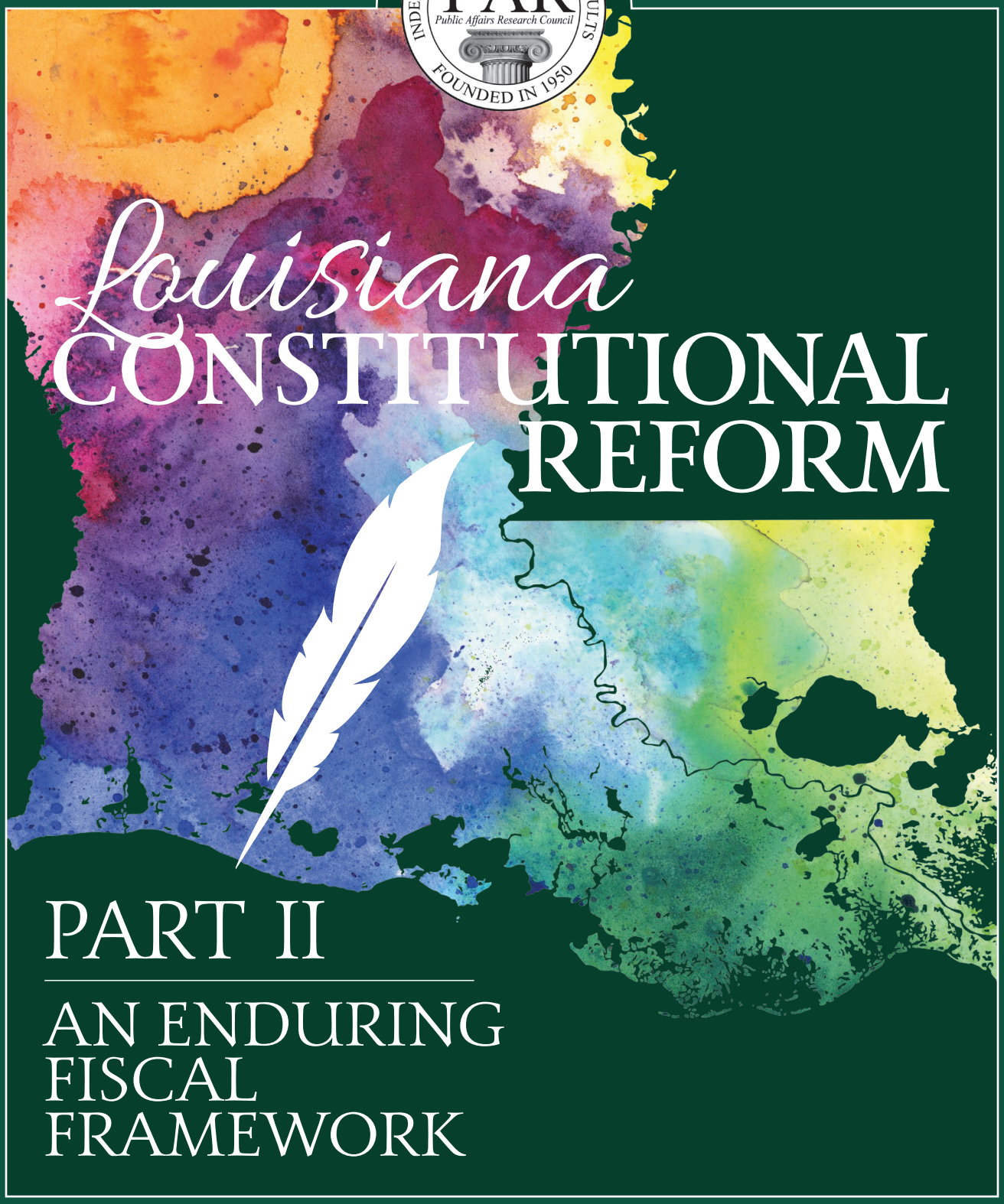

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Louisiana CONSTITUTIONAL REFORM

PART II
AN ENDURING FISCAL FRAMEWORK

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The Public Affairs Research Council (PAR) is a private, nonprofit, non-partisan public policy research organization focused on pointing the way toward a more efficient, effective, transparent and accountable Louisiana government. PAR was founded in 1950 and is a 501(c)(3) tax-exempt organization supported by PAR members, individual and corporate donors, and foundational grants.

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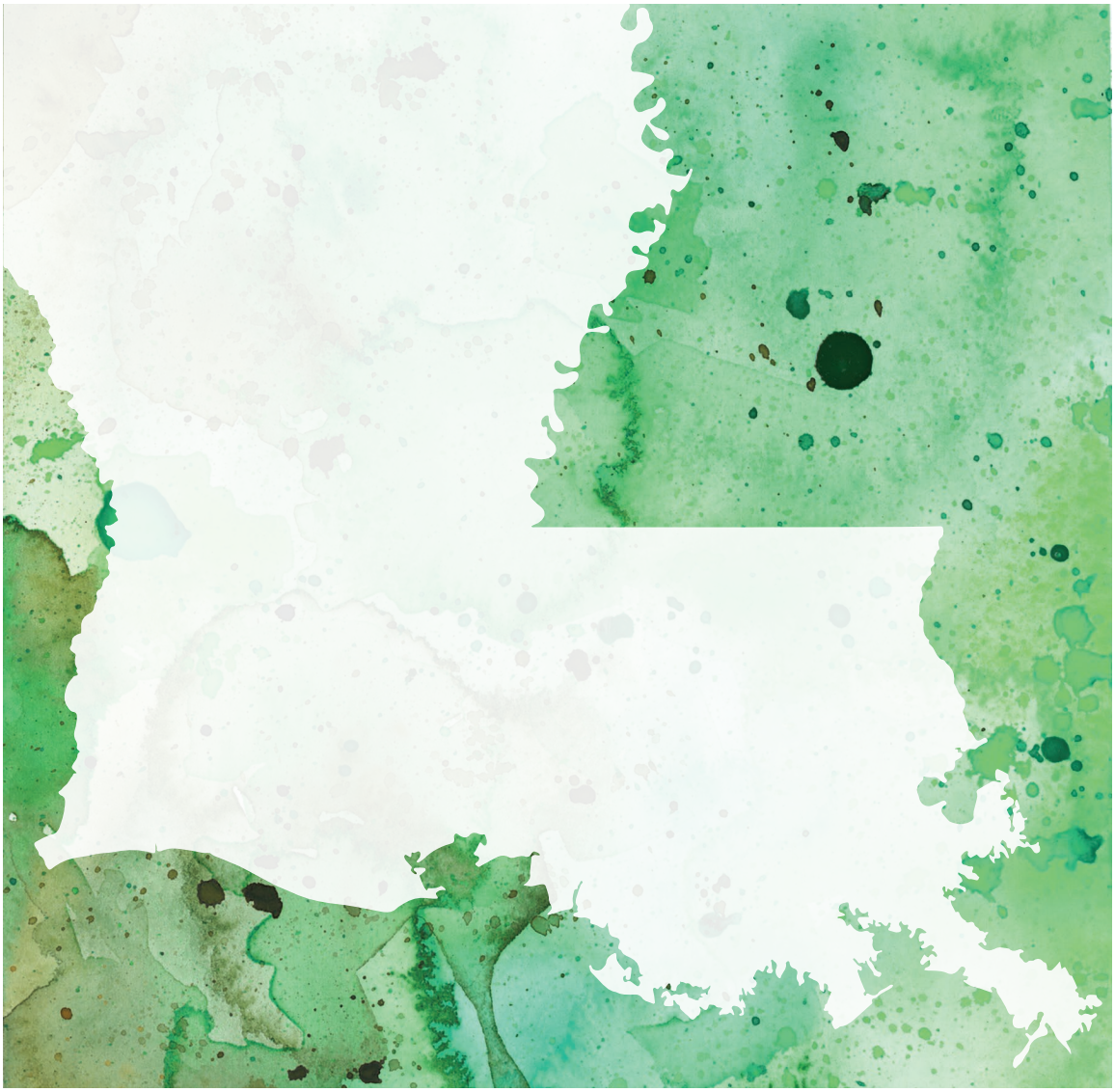
Executive Summary



The Public Affairs Research Council of Louisiana (PAR) is pleased to present *PART II* of its project on "Louisiana Constitutional Reform." *PART II: An Enduring Fiscal Framework* provides critical background information and recommendations for addressing potential reforms of the tax and spending portions of the state Constitution. It challenges common assumptions and does not attempt to satisfy any constituency or sacred cow. *PART II* is intended to elevate the discussion about the purpose of a revision and to build common ground for the goals to be achieved.

PAR's "Louisiana Constitutional Reform" project recommends changes and innovative options in clearly defined terms. It serves an important educational role by presenting a commonly shared base of explanations about the structure and functions of the Constitution. The PAR reports can be used as guidance for a constitutional convention, the revision of a single constitutional article or a slate of reform amendments, whichever strategy works. This *PART II* report follows PAR's previously published *PART I: Getting the Foundation Right*, which examined the best guiding principles in making a state constitution.

Since its creation in 1974, the Louisiana Constitution has morphed into an unwieldy and restrictive document that governs through narrow rules and restrictions rather than broad grants of authority. As changes begat more changes, it doubled in length and years ago became the fourth largest state constitution in the nation. Of the 293 amendment proposals brought to a statewide vote, 202 have passed, making Louisiana a leader in finding ways to alter its most fundamental body of law. Often, the amendments are complicated affairs delving into a legal realm that other states have wisely left to statutory law.

Volume and complexity are not the only problems. The restrictive psychology of the Louisiana Constitution, particularly the limitations in its fiscal framework, is a regular target of criticism and represents another example of how the Louisiana way is different from most everywhere else. The reasons for this aberration are both structural and cultural, and nowhere do these reasons combine with more impulse than in the Constitution's Article VII, the money chapter. This is the section of the Constitution dedicated to taxation and the management and deployment of state funds. This single article has grown from about 6,000 to about 31,000 words, near the length of the entire original 1974 document.

PART II: An Enduring Fiscal Framework contains four chapters. **Chapter One** broadly covers relevant history and future options for constitutional revisions, with an emphasis on creating a more enduring and foundational document. **Chapter Two** is about taxation, with an emphasis on constitutional controls. **Chapter Three** proposes recommendations about state spending and dedicated funds while offering innovative ideas for restructuring the relationship between the Constitution and corresponding fiscal statutes and legislative appropriations. **Chapter Four** is a detailed breakdown with recommendations for all the trust funds and money pots embedded in the Constitution.

These chapters in *PART II* contain the most thorough examination to date of how the fiscal components of our state's fundamental governing document have been convoluted and how they can be fixed. It is PAR's desire to provide a set of information that will help

policy makers make good judgements based on sound facts and long-range perspectives. The report offers an in-depth account of the fiscal contents and impacts of the Constitution while remaining accessible to most readers. One of the purposes of the report is to provide exceptional educational value, even for those who will not embrace all of PAR's recommendations.

The report also comes with a host of links to supplemental resources for those seeking reference material or for those who want to venture deeper into the subject matter. The next installment will be *PART III*, which will cover the relationship between state and local governments and key issues such as pensions and civil service, within the context of the Constitution.

For much of the financial information in *PART II*, PAR used fiscal year 2019 figures. These were pre-pandemic numbers and may offer a more stable base of making comparisons than 2020 figures. Also, these figures were used to establish comparisons among levels of tax revenues, fund balances and spending during somewhat normal times.

