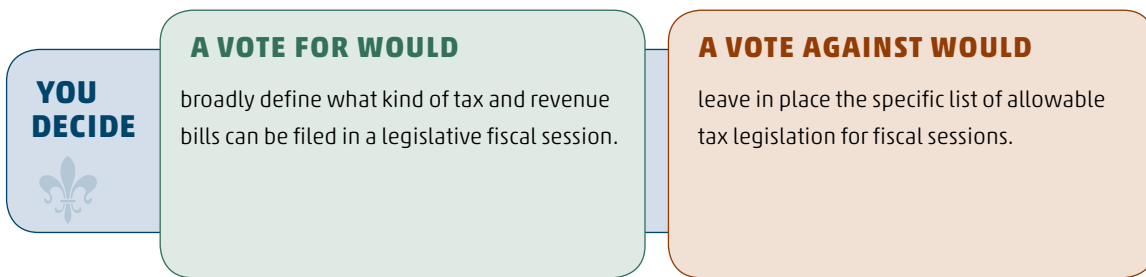
### **ARGUMENT AGAINST**

The infrastructure bank would cost money. Startup capital requirements could be more than \$100 million before the bank could be effective. Eventually, operating expenses are expected to total \$300,000 to \$400,000 per year, which would be drawn from the revenue generated by the loan program. The bank's oversight would be in the hands of a small board operating with its own criteria for selecting projects to support. That decision-making process would be separate from the legislative appropriations process and the state's widely vetted priority plan for infrastructure spending. The state already has multiple funds and dedications to support local infrastructure projects and a bonding process to provide parishes, municipalities and other local jurisdictions access to loans. Furthermore, the treasurer may or may not find it prudent to invest state funds in the infrastructure bank. If the loans to local government are going to be affordable, then the interest rates will have to be lower than other conventional financing through bonds. That would mean investments with the bank will necessarily have a lower rate of return. Therefore, the treasurer will not earn as much interest on state money through the infrastructure bank than through more conventional bond investments.

*Legal Citation: Act 471 (House Bill 618 by Rep. Karen St. Germain) of the 2015 Regular Session, amending Article VII, Section 14(B).*



### 3. Provides new guidelines for legislation in a fiscal session



#### CURRENT SITUATION

Every spring the Louisiana Legislature convenes in a regular session. Although appropriations and budgeting take place in these sessions every year, the Constitution calls for a general session in even-numbered years and a fiscal session in odd-numbered years. The overall idea has been that fiscal sessions are supposed to be limited mostly to fiscal matters. Also, fiscal sessions are supposed to be open to new or increased taxes and fees, while general sessions are open to fees but not for new taxation. These distinctions are determined fundamentally by the Constitution, but Joint Rules of the Legislature also play an important role, as do the judgment calls by the House and Senate leadership regarding particular bills.

Specifically in the current Constitution, the Legislature cannot consider bills “levying or authorizing a new tax,” “increasing an existing tax” or “legislating with regard to tax exemptions, exclusions, deductions or credits” during a general session. To restrict the fiscal sessions, the Constitution provides a list of budgetary and revenue-related matters that can be considered. For example, fiscal sessions may consider bills that “levy or authorize a new tax, increase an existing tax; levy, authorize, increase, decrease, or repeal a fee.” Fiscal sessions also may consider bills for “tax exemptions, exclusions, deductions, reductions, repeals or credits.” However, the Constitution allows a fiscal session to take on characteristics of a general session. For example, in the pre-filing period for a fiscal session, each legislator may submit five “general” bills on matters outside the fiscal parameters of the session. “Local” and “special” bills also are allowed in a fiscal session.

Over the years, some legislators have criticized the various distinctions as confusing or incomplete. Disagreements have arisen over interpretations of the Constitution and about the types and number of bills that should be permitted in general versus fiscal sessions. For example, because rebates are not mentioned in Article III of the Constitution, lawmakers have attempted legislation to clarify when rebates can be considered. Some legislators have contended that bills concerned with tax administration or collection should be considered as fiscal bills and therefore should be unlimited in a fiscal session; yet many such bills are currently interpreted as general bills.