Chapter One

Culture, Trust and Reform

A remarkable episode in Louisiana's history gave us a simpler and more modern Constitution in the 1970s, though by no means a perfect one. Soon enough, our old culture of mistrust caught up with us, along with the powerful allure of constitutional restrictions. But maybe we're better than this. We examine the methods permitted to change the document and the ways we can make it finer and more enduring. **The recommendations**:

- Create a more foundational constitution that loosens obstacles to reforms rather than containing constraints that are better housed in a statutory environment. Don't replace one set of constitutional constraints with another.
- Require consideration of proposed constitutional amendments in two successive regular legislative sessions before the proposal is put to voters.
- Require a higher level of voter engagement to approve constitutional amendments. Practically speaking, this might be achieved by scheduling votes on an amendment only during certain statewide or national elections.
- Provide the option to allow a limited constitutional convention in which delegates would be authorized only to address matters and topics specifically included in the legislation calling for the convention.
- Do not amend the Constitution to allow voters to place constitutional amendment initiatives on the ballot without legislative approval.

Chapter Two

Serious Money: Taxation in Louisiana

We take an enlightening tour of Louisiana taxes, through the eyes of the Constitution. We see that every sales tax is king, and every collector wears a crown. We visit the ineluctable deductible of the income tax, and learn how the landscape of oil, insurance and gambling revenues have altered over time. Louisiana's exceptionalism is on full display, and not in a good way. The solutions are easy and straightforward in principle, but reaching agreement is hard. **The recommendations:**

- The Constitution's requirement of a 2/3 vote to increase taxes or eliminate tax exemptions should be retained. In addition, the creation of any new tax exemption should require a 2/3 vote. Exemptions in this context should be broadly defined to include exclusions, credits, rebates, deductions and other similar provisions.
- Remove the existing constitutional caps on income tax rates and brackets. Consistent with the current Constitution, a 2/3 vote of the Legislature would still be required to increase any taxes, including through changes to individual tax brackets.
- Transfer the mandatory state income tax deduction for federal income taxes paid to statute to provide the Legislature greater flexibility to adjust or remove the exemption with a 2/3 vote.
- Transfer the "Big Three" sales tax exemptions to statute, with a 2/3 vote needed to lower or remove them. The Big Three are food for home consumption, prescription drugs and residential utilities. This change will provide the Legislature greater flexibility to remove or lower the exemptions with a 2/3 vote and lower the tax rate, with appropriate protections for lower income households.
- Remove the constitutional barrier to a more centralized sales tax collection system.

Chapter Three

Successful Money: Spending and Dedications

Louisiana likes to use its Constitution to dedicate revenue streams, protect mandated spending mechanisms and create lock boxes of special funds. While some of these uses are in line with best practices, others cause fiscal inefficiency and inflexibility. It is important to make careful judgements about those differences. Also, those who would recommend eliminating constitutional funds or dedications should appreciate when such moves would not really create new general fund revenue for the state.

PAR proposes a new framework for handling constitutional funds, divided into four categories for separate treatment. The chapter recommends how to implement this reform and explains its benefits. For the purpose of this report, PAR is counting 28 constitutional funds, which is a large number compared to other states. While some funds should remain fully protected, the particular spending mandates of some others were locked in long ago and therefore rank as the highest spending priorities for the state with no second thoughts all these years later. They should be revisited to examine whether the state's priorities have changed.

The five recommended **Constitutional Funds** could be tweaked but are essential and would remain untouchable without a constitutional amendment approved by voters statewide. The corpus of the six **Permanent Trust Funds** would remain protected in the Constitution while the appropriation of the spending from their investment earnings would be determined by a 2/3 vote of the Legislature. Under current law, those investment earnings were assigned to special interests long ago in the Constitution and are distributed every year without legislative re-evaluation. The nine **Program Funds** would be subject to change by the Legislature and a periodic sunset but would have a constitutionally protected requirement of a 2/3 vote for alterations. PAR counts seven funds simply to eliminate. The 28th fund is the annual $90 million Revenue Sharing Fund. **The recommendations:**

- **Constitutional Funds.** The highest and most protected category, Constitutional Funds are those that should remain in the Constitution because they are necessary for important budget mechanisms to function properly and to make sure the state is ensuring its long-term financial and infrastructure needs. The Rainy Day and Revenue Stabilization funds should be kept but streamlined. This category includes the following funds:
  - The Bond Security and Redemption Fund
  - The Budget Stabilization (Rainy Day) Fund
  - The Revenue Stabilization Trust Fund
  - The Coastal Protection and Restoration Fund
  - The Transportation Trust Fund

- **Permanent Trust Funds.** Under PAR's recommendation for this class of funds, these are pots of money whose principal would be protected by the Constitution while the marginal spending authority for the investment earnings would be subject to a 2/3 vote of the Legislature. This category includes the following funds:

- Health Excellence Fund
- Education Excellence Fund
- TOPS Fund
- Louisiana Fund
- LEQTF Permanent Trust Fund
- LEQTF Support Fund

› **Program Funds.** These funds would allow a 2/3 vote from both legislative chambers to amend or eliminate any function or dedication. They would be subject to periodic sunsets, in which the Legislature would have to review their performance and renew them if warranted. Currently, any changes to these funds, no matter how small the tweak, would require a constitutional amendment and a statewide vote.

- Conservation Fund
- Artificial Reef Development Fund
- Hospital Stabilization Fund
- Louisiana Medical Assistance Trust Fund
- Mineral Revenue Audit and Settlement Fund
- Oil Spill Contingency Fund
- Oil Site Restoration Fund
- Lottery Proceeds Fund
- Patient's Compensation Fund.

› **Funds to eliminate.** Defunct funds and funds with long-standing zero balances or inactivity should be repealed. This category includes the following funds:

- Millennium Leverage Fund. (Art. VII, § 10.10)
- First Use Fund. (Art. IX, § 9)
- Higher Education Louisiana Partnership (HELP) Fund. (Art. VII, § 10.4)
- Agricultural and Seafood Products Support Fund. (Art. VII, § 10.12)
- Atchafalaya Basin Conservation Fund. (Art. VII, § 4(D))
- Tideland Fund.
- Louisiana Investment Fund for Enhancement (LIFE). (Art. IX, § 10)

› The 28th fund is the **Revenue Sharing Fund**, which annually distributes $90 million of state general fund money every year to local governments. If retained, the law should require that the annual appropriation be applied to programs of joint state and local interest, such as local matches needed for mental health facilities or early childhood education. The purpose of this requirement is to aim state spending at moving the needle on critical measures of welfare that affect the entire state, while keeping the funds in local hands.

Chapter Four

Stored Money: Fantastic Funds and Where to Find Them

Anyone who braves to "drill down" into the fiscal morass of the Louisiana Constitution will need to understand the scope and nature of its fantastic variety of "funds." Unfortunately, an entire chapter is required to review them, even succinctly.

Compared to other states, Louisiana is a national champion at packing away windfalls and dedications to serve specific causes that few even know exist. Built up one by one over the decades, in most cases they lead a sheltered life free of scrutiny or any question about whether their aged priorities match the needs of today. Some don't live at all, in fact, and are useless corpses in the Constitution that no one has bothered to bury.

Some instruments – such as the Rainy Day Fund -- are vital and should be maintained in the Constitution. Others need a re-evaluation or, at the very least, a bit of daylight shone on them.

Chapter Four presents a short description of the purpose and money behind each of the 28 constitutional funds. A PAR recommendation accompanies each entry and fits the structural reforms suggested in Chapter Three.

Impact

PAR measured the advantages and added budget flexibility of implementing the recommended reforms. Here, it is important to manage expectations. The Permanent Trust Funds and Program Funds combined represent about $1.14 billion in annual expenditures. That figure is not the total value of the money in the funds, which would be much greater. It is the amount passed through and drawn from the funds for certain dedicated purposes each year. The new structure therefore would indicate a potential increased state spending flexibility of an amount more than a billion dollars.

As explained in Chapter Three, there are important reasons why that number should not be confused with the notion of new money. The lottery fund supports K-12 education through an allocation to the state's Minimum Foundation Program and basically offsets state general fund money that would be needed to sustain the MFP at its required levels. The Medical Assistance Trust Fund – which accounts for more than $500 million in expenditures – is restricted to support services from a health care provider class; a diversion would not alleviate the need for state money if the Legislature were to maintain the program. The Conservation Fund uses fees to pay most of the bills to run the Department of Wildlife and Fisheries, which presumably needs operational money from somewhere.

In these cases, the virtue of the new fund structure is not necessarily new money for new priorities. The advantage is the ability of legislators and the governor to tweak and refine programs with greater flexibility and to do so in a statutory environment, albeit at a high bar with the 2/3 vote requirement. In the case of some fee-based agencies, the Legislature might be able to exercise greater oversight of their operations during the appropriations process.

The new structure for the Permanent Trust Funds offers an opportunity to rethink those spending priorities. Although the highly constrained earnings from these trust funds are applied to current state spending programs, their purpose could be re-evaluated and applied differently. They represent about $155 million in annual expenditures. If the funds used a slightly less cautious but still conservative investment plan, they could over time

offer two or three times as much annual spending volume. Such an investment reform might also consider ways to keep the funds from slowly disintegrating in real value, which is the current design.

PAR's recommended reforms would not necessarily change the perception of funding requirements for state programs or the governor's and Legislature's consensus about state priorities, which would still be subject to limited resources and political influence. But the bottom line is that reforms for constitutional funds and dedications could increase spending discretion and agency oversight for the Legislature.

Summary

At its current rate of development, Louisiana may never make enough progress to lift itself from the bottom of national economic and social prosperity rankings. And yet the state is bestowed with a generous fortune of natural, human and public revenue resources. The Pelican State has the opportunity to be the architect of its own good fortune. A willingness to change our constitutional ways would open paths to reform. More significantly, it would signal that we in Louisiana are willing to change our culture and our self-image for the better.

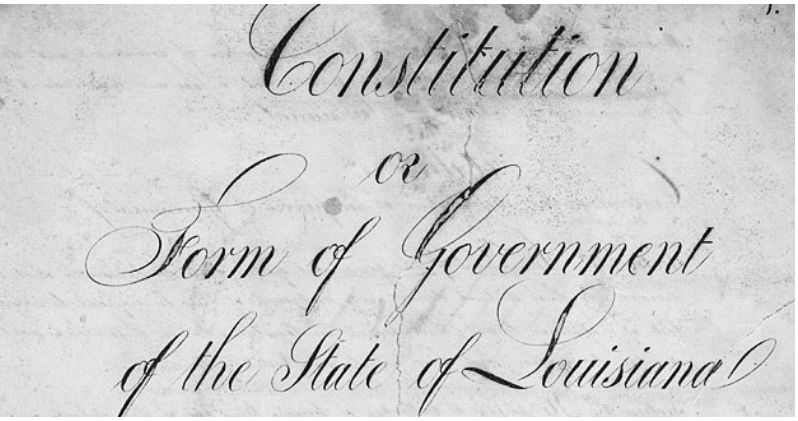
Chapter One
CULTURE, TRUST AND REFORM

How our Constitution came to be • A culture of binge, diet, repeat • The powerful allure of constitutional restrictions • A Legislature that mistrusts itself • The types of revisions allowed • A limited convention • Maybe we're better than this • A higher standard

Chapter One

Culture, trust and reform

The Public Affairs Research Council of Louisiana (PAR) has embarked on an ambitious project to examine the current Louisiana Constitution and consider worthwhile revisions. Called *Louisiana Constitutional Reform*, the project was launched to provide sound principles to guide the drafting of a new constitution and to identify recommended changes and innovative options in clearly defined terms.



PAR's independent analysis does not attempt to satisfy any constituency or sacred cow. The multi-part report is focused on the desired substantive outcome of any reform effort, whether brought about by a convention or legislative revisions presented to the voters. It is intended to elevate the discussion about the purpose of a revision and to build common ground for the goals to be achieved. In doing so, the project is providing much of what would have been presented to the public had the Legislature created a study commission or task force.

Having more than doubled in length since 1974, the Louisiana Constitution has morphed into an unwieldy and restrictive document that governs through narrow rules and restrictions rather than broad grants of authority. The proposed changes contained in this report are designed to create a more foundational document that grants the Legislature greater flexibility to implement reforms that will help achieve a better Louisiana. As a first step with this project, the principles of a better constitution were advanced in *Part I: Getting the Foundation Right*.

Now comes *Part II: An Enduring Fiscal Framework*, which provides critical background information and recommendations addressing potential reforms of the tax and spending portions of the state Constitution. Focused mainly on fiscal matters, *Part II* includes an Executive Summary and four underlying chapters. Chapter One broadly covers relevant history and future options for constitutional revisions. Chapter Two is about taxation and fiscal controls. Chapter Three proposes recommendations about state spending and dedicated funds while offering innovative ideas for restructuring the relationship between the Constitution and corresponding fiscal statutes and legislative appropriations. Chapter Four is a detailed breakdown with recommendations for all the trust funds and money pots embedded in the Louisiana Constitution.

Together, these chapters in *Part II* contain the most thorough examination to date of how our state's fundamental governing document has been fiscally warped and how it can be fixed. *Part II* also comes with a host of links to supplemental resources for those who want to venture ever deeper into the subject matter or who

just enjoy reviewing historical documents. The next installment will be *Part III*, which will cover the relationship between state and local governments and key issues such as pensions and civil service, all within the context of the Constitution. PAR will also post public comments about these reports.

We are well along into a fast-moving 21st Century. At its current rate, Louisiana may never make enough progress to lift itself from the bottom of national economic and social rankings. And yet the state is bestowed with a generous fortune of natural, human and public revenue resources. The Pelican State has the opportunity to be the architect of its own good fortune. A willingness to change our constitutional ways would open paths to reform. More significantly, it would signal that we in Louisiana are willing to change our culture and our self-image for the better.

How We Got Here

Before undertaking a discussion of specific changes, we should examine how our current Constitution came to be. After all, as a great philosopher once said, "Those who cannot remember the past are condemned to repeat it." A look back at the evolution of the 1974 Constitution reveals a document that has grown increasingly restrictive over time. As the Legislature and voters have approved amendments that impose detailed and complex controls on the Legislature's ability to adjust and spend revenue, we have been induced to continue amending the document to accommodate desired policy changes.

Meanwhile, once special interest groups are successful at gaining favored status in the Constitution for a particular priority, history has revealed there is little chance the Legislature will remove the protection if and when priorities change. Louisiana has been caught in a vicious cycle that is doomed to repeat itself without real reform to our governing document.

But even with real reform, the question remains: how do we ensure that we do not find ourselves back in this same predicament 40 years from now, searching for solutions to simplify a document that once again has grown too long and restrictive?

As an initial matter, we must look to other state constitutions that may serve as models for a better governing document for Louisiana. Not surprisingly, the data reveal that constitutions that are harder to amend are amended less often. Thus, making it more difficult to amend the Louisiana Constitution may be one way to help protect against proposed constitutional amendments that are more appropriate for statute. Another option is to adopt a higher threshold for voter engagement to approve proposed amendments.

In Louisiana, as in many other states, proposed amendments are sometimes approved by a small fraction of statewide voters and frequently by less than half of the voters. If the only difference between adding something to statute and adding it to the Constitution is a vote of the people, then a worthy goal might be to make sure a threshold portion of voters participate before allowing fundamental change.

Binge. Diet. Repeat.

Since Louisiana became a state in 1812, it has been governed by 11 separate state constitutions — more constitutions than any other state. The states with the next highest number of constitutions include Georgia (10), followed by Alabama (6), Florida (6) and Virginia (6). Louisiana's current constitution was written by a constitutional convention held in 1973 and 1974, ratified by voters in 1974 and became effective on Jan. 1, 1975. The events that brought about the 1973 convention were partially similar to the conditions prompting current discourse about the need for a major constitutional rewrite.

Louisiana's Constitution of 1921 contained 48,378 words when it was adopted, but with 536 amendments in 51 years, the document grew to nearly 255,500 words. That's about the length of Shakespeare's 11 longest tragedies combined. Not even the most consummate attorney could have known all that was in it. In his pitch for reform, newly elected Gov. Edwin Edwards appeared on television decrying the massive volumes of books needed to contain the state constitution.

Louisiana's practice had become "government by constitutional amendment." In 1970, a package of amendments was proposed to address the criticisms, but voters rejected all 53 proposals on the statewide ballot. Nineteen of the 53 proposals concerned only New Orleans. In two subsequent elections held during 1972, voters again turned down 36 of 42 proposed amendments, many of which again affected only New Orleans. With a constitution so detailed that it placed restrictions on many key facets of governance and no realistic prospect for continued use of the amendment process, the alternatives were either a constitutional convention or a revision commission followed by a convention.

With the newly inaugurated administration of Gov. Edwards, the 1972 Legislature passed Act 2 calling for a convention. There were 132 delegates in all, 105 of whom were elected from the corresponding number of single-member districts for the Louisiana House of Representatives, together with 27 delegates appointed by the governor. Fifteen of the appointments were from the public at large and the rest from various industry groups and unions.

The Act required the delegates to convene on January 5, 1973, to elect officers and organize committees and then recess until July 5th. During those seven months, a research team worked with each of the committees to draft a preliminary constitution. At the same time, convention delegates held a series of public meetings throughout the state to gather input on what should or should not be included in a new constitution. When the delegates reconvened in July 1973, the majority of the document had been written, which meant the delegates focused their time debating and refining. The convention process was highly publicized statewide, and PAR published analyses and commentary on matters before the body.

After more than a year of work, the convention produced a new constitution in January 1974. The proposed document was much shorter (36,252 words) and simpler than the unwieldy document that the 1921

Constitution had become. Portions of the 1921 Constitution's 15 articles were lifted from the Constitution and reenacted as statutes, and many other provisions were repealed altogether. Nonetheless, the new document, in the eyes of many, still was not perfect. Indeed, on January 10, 1974, Gov. Edwards acknowledged the practical challenges of crafting an ideal constitution when he addressed the convention:

Louisiana Digital Library

Edwin Edwards

> "Now, I must suggest to you ... that what criticisms I have of the document, and what problems have arisen in the feel and the hustlings and bustlings of our state, arise, very candidly, from your failure to recognize that you were here to write a constitution, rather than to serve as legislators. Had you stopped your work after completion of the Bill of Rights and the three Articles on the Executive, the Legislature, and the Judiciary, a beautiful, fantastically well-engineered and prepared document would have been your work product.
>
> Practical aspects of your job, however, required you to go further; and it is when you got into those provisions which are really legislative, and not constitutional matters, that the problems began to develop ..."

Despite these perceived shortcomings, the new 1974 Constitution was ratified by voters in a statewide election on April 20, 1974. Although fewer than 40% of the electorate turned out and voters in 36 of 64 parishes rejected the proposed document, the new constitution was ratified by a statewide vote with 58% in favor, or 358,588 to 262,030.

Forty-five years later, that Constitution looks much different. The first changes came in 1978, and since then 293 constitutional amendments have been proposed, of which 202 have been adopted. That is an average of seven amendments per year placed before voters, who approve nearly five per year on average, for an approval rate of 69%. In 2006 alone, voters were asked to decide on 21 amendments, the largest number of proposed changes in a calendar year since the 1974 Constitution was adopted. All were approved, with less than 30% voter turnout.

The result of this constant and frequent constitutional modification is a document that is about 72,000 words — twice as long as the original. As of January 1, 2018, Louisiana had the fourth longest constitution in the country, lagging only Alabama (388,882), Texas (86,936), and Oklahoma (81,666). What was once a reasonably short document that not only legislators, but also the general public, could read and understand, has now morphed into a document that would take days, not hours, to read. Moreover, many provisions that were once simple and straightforward have now been amended into detailed and often confusing restrictions that only attorneys and academics can understand.

As one constitutional scholar observed, "Some states have resorted to constitutional amendments for more than tuning up the machinery of government. California, Georgia and Louisiana in particular have

chosen to shift many ordinary political disputes to the constitutional realm, using constitutional amendment as legislation by other means."[1] Another remarked, "Constitutional revision in Louisiana, whether in conventions or by amendment, has been sufficiently continuous to justify including it with Mardi Gras, football and corruption as one of the premier components of state culture."[2]

Overwhelmingly, the article of our Constitution most often amended by voters has been Article VII regarding revenue and taxation. Article VII of the original 1974 Constitution was a mere 6,125 words and contained only a handful of dedications. Since then, more than half of the approved amendments (104 of 202), were amendments to Article VII, and most related to taxes, constitutional dedications and exemptions. About 25,000 words have been added to Article VII alone since 1974.

Increasingly, voters have ratified proposals that decrease the Legislature's spending authority through constitutional dedications. The original 1974 document contained fewer than 10 dedications; today, that number has grown to more than two dozen constitutional funds and even more constitutional dedications. As a result, nearly two-thirds of all Louisiana revenue that comes into the State Treasury is siphoned off for a specific use or program. The result is a budget that is, to a large extent, self-executing, leaving legislators with very little flexibility to craft a budget that funds today's priorities and needs.

Why We Have This Culture

Changes in our state Constitution should promote stability so that we do not once again find ourselves wishing for a new, simpler and more effective constitution in the future. For this reason, those crafting a revised document should examine trends in state constitutions generally. They also should see how state constitutions compare with the U.S. Constitution—a concise document that has remained stable and effective for more than two centuries.

Throughout the 20th century, the pace of state constitutional amendments quickened, as did the ratification rate for proposed amendments. State constitutional amendments are thus being proposed and adopted more frequently. Various theories exist as to why this is true. Some have argued that th e trend simply reflects changing public opinion and attitudes towards specific policies. However, this theory is at least partially undermined by the fact that despite the vast majority of proposed constitutional amendments being ratified, many are approved by only a small percentage of the electorate. Indeed, amendments just in the past two years have been ratified in Louisiana by as few as 14% of registered voters.

Others attribute the increased frequency of constitutional revision to growing dissatisfaction and distrust of the institutions and individuals tasked with operating state government. Under this theory, constitutional revision is the inevitable response to a lack of confidence in state legislators who are prone to short-sightedness and vulnerable to political pressures of the day. A recent study showed that for every 1% decrease in the level of trust voters have in their legislatures, their state constitution is 75 words longer.

In evaluating the theory that lengthy and heavily amended state constitutions reflect a general distrust of politicians, it is also informative to look at how states

1. Tarr, Alan G., Understanding State Constitutions 142 (1998).
2. Mark Carleton, "Elitism Sustained: The Louisiana Constitution of 1974," 54 Tul. Law Rev. 560, 560 (April 1980).

compare to the federal constitution. The average state constitution length is 39,861 words, and this number drops to 32,783 if you omit the mammoth Alabama constitution. (CSG 2018 Book of States). The average state constitution has been amended 152 times. By contrast, the United States Constitution is a short 7,591 words and has been amended only 27 times since its adoption in 1789. This vast discrepancy in length and amendment, at least in part, is likely related to the underlying substance and structure of the two types of constitutions.

Article I of the U.S. Constitution grants Congress a long list of specific powers, such as the right to borrow and coin money, regulate commerce, establish post offices, and define and punish "piracies." The Supreme Court has long held that the federal government can exercise only those legislative powers granted to it by the U.S. Constitution. By contrast, state governments have historically been understood to possess *plenary* legislative powers, meaning they possess all legislative powers not otherwise ceded to the federal government or prohibited by the federal Constitution. Louisiana courts have repeatedly confirmed the Legislature's plenary authority over state finances, which allows it to take any action relating to finances not expressly forbidden by the state constitution. For this reason, rather than granting state legislators specific powers, state constitutions tend to *restrict* legislative power by placing limitations on the Legislature's ability to do things such as enact local or special laws, create new taxes, increase existing taxes, authorize gambling or regulate the business of local governments without voter approval.