#### PROPOSED CHANGE

This amendment would allow lawmakers in a fiscal session to “legislate with regard to the dedication of revenue” and to “legislate with regard to taxes.” The list of various tax breaks would be deleted although these types of instruments still would be allowed under this umbrella phrasing. The impact of the proposed change would be to make clearer the intended broad grant of authority to the Legislature as to taxation by removing various specific terms and replacing them with sweeping language. These provisions allow wider parameters in a fiscal session for the types of tax

and revenue bills that can be considered in an unlimited fashion, especially including bills dealing with tax administration, collection, reporting and dedication. A practical effect of the amendment is that a legislator in a fiscal session would not be limited in the number of bills that concern tax administration and other tax matters not directly related to raising taxes. A bill fitting this category would not have to count as one of a legislator's five "general" bills pre-filed for a fiscal session. Although the amendment removes specifics, it does add a special type of instrument: it allows fiscal session legislation "with regard to rebates." The amendment makes no changes to what can or cannot happen during a general session.

### **ARGUMENT FOR**

The current system is fraught with confusion and even litigation due the lack of clarity in definitions. It frustrates the efforts by some legislators to improve the state's administration of taxes and other tax-related issues. This amendment would clear up a part of the Constitution that imposes highly technical impediments. Currently, legislators in a fiscal session might want to propose a bill that deals with tax administration or collections, only to learn that it counts as one of a legislator's five pre-filed general bills. By extending and clarifying the category of tax and revenue-related bills, the amendment would give the Legislature greater flexibility to deal with a broader set of fiscal policy and management issues during a fiscal session. Greater flexibility to handle fiscal issues can be handy when the state is facing a budget crisis and can help lead to long-range reforms. Greater clarity is needed about whether fiscal sessions may consider rebates, which can assist the state's economic development strategy; this amendment provides that clarity.

### **ARGUMENT AGAINST**

The process of legislating is more streamlined when legislative sessions are limited by the number and types of bills that can be introduced. By loosening the limits on the types of fiscal bills that can be considered, the Legislature could become less efficient. Legislators would have greater opportunity to introduce bills creating intrusive tax collection or administration measures. If anything, the fiscal sessions should be more restricted to prevent a host of general, local and special bills from turning a fiscal session into a de facto general session. The amendment does not prevent legislation on rebates in general sessions, which some lawmakers in the past have sought to restrict. This amendment might contribute to confusion rather than alleviate problems. Voters should not have to deal with this level of minutia with constitutional amendments.

*Legal Citation: Act 472 (House Bill 518 by Rep. Julie Stokes) of the 2015 Regular Session, amending Article III, Section 2(A)(4)(b).*

## 4. Allows local governments to tax property within their jurisdictions that is owned by local or state governments outside of Louisiana

### YOU DECIDE



#### A VOTE FOR WOULD

require states or local governments outside of Louisiana to pay taxes on properties they own in Louisiana.

#### A VOTE AGAINST WOULD

leave the question to the courts, which recently ruled that state or local governments outside Louisiana are exempt from property tax.

### CURRENT SITUATION

The Louisiana Constitution allows local governments to assess and collect property taxes. The Constitution also provides exemptions from property taxes. Two of those exemptions are for “public lands” and “other public property used for public purposes.” There is no dispute that these exemptions apply to property owned by Louisiana’s state government or other Louisiana public entities. A Louisiana state, parish or city government does not have to pay property tax in Louisiana. But disagreement has arisen in the courts about whether this exemption also applies to property in Louisiana owned by other states or local governments of other states. For example, if a city utility in Tennessee stores natural gas in Louisiana, should that inventory be subject to property tax? *(See the Special Section: Want to Go Deeper? to learn about the recent court case that led to this amendment.)*

### PROPOSED CHANGE

This proposed amendment says that “land or property owned by another state or owned by a political subdivision of another state shall not be exempt” from property taxes. Although some stakeholders contend that the Louisiana Constitution already disallows such an exemption, Louisiana courts recently decided otherwise. This amendment would make it clear that Louisiana assessors and sheriffs would be required to assess values and collect taxes in their jurisdictions on property owned or used for public purposes by other states or local governments of other states.