The plenary character of state legislative power, however, does not, on its own, describe the growing length and detail of state constitutions. Professor Alan Tarr from Rutgers University, who has written extensively about state constitutions, believes that by limiting the power of elected officials, state constitutions also reflect "a tradition of being skeptical of the people we put into political office." As a result, state constitution makers have deemed it necessary to detail every limitation they seek to impose on legislatures. Louisiana's Constitution certainly reflects this desire to limit legislative power. Indeed, almost every provision of Article VII is designed to limit the Legislature's power of the purse by requiring the appropriation of funds to dozens of specific purposes and programs.

Amendment by Initiative?

A growing number of states allow citizens to bypass their state Legislature to place proposed statutes and constitutional amendments on the ballot for voter approval through the "initiative" process. Currently, 24 states allow the initiative process. Of those, 21 states allow initiatives to propose statutes, and 18 allow initiatives to propose constitutional amendments.

No two states have exactly the same requirements for initiatives to be placed on the ballot. Generally, however, the process includes gathering a required number of signatures from registered voters on a petition that lays out the proposed measure. In most states, the petition signature requirement is roughly 10% of votes cast in the most recent gubernatorial election, or 10% of all registered voters.

There are two types of state initiative frameworks. In states with a *direct initiative process*, once a sufficient number of signatures has been collected, the proposal is placed on the ballot for a vote of the people. Alternatively, in states with an *indirect initiative process*, the proposal goes to the legislature first, and if it is approved by the legislature, is not voted on by the people, but becomes law. If the proposal is not approved by the legislature within a prescribed window of time, the initiative is then placed on the ballot for consideration by voters. 16 states allow direct initiatives and two allow indirect initiatives to propose constitutional amendments. A full list of states that allow some form of citizen initiative process, along with the requirements for each and a wealth of information on the subject, can be found on the website of the Initiative and Referendum Institute.

PAR does not recommend amending the Louisiana Constitution to allow voters to place constitutional amendment initiatives on the ballot without legislative approval. Overall, the deliberative, consensus-building process of legislative consideration is preferable to the initiative process, in which voters may be asked to make simple yes-no decisions about complex issues without constitutional context or legal analysis. Voters in an initiative process, unlike legislators, are not being asked to balance competing needs with limited resources, which may undermine the ability of the state as a whole to develop policies and priorities in a comprehensive and balanced manner. Furthermore, multiple ballot initiatives from citizen petitions would run a greater risk of being contradictory or mutually exclusive than those presented by a Legislature. Fundamentally, a ballot initiative process would run counter to our representative form of government and decision making, in which citizens and affected parties can testify on behalf of their interests.

Ways to Change the Constitution

Article XIII of the Louisiana Constitution, which addresses constitutional revision, lays out both the requirements for amending the Constitution as well as the requirements for calling a constitutional convention and approving a new constitution.

An in-depth analysis of state constitution data reveals that the frequency with which state constitutions are amended is correlated with their length and with their ease of amendment.

As to the former, the most likely explanation is that longer state constitutions tend to include more detailed prescriptions and proscriptions which build rigidities into the document, thereby limiting the state's ability to adapt to changing situations and necessitating constitutional change simply to govern. This is often the case with specific parts of state constitutions that have been amended over and over only to solve immediate or short-term problems without addressing the underlying larger problem. As scholars Frank Grad and Robert Williams have noted, "Every detailed constitution thus develops certain sore points, which become the foci for veritable clusters of constitutional amendments." In this regard, it is safe to say that Article VII of the Louisiana Constitution, which has been amended 104 times, is the "sore point" of our current Constitution. The scholars have a term for it: "an amendment breeder."

As to the ease with which state constitutions can be amended, Louisiana's requirement of a ⅔ vote from each legislative chamber and a majority of statewide voters is similar to that of many other states. A few states, however, have made it considerably harder to change their constitutions. Tennessee's constitution, for example, requires a majority vote from each legislative chamber, followed by a ⅔ vote from each chamber in the next legislative session, plus approval from a majority of statewide voters. This high standard for constitutional revision is reflected in Tennessee's current constitution, which is a short 13,960 words and has been in place since 1870. Vermont's constitution, which imposes a similar standard, is only 8,565 words and has been around since 1793.

To help achieve a more stable Louisiana Constitution, revisers should seek to

Revision Type	Form of Proposal	Approval Requirement
Single-Subject Constitutional Amendment (Art. XIII, § 1(A))	Joint Resolution approved by ⅔ vote of each legislative chamber *Not submitted to the Governor, who has no veto power*	Approval by a majority of electors voting in a statewide election *Local amendments affecting five or fewer parishes or municipalities must also be approved by a majority of electors in each affected local jurisdiction*
Amendment of an Entire Constitutional Article (Art. XIII, § 1(B))	Joint Resolution approved by ⅔ vote of each legislative chamber *Not submitted to the Governor, who has no veto power*	Approval by a majority of electors voting in a statewide election
Constitutional Convention (Art. XIII, § 2)	Bill approved by ⅔ vote of each legislative chamber and submitted to the Governor, with veto power	Voters do not decide whether a convention may take place but would later decide on the convention's proposal
New or Revised Constitution (Art. XIII, § 2)	Majority vote of convention delegates unless a different threshold is agreed upon by the convention	Approval by a majority of electors voting in a statewide election

impose a more demanding standard for constitutional change. One way to achieve this is to adopt a system like Tennessee's that requires a lengthier approval process. Another way is to ensure that only amendments that have garnered a high level of voter engagement are added to the Constitution. Voter data reveals that popular ratification of a constitutional amendment does not always mean public agreement with the change. Indeed, while approximately 70% of all constitutional amendments are ratified nationally, they are often approved by only a small percentage of the electorate. A PAR chart in the resources section shows the percent of registrants voting on amendments.

A "Limited" Convention?

The Louisiana Constitution does not contain any provision specifically allowing for a limited constitutional convention. Rather, Art. XIII, § 2 simply grants the Legislature general authority to pass a law calling for a convention upon approval by ⅔ vote of each legislative chamber. However, over the years, there has been at least some guidance suggesting that the Legislature could restrict the scope of a convention in a way that binds convention delegates.

In 1992, a State Representative requested an opinion from the Louisiana Attorney General on "whether or not the Legislature, when it calls a constitutional convention, can limit the convention to specific matters or to specific parts of the Constitution." La. AG Op. 92-25, Mar. 23, 1992. The Attorney General at the time, Richard Ieyoub, concluded the Legislature could. Analyzing Article XIII of the Constitution, the Attorney General wrote:

> "From our reading of the Constitution and jurisprudence, it is clear that Article XIII, Section 2 authorizes the legislature to issue a constitutional call. It is also clear that a constitutional call may be to revise the constitution or to propose a new constitution. A mode of revising the constitution is to all a convention. This mode of revision of the constitution was recognized as far back as the Constitution of 1812, Article VII. *We conclude, therefore, with the opinion that it is not inconsistent with the 1974 Louisiana Constitution, nor Louisiana jurisprudence, for the Louisiana Legislature to issue a call for a constitutional convention, which* ***may limit the convention to specific matters or to specific parts*** *of the constitution in revising the Constitution. Furthermore, it is our opinion that* ***a constitutional convention can do no more than authorized to do in the convention call by the Legislature.***"

The Attorney General's opinion set the stage for two major constitutional revision efforts by the Legislature.

First, during the 1992 Regular Session, the Legislature passed Act 1066 calling itself into a limited constitutional convention "for the purpose of revising the constitution in order to provide for state and local revenue and finance matters relating thereto." Pursuant to the call, the convention began on Aug. 23, 1992, and was composed solely of existing legislators. Shortly after the convention was convened, it was interrupted by Hurricane Andrew. The delegates nevertheless approved a set of changes to the Constitution that were grouped under a single ballot item and put before the people for a statewide vote on Nov. 3, 1992. The proposed revisions to the Constitution failed miserably, garnering only 38% of the vote.

Second, the Legislature passed a proposed constitutional amendment (Act 1148) that would have granted the Legislature the specific authority to call a limited convention. That proposal was also soundly rejected by voters, 39% FOR, 61% AGAINST.

Today, we are left with a situation in which a former Louisiana Attorney General in May 1992 in a non-binding opinion said that the Legislature can call a limited convention, which the delegates must honor, but in November 1992 Louisiana voters soundly rejected a proposal to expressly allow a limited convention. We have no guidance from the Louisiana Supreme Court.

Thus, when analyzing any proposal for a future constitutional rewrite, it is important to acknowledge that there is no guarantee that a convention called by the Legislature to address specific topics or sections of the Constitution would be bound by a limited call. Indeed, convention delegates, particularly if they include non-legislators who were uninvolved with the convention call, might, once convened, choose to address a broader set of topics. Given that Article XIII states that the "revision of the proposed constitution and any alternative propositions agreed upon by the convention shall be submitted to the people for their ratification," then that view could well be sustained.

For this reason, PAR recommends amending the Constitution to specifically authorize the Legislature to call a limited convention and to limit the authority of future delegates to only those articles, sections or topics included in the legislative call. Such a provision would eliminate any uncertainty around the scope of a future convention and in turn help alleviate concerns that under today's Constitution, convention delegates, once convened, might seek to expand the scope of their work outside the bounds of the Legislature's intent.

We're Better Than This

Yes, there are giant political, substantive and structural obstacles in the way of revising the Louisiana Constitution. Some of these erupted in 2018 when lawmakers proposed House and Senate bills calling for a constitutional convention, only to fail on the floor of their respective chambers. The concerns and opposition ran deep, especially among local government entities fearing a shift in power or guaranteed funding streams. At the time, the consensus had not grown large enough to lead to action. And many policymakers were uncertain as to exactly what constitutional changes or impact should be sought.

PAR's fundamental position is that the Louisiana Constitution does not fit the ideal of what a constitution should be. In fact, it's worse than bad. It is too long, unwieldy and inflexible. It holds us back from pursuing reforms and breaking from unhealthy traditions. PAR also recognizes the challenges and legitimate fears involved. Whenever a long-established pattern of spending is considered for change, opposition will arise. And revenue that is "freed up" from a dedication does not usually count as "new money" to spend, as the ensuing chapters will explain.

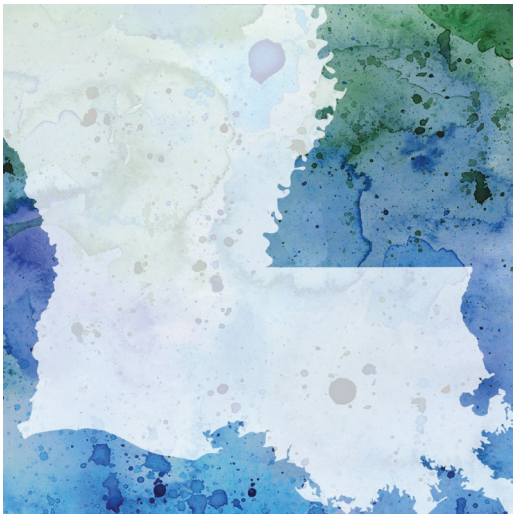
PAR strongly urges those wishing to redesign the Constitution to consider creating a more foundational document that loosens constraints on potential reforms rather than writing a new document with new constraints that further tie the hands of legislators and

local governments. There is a significant difference between an enduring document that *allows* fiscal reforms to take place versus a constitutional storage box that *enshrines* a detailed set of reforms that are different but no less flexible than before.

We in Louisiana should be able to create a new constitution that is a true foundational document allowing elected officials to pursue broad reforms and to budget with more flexibility within the same means. We should be able to re-examine the spending priorities locked into the Constitution in the 1980s and 1990s and determine if they truly reflect today's evolving needs and values. We should be able to establish a constitution of greater permanence that changes less with time. And we should one day hold in our hands a constitution that we as average citizens can read and understand, and that legislators and governors can more readily uphold. With leadership and consensus, we can build a better foundational document that opens the way to greater genuine progress.

Recommendations:

1. Create a more foundational constitution that loosens obstacles to reforms rather than containing constraints that are better housed in a statutory environment. Don't replace one set of constitutional constraints with another.
2. Require consideration of proposed constitutional amendments in two successive regular legislative sessions before the proposal is put to voters. (Article XIII, § 1)
3. Require a higher level of voter engagement to approve constitutional amendments. Practically speaking, this might be achieved by scheduling votes on an amendment only during certain statewide or national elections. (Article XIII, § 1)
4. Provide the option to allow a limited constitutional convention in which delegates would be authorized only to address matters and topics specifically included in the legislation calling for the convention. (Art. XIII, § 2)



Chapter Two

SERIOUS MONEY: TAXATION IN LOUISIANA

A Louisiana tax tour • Every sales tax a king • Tickling the income tax • The ineluctable deductible • Oil down, insurance and gambling up • Franchise tax dilemma • Our dubious local tax base • Confusing collections • Louisiana's unfortunate exceptionalism • Solutions are easy but hard

Serious Money: Taxation in Louisiana

As a Louisiana politician once said when sitting down to address inquiries at a legislative committee hearing, "The answer is money. Now, what's the question?"

Indeed, money would seem to be the most pervasive preoccupation of government. As sure as death, taxes are the inevitable reality of government operations. But not all structures of taxation get the same results. How do you construct a tax system that applies as little friction as possible on the free workings of the economy, and that treats most taxpayers fairly?

This chapter looks at the constitutional dimensions of tax policy in Louisiana and recommends improvements through a constitutional revision. The ultimate purpose of these recommendations is not to embed a new specific tax reform into our state Constitution. The intention is to develop a more foundational constitutional document that allows the tax system to be reformed and modernized over time through statutory changes.

Tax scholars have described Louisiana as having a "very constitutionally motivated" tax structure. The Louisiana Constitution authorizes governments to impose and collect certain categories of taxes, such as state individual and corporate income taxes, local and state sales taxes and property taxes. The Constitution also imposes limitations on state and local governments' ability to tax, primarily through mechanisms such as numerical caps on rates of taxation and mandatory exemptions and deductions. Although significant changes to Louisiana's tax structure can be achieved through statutory revisions, key structural changes require a constitutional amendment approved by the electorate.

Ideally, government revenue streams should be predictable and stable. State officials and legislators must be able to forecast with reasonable assurance the amount of revenue that will be available to finance the state's fiscal obligations, and individuals and businesses must have some level of confidence regarding the tax implications of their decisions and investments. Wealth, economic cycles and industry diversity all play a role in determining the stability of a revenue base.

> "Articles VI (Local Government) and VII (Revenue and Finance), together with Title 47 of the Louisiana Revised Statutes, dictate the basic structure and operation of Louisiana's tax system."

The tax structure, too, should contribute to predictability and stability, and it can most effectively do this by applying taxes broadly and fairly. In Louisiana, generally that has not been the case. We tend toward high tax rates with large offsets. This structure creates the appearance of an uncompetitive tax environment when in fact the overall tax burden is relatively low to average. But not necessarily low for all taxpayers. To fix this, the

laws underpinning a tax system should be flexible enough to allow lawmakers to design and modify the structure to achieve the qualities of a good and strong revenue code – one that is broad, fair, simple, transparent, competitive and stable.

Moving Forward

The recommendations in this Chapter seek to achieve balance by removing some of the Constitution's detailed mandates and restrictions while leaving in place provisions that reflect more fundamental principles about the role of taxes and financial controls in the state's overall fiscal landscape. The recommendations also aim to achieve an additional goal: a fairer, simpler and more transparent tax code that is easier to understand and to comply with, both for individuals and businesses.

Government and business leaders, policymakers, taxation experts and many citizens have long decried Louisiana's tax code as overly complex and unpredictable. It has more than 80 individual income tax exemptions and about 200 sales tax exemptions (some of which are temporarily suspended). Most are authorized by statute, but others, including many of the most expensive exemptions and deductions, are mandated by the Constitution. This long list of exemptions and deductions built into our current tax structure has eroded both the state and local tax base and, in turn, necessitated higher overall tax rates to raise the revenue needed to support public services. A tax structure that fosters instability is also one that invites intermittent calls for tax increases.

Over the years, PAR and other organizations and policy analysts have advocated for comprehensive reform to the Louisiana tax code, including an elimination of some exemptions and deductions and lower tax rates across the board. Most recently, PAR's president and two of its board directors served as members of the Task Force on Structural Changes in Budget & Tax Policy. The Task Force was created by the Louisiana Legislature in 2016 to make recommendations for permanent changes to the structure and design of the state's budget as well as the state's tax policies for individuals and businesses. In its final report, the Task Force offered 15 major recommendations for achieving a tax structure that is "fair, simple, competitive with other states, and stable over the short and long term." Key parts of the Task Force's recommendations, many of which are consistent with the recommendations in this report, would require amending the Constitution.

So, for this Chapter, let's look at the Louisiana tax structure, identify the constitutional elements, and make some recommendations.

Revenue and Taxation Principles

- **The Constitution should not contain numerical limits on state or local taxes. To the extent numerical limits are included, they should be clear and allow maximum flexibility for tax policy adjustments within those limits.**
- **Specific tax exemptions across all forms of taxation should be removed from the Constitution. However, the Constitution may allow exemptions to be created and regulated in statute.**
- **Some exemptions in statute could be granted heightened status by requiring a 3/5 or 2/3 vote to change or remove them.**
- **The Constitution should lift restraints on sales tax collection and administration to allow for a more uniformed, streamlined and statutorily authorized system.**
- **The Constitution should provide the legislature with greater flexibility to address fiscal and budget matters by allowing a wide array of subject matters during all legislative sessions.**

Source: Part I: Getting the Foundation Right

The Louisiana Tax Tour

Louisiana's revenue structure is an evolving mix of resources. The sales tax is the leading revenue generator for the state and many local governments, followed by an income tax that has grown proportionally over time. State and local governments receive a variety of gambling taxes, including those on casinos, video poker, race tracks and lotteries. Insurance premium taxes are a major contributor. Oil and gas taxes have declined in importance over the years.

The hallmark of Louisiana taxation is that we have relatively high rates and narrow bases. A tax rate is the percentage that determines the extent to which someone or something is taxed, whereas the base reflects who or what is subject to a tax. The base is narrowed by various tax breaks and exclusions. Louisiana features many such offsets that narrow the base of its sales, income and property taxes.

The sales and income taxes along with property taxes are the most significant tax types with constitutional ramifications. Article VII of the Constitution houses the state tax considerations while Article VI includes some key local taxation matters. What follows is a quick tour of the major points and constitutional consequences of the various tax types.

Where does the money come from?
Louisiana Tax Revenue Sources (Fiscal Year 2019)*

Revenue Source	Revenue Amount	% of Total State Taxes, Licenses, Fees
Sales Taxes (incl. vehicles)	$3.9 billion	31.0%
Individual Income Taxes	$3.7 billion	29.4%
Insurance & Excise License	$987 million	7.8%
Gambling	$897 million	7.1%
Mineral Rev./Severance**	$721 million	5.7%
Gasoline/Special Fuels Taxes*	$643 million	5.0%
Corporate Income and Franchise Taxes	$631 million	5.0%
Tobacco and Alcohol Taxes	$361 million	2.9%
Other	$768 million	6.1%
Total	$12.6 billion**	

* Legislative Fiscal Office presentation to October 2019 Joint Legislative Committee on the Budget.

** This is the total revenue before dedications. Total State General Fund Revenue is $10 Billion. See Chapter 3 for more information on constitutional dedications such as how gas taxes are deposited into the Transportation Trust Fund and mineral revenue dedications.

The Sales Tax Reigns

At the state level, Louisiana relies heavily on sales and use taxes, which account for about one-third of the state's overall revenue. For simplicity we will refer to this category as the sales tax. According to the most recent data available, Louisiana ranks No. 3 nationally for relying on sales tax collections as a percent of total state and local tax collections. That's no surprise, because Louisiana has the distinction of having the third highest average combined state and local tax rate in the nation, at 9.45%, right behind the top two at 9.47%.

To address a major shortfall in the state budget, Louisiana increased the state sales tax rate from 4% to 5% in 2016, followed by a lowering of the rate to 4.45% in 2018. Sales taxes were chosen for an increase partly because, unlike some other tax types, they can produce large and immediate revenue gains with higher rates. The sales tax rate will reduce to 4% in 2025. The local sales tax rate varies depending upon the jurisdiction and in most areas is 5% or close to it.

Louisiana is unusual in having an abundance of sales tax exemptions, numbering about 200. Importantly, the Legislature in 2018 temporarily removed about 100 statutory sales tax exemptions until 2025. The state will face a decision in the coming years of whether to get rid of those exemptions permanently. Collectively, sales tax exemptions erode the tax base, which in turn requires the state to impose higher rates to collect the desired amount of revenue. They also add significant complexity to the system both for businesses who collect sales taxes from consumers and for officials who administer the system.

Sales taxes tend to be more regressive and place a greater proportional burden on people with lower incomes than the income tax and property tax. But that burden is lessened by state sales tax exemptions on food for home consumption, prescription drugs and residential utilities. These key tax breaks – which are among the largest state tax breaks available in Louisiana – are aimed at individuals and families, not businesses. Local governments have the option of taxing food and nearly all the locals do so.

The Louisiana Constitution grants the Legislature authority to charge sales taxes and allows state statutes and regulations to make the distinctions of which goods and services are eligible. However, the Constitution imposes several important restrictions with significant fiscal impacts, both at the state and local levels.

Constitutional Impact on Sales and Use Taxes	
Art. VII, § 2.2	The State may levy a sales and use tax.
Art. VII, § 2.2	The State sales tax does not apply to (1) food for home consumption, (2) natural gas, electricity and water sold directly to consumers for residential use and (3) prescription drugs.
Art. VII, § 27	Neither the state nor local governments may impose a sales tax on gasoline or special fuels. State gas and diesel taxes in Louisiana are excise taxes levied at a per-gallon rate.
Art. VII, § 3	State sales and use taxes are collected by the Department of Revenue. Local sales and use taxes must be collected by a single collector for each parish.
Art. VI, § 29	Local governing authorities and school boards may levy a sales and use tax, if approved by a majority of local voters.
Art. VI, § 29	Local sales tax rates may not exceed 3% unless approved by the Legislature and a majority of local voters. Most local governments have approved higher rates, with the statewide average at 5%.

In 2002, voters statewide approved the "Stelly Plan" that swapped lower sales tax revenue for higher income tax revenue. After Stelly, food for home consumption and residential utilities were granted an exemption in the state Constitution. Prescription drug sales taxes, which were

already prohibited by statute, were given a constitutional-class exemption. These three exclusions account for approximately $1.1 billion in value, according to state estimates for fiscal year 2019.

The Constitution also prohibits imposing a sales tax on gasoline or diesel fuel, instead limiting taxes on these products to a per-gallon excise tax specified in Title 47 of the Louisiana statutes. This exclusion was added to the Constitution in 1990 when the excise tax was raised from 16 cents to 20 cents per gallon. The exclusion is estimated at $323 million in value for fiscal 2019. Combined, all four of these constitutional exemptions add up to a value of about $1.5 billion in lost revenue, or nearly 40% of the state's actual sales tax collections. Total constitutional and statutory exemptions amount to about $2.4 billion. While PAR would not recommend ending all sales tax exemptions, these figures demonstrate that sales tax rates could be reduced significantly to offset the removal of some exemptions.

The Income Tax Grows

The individual income tax is Louisiana's second major revenue source. These are paid by individuals, families and many businesses that do not file under the corporate income tax. The upper bracket rate is 6%, which is higher than 33 other states and is an outlier in the Southeast. Even more so than the sales tax, Louisiana's reliance on income taxes has grown significantly over the past several decades. In 1981, just 5% of Louisiana's overall tax revenue came from the individual income tax compared to nearly 30% now.