### ARGUMENT FOR

This amendment would clarify the intent of the Constitution to tax property in Louisiana owned by other states or local government bodies in other states. A recent Louisiana appeals court decision has incorrectly refused to heed the Louisiana Supreme Court’s guidance that has been followed for nearly 65 years on this issue. This amendment is needed now to rectify this errant court ruling and to require Louisiana parish assessors and sheriffs to collect taxes that are rightfully theirs. Local governments are under financial strain and should be allowed to collect taxes owed by out-of-state entities. The neighboring states of Texas and Mississippi already make it explicit that their property tax exemption only applies to their state and local subdivisions. As the Louisiana Supreme Court long ago stated, there is “no reason whatever to believe that the people of Louisiana, in adopting their Constitution, intended to exempt from taxation the local property of foreign countries, other states or their political subdivisions.”

## **ARGUMENT AGAINST**

The current Constitution needs no tweaking on this issue and its clear language should not be lightly disregarded. A recent appeals court decision correctly interpreted the plain and unambiguous language and intent of the Constitution and the issue should rest there. The Louisiana Constitution states “public lands” and “other public property used for public purposes” shall be exempt from property taxation. The exemption should be available for all state governments and their political subdivisions. The Legislature should not ask voters for an amendment every time a court interprets the Constitution in an unfavorable way to a parish government or other narrow interest.

*Legal Citation: Act 470 (House Bill 360 by Rep. Charles “Bubba” Chaney and Sen. Francis Thompson) of the 2015 Regular Session, amending Article VII, Section 21(A).*

## Special Section

### WANT TO GO DEEPER?

*This special section of the “PAR Guide to the 2015 Constitutional Amendments” delves into additional material, historical background, factoids, court cases and related legislation that shed more light on the Oct. 24 ballot items.*

#### NO. 1

The Budget Stabilization Fund is a complex creature. The money in the Fund may be tapped only if there is a projected revenue decline in the current fiscal year or at least a 1% decline for the upcoming fiscal year. Even then, only a two-thirds vote of the Legislature can tap the Fund. No more than one-third of the Fund can be tapped at a time; however, the permitted frequency of withdrawals is complicated by an ambiguous rule. One-third of \$811 million, which is the Fund’s cap under current law, is \$270 million. One-third of \$500 million is \$167 million.

Mineral revenue was estimated at \$1.3 billion in fiscal year 2014 and at \$1 billion in fiscal 2015. That revenue source has been estimated to be close to \$900 million this year and the next. This estimate could be revised even lower because of further depressed oil prices. It should be noted that the first priority of mineral revenue is to allocate a portion to local governments. The amount is usually about \$100 million. Above that is the base mineral revenue – the portion that goes into the state general fund.

The mineral revenue base was originally set by the Constitution at \$750 million, with allowances for an inflation-indexed increase every 10 years starting in 2000. The base was raised to \$850 million in the past decade. In the 2015 legislative session, the base was raised to \$950 million, but with an important requirement. That last \$100 million actually is steered to the state’s Transportation Trust Fund. (Not to be confused with the proposed amendment’s Transportation Stabilization Subfund.) That particular \$100 million in TTF money is restricted to use on state highways and bridges primarily, followed by allocations to ports and other programs. These changes have been accomplished through statutes that are already law.

If the constitutional amendment passes, the spending from the new transportation subfund would be restricted. The Intermodal Connector program would be in line for 20% of any expenditures from the subfund. This program focuses on roads and other connections to major transport hubs such as airports and ports. The rest of the subfund expenditures would be restricted to state highway and bridge projects. These projects are normally funded with 20% state dollars and an 80% federal match. A number of legislators have been concerned that these types of projects have been neglected in recent years while the state focused more on interstate improvements, which garner a 90% federal match.