The state's reliance on personal income taxes also reflects recent changes to federal income taxes, which were reduced by Congress under President Trump. Because Louisiana's Constitution carries a mandatory deduction for federal income taxes paid, the federal decrease resulted in smaller deductions for Louisiana state income filers. That meant an increase in Louisiana's state income tax collections. That federal tax change is temporary. Weighing its high rate against its large offsets, Louisiana's individual income tax is not unusually burdensome compared to many other states that have an income tax.

There is no widely agreed-upon magic balance of the amount of sales-tax versus income-tax revenue that should be achieved to create the best tax system. The proportions do not have to be equal. However, if the state is much more dependent upon one type than the other, then disturbances in the chief revenue type can have disproportionate effects on state receipts. Also, income taxes, if progressively structured, will tend to grow more over time than sales taxes. For example, the Legislative Fiscal Office estimates that sales tax revenue will grow by 7% by 2023, whereas the individual income tax will rise by 11% in that time.

Article VII of the Louisiana Constitution grants the Legislature authority to impose an individual income tax as well as a corporate income tax:

> **Section 4.(A) Income Tax.** Equal and uniform taxes may be levied on net incomes, and these taxes may be graduated according to the amount of net income. However, the state individual and joint income tax schedule of rates and brackets shall never exceed the rates and brackets set forth in Title 47 of the Louisiana Revised Statutes on January 1, 2003. Federal income taxes paid shall be allowed as a deductible item in computing state income taxes for the same period.

The Constitution also expressly prohibits local governments and taxing authorities from levying an income tax. (Art. VII. § 4(C)) In this regard, Louisiana

is fairly typical since fewer than half the states allow local governments to impose their own personal income tax.

All but seven states impose a tax on individual income. Like most other states, Louisiana's income tax is graduated, meaning the rate goes higher as the person's income moves up from one income bracket to the next. That means people with lower incomes pay an overall lower percentage of their income in taxes than do people with higher incomes. Since before 1974, Louisiana has imposed three distinct income tax rates and brackets. While the specific brackets for taxpayers have changed over the years, the rates of taxation for each of those brackets have remained constant at 2%, 4% and 6%.

The original 1974 Constitution capped personal income taxes at the rates and brackets in effect on January 1, 1974. However, in 2002, as part of the "Stelly Plan," named for Rep. Vic Stelly, voters approved a set of major changes to both the state sales tax and individual income tax. In general, the plan sought to swap less sales tax revenue for more income tax revenue by constitutionally prohibiting the state from taxing three major sales tax categories of goods and services: food for home consumption, prescription drugs, and residential utilities. Prescriptions were already untaxed under statute.

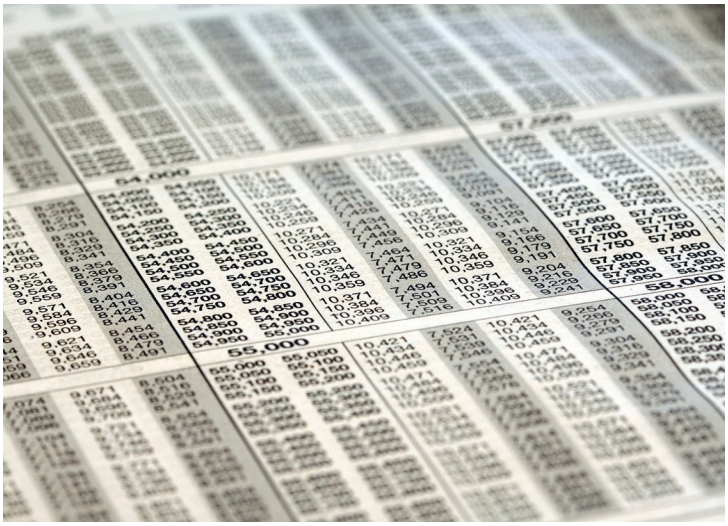
Also, the Stelly Plan changed the individual income tax brackets to increase progressivity and eliminated federal excess itemized deductions as a deduction on the state income tax. The plan kept existing income rates of 2%, 4%, and 6%, but widened the tax brackets for the lowest income taxpayers and reduced the brackets for taxpayers making over $25,000. All in all, the Stelly Plan produced a more progressive tax system and constitutionally capped incomes taxes at the new rates and brackets approved in 2002. Income tax revenues grew steadily from 2002 to 2007.

In the wake of Hurricanes Katrina and Rita and the windfall of new state revenue from economic recovery activity, the Legislature decided to reverse the Stelly income tax changes. Under Governor Kathleen Blanco, the state reestablished the excess itemized deduction in 2007. The following year, during Gov. Jindal's first year in office, the Legislature expanded the tax brackets to pre-2002 levels. No changes have been made to either the brackets or rates since.

Current Rates & Brackets versus Constitutional Caps

This table shows the current tax rates and brackets in Louisiana, in italics. The Constitution caps the tax rates at their current levels while allowing the brackets to adjust to a maximum point, shown in bold.

Rate	Single	Filing Jointly
2%	*$0-$12,500*	*0-$25,000*
	$0-$25,000	**$0-$12,500**
4%	*$12,500-$50,000*	*$25,000-$100,000*
	$12,500-$25,000	**$25,000-$50,000**
6%	*Over $50,000*	*Over $100,000*
	Over $25,000	**Over $50,000**



The Ineluctable Deductible

Despite its short length, the Constitution's income tax provision contains another very significant mandate. Since 1974, the Constitution has required that taxpayers, both individual and corporate, be allowed to deduct 100% of their federal income tax liability from their adjusted gross income for state income tax purposes. The deduction inextricably ties the tax liability of Louisiana taxpayers, and ultimately the state's revenue outlook, to changes in the federal tax code made in Washington, D.C.

Only two other states, Alabama and Iowa, provide a deduction similar to Louisiana's, and in both those cases the deduction is mandated by statute, not their constitutions. Three other states -- Missouri, Montana, and Oregon -- also allow a deduction for federal income tax liability but limit the deduction to around $5,000 per taxpayer.

The federal income tax deduction lowered Louisiana's individual income tax revenues by $744 million in fiscal 2019. That figure is down slightly since the federal income tax reductions passed in 2017. Because the cumulative financial impact of the federal income tax deduction is so large, tax rates must be higher to offset the loss of revenue. Thus, almost all proposals in recent years to lower income tax rates have also included eliminating the deduction for federal tax liability.

As noted earlier, Louisiana taxpayers also can reduce their state taxable income by the amount of their excess itemized deductions on their federal form. But fewer people have been able to exploit this state tax deduction after the federal tax changes, which increased the federal standard deduction and disallowed certain types of write-offs. With less to deduct on their state forms, many Louisiana taxpayers got a higher state tax bill. As a result, income tax revenue grew. Although it was originally part of the Stelly Plan changes, the excess itemized deduction is a statutory matter, not a constitutional one.

By capping income tax rates and brackets and mandating a state deduction for federal income taxes in the Constitution, Louisiana has all but guaranteed that no significant changes to the state's income tax policy can be achieved without amending the Constitution. The Legislature would need greater flexibility to adjust to changing fiscal conditions, including thorough changes to the state's tax policies.

Oil, Gas & Other Mineral Revenue

Energy money used to be king in Louisiana. In 1981, mineral revenues constituted over 40% and sales tax revenue constituted just over 20% of Louisiana's budget. Due to declining oil and gas activity and growing income tax revenue from higher paid workers in the state, mineral revenues today only account for approximately 6% of total tax receipts. The state's lower dependence on energy taxes is generally viewed by tax experts as a positive development that has reduced the state's vulnerability to what was once a volatile source of revenue. After all, the oil collapse of the 1980s brought an

economic depression to Louisiana and a massive restructuring of the state's fiscal policy. The Constitution contains a host of specific instructions on how mineral revenues must be appropriated; much of this revenue does not go into the State General Fund. The restrictions often depend on how and where the revenue was generated. (See Chapter Three.)

Insurance

Excise license and other insurance taxes make up about 8% of state revenue, at nearly $1 billion annually. Some of these premium taxes have been applied to Managed Care Organizations that provide publicly funded coverage for Medicaid enrollees. This use of the premium tax essentially works as a state match to draw down a great deal more money from the federal government to pay for Medicaid programs in Louisiana, including the adult Medicaid expansion program. Some insurance taxes, therefore, are strongly embedded into the state budgeting process.

Tax reform proposals generally have not sought constitutional changes to address premium taxes. Louisiana allows insurance companies to offset their corporate income tax liability with a credit for premium taxes paid, but this tax policy is statutory, not constitutional. Louisiana's rate structure creates so-called "retaliatory" insurance taxes, which some say has a negative impact on economic development, but this is not a constitutional matter.

Gambling

In somewhat oxymoronic fashion, Article XII of the state Constitution says, "Gambling shall be defined by and suppressed by the Legislature." In fact, that statement and a one-sentence prohibition on lotteries were the only thing the 1974 Constitution had to say about gambling. But no one these days would be shocked – shocked! – to find that gambling is going on here. Louisiana is one of only two states that permit such a broad scope of gambling, including a land-based casino, riverboat casinos, video poker, horse racing, racetrack slot machine "racinos", raffles, bingo, Keno, fantasy and sports bets and nationally and state-run lotteries. Plus, we have several large tribal casinos. Alas, there is no dog racing.

Since 1974, constitutional amendments have authorized lotteries and local referendums allowing parishes to permit forms of gambling. A legal interpretation that casino "gaming" is not "gambling" aided legislation that expanded the industry. The state and many local governments now rely on gambling tax revenue. Recent efforts to increase gambling revenue have centered less on the idea of raising tax rates and more on initiatives to expand gambling, loosen regulations and allow more competitive amenities and services at casinos to capture more customers. Also, sports betting has taken root and is expected to generate state tax revenue.

Business Taxes

Although much attention is placed upon corporate income and franchise taxes, they do not represent the bulk of taxes on business. Louisiana businesses pay about half of all sales taxes, the majority of property taxes and many local and state regulatory and occupational licensing fees. The largest set of sales tax exemptions apply to food, prescription drugs and residential utilities, all of which mainly benefit households rather than companies. Many companies and partnerships, including some large operations, pay substantial revenue to the state by filing through the individual income tax.

Taken separately, corporate income and franchise taxes account for about 4% of Louisiana's total net tax receipts, which is a normal amount compared to other states with comparable income taxes. Louisiana's upper rate for corporate income tax is 8%, which is higher than 37 other states, including all the states in the competitive Southeast. The high rates should not be surprising, because Louisiana's corporate tax structure includes a list of exemptions, credits and rebates, including very costly ones, that significantly lower the state's net tax receipts. The high rates and exemptions, along with economic cycles, contribute to volatility in corporate tax revenue.

The state Constitution allows corporate income tax filers to deduct their federal tax bill from their state corporate income, just as it does for individual income tax filers. This deduction is greatly more favorable to some corporations than to others. That means a removal of the federal deduction in favor of a lower tax rate would create winners and losers among Louisiana corporations.

Our Dubious Local Tax Base

Louisiana's local governments, which are not permitted to impose an income tax, rely more heavily on local sales taxes than most local governments in other states.

Louisiana exceptionalism

Louisiana ...

1. Ranks No. 2 nationally for highest combined state and local sales tax rate.
2. Ranks No. 2 nationally for the highest average local sales tax rate.
3. Is one of only five states where the average local sales tax rate is higher than the state sales tax rate.
4. Ranks No. 1 in the Southeast for highest upper rate of corporate income tax.
5. Ranks No. 13 nationally for highest upper rate of corporate income tax.
6. Is one of only 12 states with a franchise tax that isn't eliminated or being phased out.
7. Has the nation's highest franchise tax rate except for Connecticut, which is eliminating the tax.
8. Ranks No. 2 in the Southeast for highest upper rate of individual income tax.
9. Ranks No. 17 nationally for highest upper rate of individual income tax.
10. Is the only state whose Constitution requires an income tax deduction for federal taxes paid, and one of only three states with a full deduction.
11. Is one of only 10 states that allow full taxes on business inventory (four others have partial tax).
12. Is one of only 9 states that allow a sales tax on manufacturing machinery (a local tax in Louisiana).