Amendment No. 1 was devised as an alteration rather than a replacement of the Budget Stabilization Fund. The new subfunds are wedged into the existing provisions rather than creating a new uniform section in the Constitution. This approach has created a number of questions about how to interpret the proposed law. The Constitution’s formulation of the Budget Stabilization Fund can be found in Article VII Section 10.3. The proposed amendment would make no changes to Section 10.3 (C), which restricts the fund balance and outlines how money may be appropriated from it. Of course, this section of the Constitution originally was not written with a transportation subfund in mind. The amendment does not make clear whether the provisions of Section 10.3 (C) would apply to just the new budget stabilization subfund or the whole new trust, including the new transportation subfund. Section 10.3 (C) only refers to “money in the fund”, which

would appear ambiguous if the proposed amendment passed because no longer would there be a single fund but a trust with two subfunds. The Constitution's intention for appropriations of transportation subfund money would be open to interpretation. Also, the fund caps could become a puzzle. Although the amendment creates mineral revenue caps for the two subfunds, it does not remove the Constitution's existing fund cap. That cap holds the Budget Stabilization Fund to no more than 4% of total state revenue receipts.

The \$500 million "caps" on the proposed subfunds limit mineral revenue infusions but may not be actual hard caps on the amount of money that can be placed in the funds. When a subfund reaches \$500 million, no more mineral revenue can be poured into it. Technically, deposits or appropriations other than mineral revenue could be made to either subfund so that they could contain more than \$500 million. In fact, currently the Constitution requires deposits into the Budget Stabilization Fund under certain circumstances. For example, 25% of any money forecast as nonrecurring gets deposited in the fund assuming the fund is not full. In addition, the Legislature designated some money from the Deepwater Horizon Economic Damages Collection Fund to the Budget Stabilization Fund. Amendment No. 1 is silent about where exactly such money would go under the proposed Trust system with two subfunds.

## NO. 2

This proposed amendment is brought to you by Act 471 of the 2015 session. Two other pieces of legislation were passed in the 2015 session to create and finance the infrastructure bank. Act 431 created the Louisiana State Transportation Infrastructure Bank and a corresponding fund. That legislation also would have allowed 7% of the state vehicle sales tax to flow to the new bank. That sales tax provision was overridden by Act 275, which instead sets up a potential stream of as much as \$7 million a year to the infrastructure bank if state mineral revenue reaches a certain high level. Mineral revenue is not expected to reach a high enough level in the near future for this financing source to occur. This financing in Act 275 is the only current form of funding required by law for the infrastructure bank.

Act 431 establishes the bank in the Department of the Treasury. The bank is overseen by a board whose members are: the secretary of the Department of Transportation and Development; the state treasurer; the chairman of the Senate Committee on Transportation, Highways and Public Works; the chairman of the House Committee on Transportation, Highways and Public Works; one member appointed by a majority of the other members from among three persons who shall be nominated by the Louisiana Bankers Association; one member appointed by the board members of the State Board of Certified Public Accountants; and one member appointed by the board of directors of the Louisiana Good Roads and Transportation Association.

## NO. 3

This amendment removes some words and adds others to Louisiana Constitution Article III, Section 2 (A)(4)(b). Here is how this provision reads currently in the Constitution. The parts in bold would be removed under this amendment.

"During any session convening in an odd- numbered year, no matter intended to have the effect of law, including any suspension of law, shall be introduced or considered unless its object is to enact the General Appropriation Bill; enact the comprehensive capital budget; make an appropriation; **levy or authorize a new tax; increase an existing tax;** levy, authorize, increase, decrease, or repeal a fee; **dedicate revenue; legislate with regard to tax exemptions, exclusions, deductions, reductions, repeals, or credits;** or legislate with regard to the issuance of bonds."

(This section then provides exceptions for five pre-filed bills per legislator and for local and special bills.)

Here is how this provision would read with the proposed amendment. The new parts are in bold.

“During any session convening in an odd- numbered year, no matter intended to have the effect of law, including any suspension of law, shall be introduced or considered unless its object is to enact the General Appropriation Bill; enact the comprehensive capital budget; make an appropriation; levy, authorize, increase, decrease, or repeal a fee; **legislate with regard to the dedication of revenue; legislate with regard to taxes; legislate with regard to rebates;** or legislate with regard to the issuance of bonds.” (This section then provides the same exceptions for five pre-filed bills per legislator and for local and special bills.)

Lawmakers have sought to make changes in the state’s administration of taxes and credits during a fiscal session only to find out that the House has interpreted the Constitution to mean that those types of legislation must be considered “general” bills. Some legislators have packaged tax administration bills to make the proposals appear better qualified for a fiscal session; this constitutional amendment would negate the need for such maneuvers.

Fiscal sessions are restricted to not more than 45 legislative days within a period of 60 calendar days. General sessions are restricted to not more than 60 legislative days within 85 days. The pre-filing period ends 10 days before the start of a session. In addition to the bill limits for the pre-filing period before fiscal sessions, the Constitution limits each legislator in any regular session to five bills during a session; however, the Legislature may adopt rules for exceptions to this limit. Special sessions can be called to consider fiscal or general matters.

#### **NO. 4**

In Louisiana a property tax is a type of ad valorem tax based on the assessed value of a property. The Latin term “ad valorem” means “according to the value.” Taxable property includes inventories, such as merchandise, vehicles held by auto dealers and oil and gas kept in storage.

The legal case that led to this proposed amendment stems from differing interpretations of the Louisiana Constitution. A Tennessee municipal utility -- Memphis Light, Gas and Water -- stores natural gas in West Carroll Parish. For this inventory, the parish assessed the property and issued tax bills totaling just over \$406,000 for the 2009-2012 period. The municipal utility protested and claimed in court that the natural gas was exempt from taxation because it was “public property used for public purposes” and that the constitutional exemption is not limited to Louisiana governments. In 2013, the 5th Judicial District Court of Louisiana agreed with the utility and the 2nd Circuit Court of Appeals later upheld the decision. The Louisiana Supreme Court did not take up the case.

West Carroll Parish had argued that a Louisiana Supreme Court ruling in 1951 – *Warren County, Miss., v. Hester* - was the defining guidance on this question. That court stated, “We think it plain that the exemption of all public property has reference only to property of Louisiana and its political subdivisions. There is no reason whatever to believe that the people of Louisiana, in adopting their Constitution, intended to exempt from taxation the local property of foreign countries, other states or their political subdivisions.”

The appeals court said this passage was an “extraneous comment” (or “dicta”) by the Supreme Court in the Hester ruling and “was in no way necessary to the disposition of the case.” The appeals court thus determined that the comment need not be followed. (The Hester dispute

concerned a toll bridge that crossed the Mississippi River from Vicksburg to Louisiana.) The trial court, whose ruling and reasons were expressly adopted by the appeals court, said the plain language of the Constitution is a more important factor: “On multiple occasions in recent years, the Louisiana Supreme Court has reiterated and re-affirmed its adherence to the first rule of constitutional interpretation that the starting point is always the language of the constitution itself, and when a constitutional provision is plain and unambiguous and its application does not lead to absurd consequences, its language must be given effect.” The trial court and the appeals court went on to say that in the Louisiana Constitution, “the exemption is stated in general terms as one for ‘public property used for public purposes’. The limiting terms ‘Louisiana’ or ‘Louisiana political subdivision’ do not appear in the constitutional provision. Therefore, the plain language [of the Constitution] seems to confer this tax exemption on the temporarily stored natural gas in question.”

The Legislative Fiscal Office could not determine whether some other parishes might face a similar circumstance. Although West Carroll Parish appears to be dealing with a rare occurrence of such a situation, Louisiana is a state with many energy storage sites that could provide an opportunity for similar disputes. The proposed amendment would of course apply to all forms of property, not just natural gas inventories. State Rep. Charles “Bubba” Chaney and Sen. Francis Thompson, whose legislative districts include West Carroll Parish, sponsored the bill in the 2015 session to propose the amendment. The Legislative Fiscal Office said that out-of-state municipalities paying property taxes in Louisiana would not be eligible for the state’s inventory tax credit.

The proposed amendment does not identify foreign countries among the entities that would not be allowed the exemption. The amendment only refers to property owned “by another state or owned by a political subdivision of another state.”





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