Source: Tax Foundation; PAR research

Franchise Taxes

In addition to the corporate income tax, Louisiana imposes a corporate franchise tax, known as a "capital stock tax," which taxes wealth and investment that represents the equity of a corporation.* Businesses are required to pay the tax regardless of whether they are profitable or not. Louisiana's franchise tax rate is the second highest in the nation. Only Connecticut, which is phasing out its franchise tax, has a higher rate.

The business community and many policy organizations, including PAR, have long criticized the corporate franchise tax as discouraging companies from accumulating capital, establishing a headquarters or expanding in Louisiana, which in turn inhibits economic development. This tax is levied on the sum of all corporate stock, paid-in capital and retained earnings. In other words, any corporation that is heavily capitalized -- which is the most desirable kind to attract -- would be less likely to locate in Louisiana due to this annual assessment.

This is one of the reasons few states have a franchise tax. Four states, including Mississippi, are phasing out their franchise tax, leaving only Louisiana and 11 other states to continue imposing this type of tax. Five of those states impose a cap on the maximum tax liability a business is required to pay.** Louisiana imposes no cap.

Louisiana is the only state in the nation recently to have significantly expanded the base of its franchise tax, running against the national trend. According to a recent Tax Foundation report: "As legislators have wizened up to the damaging effects of capital stock taxes, many states have reduced them or repealed them altogether. Kansas completely phased out its capital stock tax prior to tax year 2011, followed by Virginia and Rhode Island in 2015 and Pennsylvania in 2016. New York and Mississippi are in the process of phasing out their capital stock taxes, with New York's scheduled to phase out by 2021 and Mississippi's by 2028. Illinois repealed its franchise tax in its most recent session, and will begin phasing it out in 2020, completing the process by 2024. Connecticut will phase out its capital stock tax over five years starting in 2021."

The franchise tax is widely regarded as an antiquated type of taxation that discourages investment and causes costly compliance and auditing problems. The franchise tax is exceptionally complex to administer by the government and to calculate for businesses. Audits and lawsuits are more common with the franchise tax than with other tax types. Louisiana has always desired to attract corporate headquarters, but this tax works counter to that goal.

Louisiana gets little bang for its buck when it comes to franchise taxes. Despite comparatively high rates, the tax generates little net revenue. In 2018, companies

Continued next page

had $550 million in liabilities to the state for the franchise tax. But after credits and exemptions were applied, the tax generated a net revenue of only $127 million. Removal of the franchise tax would face some major obstacles in the Legislature. If the tax were to be removed in a revenue-neutral manner, then the entire tax liability – sometimes exceeding $500 million annually – would have to be compensated, which is a tall order. That's because much of the credits and exemptions applied to the franchise tax could be applied also to the corporate income tax. Also, a relatively small fraction of companies are responsible for the lion's share of the tax liability. An elimination of the tax would be criticized as a break that is mostly favorable to some of the state's largest corporations. Also, advocates of the tax see it as a more steady revenue source than the corporate income tax, which is more likely to rise and fall with economic cycles. PAR has recommended options to address these obstacles.

The Louisiana Constitution contains no mention of the corporate franchise tax; the tax is required only by statute (see La. R.S. § 47:601 et seq.). Eliminating the tax or phasing it out, therefore, would not require a constitutional amendment. However, proposals in recent years, in order to be revenue neutral, have coupled a phase out or elimination of the franchise tax with elimination of the corporate income tax deduction for federal tax liability, among other adjustments. Changing that deduction would require amending Art. VII, § 4(A) of the Constitution.

If the franchise tax is not eliminated or phased out, some might suggest using a method employed by Connecticut to require companies to pay either the corporate income tax or the franchise tax, whichever is higher. This approach in theory would ensure that some large multi-state companies reporting flat or negative income would still have a significant franchise tax liability to the state. A disadvantage of this approach is that it would resemble an alternative minimum tax, which is typically not graded well for good tax policy. It also would not relieve companies from the filing and compliance burdens of the franchise tax.

Another option, which PAR has proposed, would be to raise the floor of the taxable base for the franchise tax. Even a slight raising of the floor would relieve tens of thousands of businesses from having to comply with the tax while causing only minor revenue impact for the state. The great majority of companies paying the franchise tax have a minimal tax liability from it. This approach would exempt the small payers and continue to tax the large payers. The Legislature passed a crude form of this plan in 2020 in the form of a suspension of law. The constitutionality of that law suspension is questionable. The better long-term solution is a statutory fix.

Franchise Tax Recommendation:

The franchise tax should be eliminated or phased out. Constitutional changes would not be needed directly to achieve that outcome, but could help indirectly by allowing offsets.

* The initial franchise tax is $10, then: $1.50 for each $1,000 up to $300,000 of capital employed in Louisiana, and $3.00 for each $1,000 in excess of $300,000 of capital employed in Louisiana.

** Mississippi and New York are included in this count but have enacted laws to phase the tax out.

At 5%, Louisiana's average local sales tax rate is the second highest in the nation, narrowly behind Alabama, according to the Tax Foundation. In Baton Rouge the local rate is 5.5%. Louisiana is one of only five states where the average local rate is higher than the state sales tax rate.

By comparison, local government property tax collections in many places in Louisiana are relatively meek, due to the homestead exemption, an assessment freeze for seniors and other breaks enshrined in the state Constitution. Nearly half of the state's parishes have 49% or more of their homesteads 100% exempted. Local governments can raise the millage on property assessments, and the millage rates around the state vary. But the amount of property that can be assessed is limited. Businesses pay the better part of local property taxes in Louisiana, according to a study by Tulane economist Steven Sheffrin.

On a statewide basis Louisiana's property tax burden is low, particularly for homeowners. The most recent available comparative data from fiscal year 2016 shows that Louisiana ranks 43rd nationally in property taxes collected per capita ($887). The state ranks 42nd nationally in property tax collections as a percent of total state and local tax collections, with property taxes accounting for 23% of total collections. By contrast, our neighbor Texas receives 44% of its revenue collections from property taxes. A study by Tax-Rates.org shows Louisiana with the lowest median percentage of property tax for homeowners among all the states. As one personal finances website put it, "Louisiana is the next best thing to a state with no property tax."

In Louisiana, property taxes support public schools at only half the national average. As a result, local governments tend to rely more on the volatile sales tax, which is less resilient than property tax revenue in economically hard times. Also, Internet commerce is complicating sales tax collections for local governments. (See sidebar on the decentralized sales tax system.)

At the local level, tax revenue sources vary widely among parishes and municipalities. Some parishes rely disproportionately on sales and use taxes to fund local services. Others, such as St. James Parish with major manufacturing and petrochemical facilities, rely more on property taxes. School systems and parish governments across Louisiana vary in their proportions of sales tax versus property tax support.

Also, business inventory is assessed for local property taxes, making Louisiana one of only 10 states to do so, according to the Tax Foundation. Four others partially tax inventory. Although "inventory" is not specifically mentioned in the state Constitution, it is assumed to be part of business property that can be assessed. Louisiana offers state tax credits to businesses that pay the local inventory tax, although this system has restrictions and limits.

Texas and Florida have high state sales taxes but no income tax. In those states, high property taxes and local responsibility for key government and social services create a culture of more independent local communities. It is not only the tax structure in these states that is different from Louisiana, but the local community responsibility for public services also. Those two states have seen large in-migrations from other states and strong job growth despite their local governments' high property taxes.

The Louisiana Constitution allows a very limited state tax on property in addition to the local property tax, but this tax has not been authorized in statute. A state property tax has been proposed previously as a source of funding for certain dedicated purposes or to offset tax cuts in other areas. The Constitution prohibits real estate transaction taxes.

A Confusing Local Sales Tax

Article VI, § 29 of the Louisiana Constitution authorizes local governments to levy and collect their own sales and use taxes, provided that any new tax, any renewal or any increase to an existing tax must be approved by a majority of local voters. In addition to local parish governing authorities, school boards are also authorized to impose a sales tax. Thus, in many parishes, particularly those that also include municipal school districts, there are a host of local entities each imposing their own separate sales tax rate.

Altogether, Louisiana has more than 450 different sales tax jurisdictions, many of which have their own unique rate and base. Indeed, there are at least seven parishes in Louisiana that impose at least six or more different sales tax rates and another 14 that impose at least four different sales tax rates.

For the most part, local taxing authorities share a similar tax base, but local sales tax bases are not aligned with the state sales tax base. Thus, local sales tax bases can and do differ from the state sales tax base, and even within a single parish the sales tax base may vary from one governmental unit to another.

For example, while the Constitution requires that the state exclude the "Big Three" (food for home consumption, residential utilities and prescription drugs) from its sales tax base, local governments are not similarly required to exempt these items. In fact, many political subdivisions tax food. Moreover, even within a single parish, some taxing authorities may tax the items while others may not. Similarly, while the state does not tax manufacturing machinery and equipment, local taxing authorities have the option to tax these items and most parishes do.

With respect to rates, as noted above, the Constitution allows local taxing authorities to set their own rates, subject to voter approval. However, for any local authority wishing to raise its sales tax above 3%, the Constitution requires that the Legislature must first approve the tax increase before it goes to local voters for their approval. Under this system, most local jurisdictions have raised rates to the 5% range.

In this regard, the Louisiana Constitution is an outlier. Only a handful of other states impose any caps on state or local sales tax rates. Moreover, this added layer of approval, which in effect gives legislators from one parish the power to block a sales tax increase that voters in another parish

favor, not only makes it harder for local governments to raise sales tax revenue but also has the indirect effect of increasing local governments' financial dependence on the state. This topic will be covered in more detail in Part III concerning state and local relations.

Summary and Recommendations

What if we wanted to lower Louisiana's high tax rates without gouging the state budget? What if we wanted a tax structure that was more appealing to business investment and more competitive for economic development? What if local governments wanted a more reliable broad base of property taxes rather than a narrow base of sales taxes? What if we wanted to create a more stable state and local tax structure? What if we wanted to improve our negative rankings for having a poor tax code?

High tax rates can discourage businesses from investing and expanding and discourage workers from moving to Louisiana. Our tax system is characterized by high rates, lots of exemptions and low returns. It not only impacts individuals and families negatively but also makes Louisiana less competitive economically.

Whatever your goals for an improved Louisiana tax system, the best way to reach them in a broad and effective manner would be to revise the state Constitution. We do not have to embed a specific new tax structure into the Constitution. Preferably, we need only make Louisiana's constitution into a truly foundation document that allows tax reforms to take place. These recommendations would help achieve that goal.

Voting Threshold Recommendation:

The Constitution's requirement of a 2/3 vote to increase taxes or eliminate tax exemptions should be retained. In addition, the creation of any new tax exemption should require a 2/3 vote.

Exemptions in this context should be broadly defined to include exclusions, credits, rebates, deductions and other similar provisions.

The state needs a high bar and large consensus to warrant an increase in taxation, and so the current 2/3-vote standard should be kept. However, the primary reason Louisiana has such high tax rates is the extensive use of various types of exemptions, which narrow the tax base. The large number of exemptions has also led to a complex tax code that is difficult to navigate, particularly for businesses. Establishing a higher standard to add new exemptions to the tax code will not only help create a simpler, fairer tax code but will also help achieve the larger goal of moving to a broader base and lower rates.

Income Tax Recommendations:

Remove the existing constitutional caps on income tax rates and brackets. Consistent with the current Constitution, a 2/3 vote of the Legislature would still be required to increase any taxes, including through changes to individual tax brackets.

The current Constitution caps income tax rates and brackets at levels approved in 2002. (Art. VII, § 4) This limitation restricts the Legislature's ability to adjust income taxes as part of comprehensive tax reform. The most adaptable and foundational approach would be to eliminate limits on rates and brackets. To the extent that future legislators or convention delegates wish to preserve some form of limitation on income taxes, care should be taken to apply simple methods that are as unrestrictive as possible, such as a single cap versus multiple caps on brackets and rates. Besides, the goal of many reformers has been to achieve lower rates offset by reduced deductions and exemptions.

Transfer the mandatory state income tax deduction for federal income taxes paid to statute to provide the Legislature greater flexibility to adjust or remove the exemption with a 2/3 vote.

The current Constitution mandates this deduction. Moving the provision to statute would better enable comprehensive tax reform that seeks to achieve a broader base and lower rates. As part of this step, the Legislature should be required to mount a 2/3 vote to adjust or eliminate the deduction. Strong consensus should be obtained for such major changes.

This move would allow the Legislature to lower income tax rates across any or all brackets. Valued at more than $800 million, the deduction's removal could be applied to lower rates, offsetting reductions of other tax types or higher revenue. If proponents of this idea wanted to reinforce their intentions, they could propose that any partial or full removal of the deduction would have to be joined by a reduction in income tax rates or other tax types.

Given the magnitude of this fiscal impact, almost all major tax reform proposals have included eliminating this mandatory deduction. This change would grant the Legislature greater flexibility to decouple Louisiana's income tax base from federal tax changes. The current system adds volatility to the state's long-term revenue outlook and ties revenue wins and losses for the state to decisions in D.C. that state officials have no control over.

Sales Tax Recommendations

Some of the changes necessary to streamline and improve Louisiana's sales tax regime may be accomplished by statutory changes that do not require a constitutional amendment. For example, in order to achieve lower rates, the Legislature should continue to broaden its sales tax base by permanently eliminating the approximately 100 exemptions that have been suspended temporarily and identifying additional exemptions to abolish. Adding certain services that are taxed in surrounding states to the sales tax base could also be accomplished statutorily and could offer the state an opportunity to lower overall rates.

However, achieving real uniformity and more simplicity in Louisiana's sales tax regime will require amending Articles VI and VII of the Constitution to bring exemptions and exclusions in line at the state and local level, provide the state with flexibility to adopt a uniform system of sales tax collection and administration and to enable local governments to become less dependent on sales tax revenue to support local functions.

Transfer the "Big Three" sales tax exemptions to statute. This change will provide the Legislature greater flexibility to remove the exemptions with a 2/3 vote and lower the tax rate.

The current Constitution mandates three major sales tax exclusions for food for home consumption, residential utilities

and prescription drugs (the "Big Three"). (Art. VII, § 2.2) Altogether, these exclusions cost the state approximately $1.1 billion in lost tax revenue. Moving the Big Three back to statute would provide the Legislature greater flexibility to remove one or more of the exclusions and lower the state sales tax rate accordingly.

Remove the constitutional barrier to a more centralized sales tax collection system.

The current Constitution requires that each parish have a single tax collector for local sales taxes. This system is burdensome for businesses and places Louisiana at a disadvantage when attracting and growing business. (Art. VII, § 3) Removing the mandate from the Constitution will give the Legislature greater flexibility to implement a more uniform and centralized system of sales tax administration, collection and audit that is easier for businesses to navigate and helps ensure Louisiana's collection of online sales taxes is consistent with current legal requirements.

A transition to a new system would be complex and would take time. As part of the deal in moving to a centralized system, the state could consider a hold-harmless provision to ensure local governments are not financially short-changed.

PAR also recommends moving to a more uniform state-local sales tax base so that the same set of goods and services are taxable at the state and local level. This uniformity would not have to be perfect, but changes in this direction would simplify Louisiana's tax code and ease the burden on businesses operating in multiple tax jurisdictions.

Decentralized Sales Tax Collection System

The cap on local sales tax rates is not the only feature of Louisiana's sales tax system that sets it apart from other states. The manner in which we collect and administer sales taxes at the local level is unique as well. In Louisiana, state sales taxes are collected and administered by the Louisiana Department of Revenue. But the Constitution mandates that local sales taxes be collected and administered by "a single collector in each parish." In most parishes, the "single collector" is either the sheriff, school board or police jury. Colorado also has a dual system of administration for state and local sales taxes and Alabama partially does. This decentralized system is distinctly unfriendly to business.

In addition to high rates imposed on consumers, Louisiana's current sales tax system is also incredibly complicated for businesses to navigate. The Louisiana Constitution (Art. VI, § 29) empowers local governing authorities, in addition to the State, to collect sales and use taxes. This means that upon receipt of sales tax revenues from consumers, businesses must pay both the state collector (Louisiana Department of Revenue) and the parish collector (generally the sheriff, school board or police jury). This system is an outlier from other states, where businesses are required only to remit sales taxes to the state, who then distributes the funds to local governments.

Further complicating matters, the Louisiana Constitution and statutes collectively contain over 200 separate sales tax exemptions and prohibitions. However, because Louisiana law does not require the state and local governments to share a uniform sales tax base, the state may offer tax breaks for certain transactions, while local governments may or may not also give that same benefit.

With over 450 different sales tax jurisdictions, each with its own unique rate, and close to 60 different sales tax collectors, companies that transact business in multiple parishes or statewide must know not only the rates within each parish and local taxing jurisdiction but must also understand the intricacies of both state and local tax exemptions and exclusions in order to calculate their total tax basis. Louisiana businesses also face the added burden of being subject to separate audits from differing tax collectors, whereas most states have only a single audit agency. The combined effect is a sales tax system that is costly to administer and to comply with, and ultimately disincentivizes business investment in Louisiana.

A more recent effect of Louisiana's decentralized and complex sales tax system is its impact on the state's ability to collect revenue from online transactions. In 2018, the United States Supreme Court ruled in South Dakota v. Wayfair that states may charge sales taxes on internet purchases made from out-of-state sellers, even if the seller does not have a brick and mortar presence in the taxing state.*

While the Court's decision opened the door for states to significantly increase sales tax collections, the Court also conditioned its ruling on states having in place a sales tax system that is not overly burdensome for online retailers. Specifically, the Court cautioned that a state's sales tax system must include a certain level

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Decentralized Sales Tax Collection System

of uniformity, both with respect to the tax base and administration of the system. Louisiana's current sales tax system displays neither of those characteristics. To be fair, Louisiana has taken some steps to comply with *Wayfair*, although its efforts are more of a band-aid approach rather than a long-term solution.

Through legislation, Louisiana formed the Louisiana Sales and Use Tax Commission for Remote Sellers within the Department of Revenue to help the state comply with *Wayfair*. The commission is designed to perform as a single entity for handling revenue from remote sales transactions. Rather than requiring online retailers to collect different amounts of local sales taxes for each of Louisiana's nearly 500 local taxing authorities, the Commission initially opted to charge out-of-state online retailers a consistent tax rate of 8.45%. The state gets 4.45% and the local governments get 4%. The local revenue is then distributed to local governments quarterly based on the population in each parish.

Some parishes are winners and others are losers under this system. East Baton Rouge Parish, for example, is collecting 4% on transactions through this centralized system even though its local sales tax rate is 5.5%. Bienville Parish, on the other hand, comes out a winner under the current system, since its local sales tax rate is only 3%.

This year the Commission put in place a system that would allow it to distribute local revenue based on each local jurisdiction's specific tax rates and exemptions. Meanwhile, local jurisdictions are attempting to establish their tax collection authority by taxing the online sale directly and assigning the appropriate tax rate to the jurisdiction of the purchaser's home or business. This system would seem to compete with the state's effort to command greater collection authority on shipped items.

Whether Louisiana's current system for collecting and distributing online remote sales tax revenue would withstand a legal challenge under the *Wayfair* standard remains an unknown. Its marked lack of uniformity would seem to make it ripe for a challenge on fairness grounds, potentially putting at risk millions of dollars of expected state and local revenue. For this reason, among others, the state's goal should be a truly modern centralized and streamlined system for all retailers. Not only would the system ensure that Louisiana is able to reap the benefits of the surge in online retail, but it would also improve Louisiana's overall business climate.

*South Dakota v. Wayfair, Inc., No. 17-94, 585 U.S. ___ at 23 (June 21, 2018).

Chapter Three

SUCCESSFUL MONEY: SPENDING AND DEDICATIONS

Mandated spending mechanisms • Fecund with funds • Dedicated to dedications • Tax or fee? • Indiscreetly non-discretionary • Know your "state general fund equivalents" • A new framework • Constitutional Funds • Permanent Trust Funds • Program Funds • Sunsets • Seven to the dumpster

Chapter Three

Successful Money: Spending and Dedications

A Louisiana philanthropist once said, "Success in life is measured not by how much money you make, but by what you do with it." That proverb ought to fit the definition of successful government, also.

The best financial practices for a state might include guidance that could apply to ordinary households: Live within the means of your operating budget. Don't pay your operating expenses with resources that won't be available in the future. Pay your debts. Plan for the long term. Start a good savings plan and stick to it. Work toward the best possible credit rating. Re-think your spending priorities regularly. And be honest, with yourself and those with whom you have a financial relationship. For state governments we might add: Keep it all transparent to the citizens.

Before a state decides what it wants to spend its money on, it should firmly establish these types of fiscal principles. A constitution is an appropriate place for foundational, common-sense thinking. Such prudence might include certain limits. For example, there are some values we like to see in a business or individual that we wouldn't want government to pursue. We might celebrate a business that's good at growth, diversification and expanding its forms of revenue. But we may think less of those qualities in a government that's primarily bent on growing and making more money through new taxes or fines. These considerations are also on the table for a constitution.

Louisiana's Constitution requires a balanced budget, which is common among states. This sound principle differentiates the states from the federal government, which often borrows heavily to pay its regular ongoing expenses. In addition, the state Constitution sets up a system for an expenditure limit, places a high priority on meeting debts, restricts the uses of non-recurring income and requires budgeting based on consensus revenue forecasting. In other words, don't make it easy to fake how much money you've really got. These are good provisions that, at least in principle, should be kept in any revised constitution.

So, this is the important balance that must be sought when writing the fiscal portions of a state constitution. For taxing

or spending, don't constrain the Legislature from making reforms and re-evaluating program priorities. Leave the details to the statutes. But the public needs protections, too. Limits will be needed in a constitution, and they should be made broadly, sparingly and wisely.

This chapter supports the concept of foundational fiscal guidance in a constitution. It focuses on our current constitution's many dedications and spending mandates. It challenges the notion that all dedications must be immutable. And it questions whether we sometimes spend dedicated revenue simply because we have it, rather than rethinking its amount or best use.

PAR proposes an innovative restructuring of how Louisiana manages its dedications and its unusually large number of special funds that are locked in the Constitution. This chapter presents that new framework. Chapter Four follows with a detailed breakdown and recommendations for each of Louisiana's constitutional funds.

Fecund with Funds

In addition to establishing the basic structure of Louisiana's tax system, Article VII of the Louisiana Constitution addresses how the state can, or in some cases must, spend its money. More specifically, Article VII contains more than two dozen distinct dedications of various categories of state revenue, including taxes, mineral revenues, fees and settlements.

For almost all of these dedications, the Constitution creates a separate "special fund" within the state Treasury and requires that money in each fund be appropriated by the Legislature only for specific purposes and programs authorized by the Constitution.

The original 1974 Constitution contained only two special funds: The Bond Security & Redemption Fund and the Revenue Sharing Fund. Both of those funds essentially are financial pass-through mechanisms. Over the past 45 years, 26 new constitutional funds have been added, primarily to Article VII, each with its own set of detailed restrictions on the type of revenue that must be deposited into a fund and how the money can be spent.

Of note, over this same period, the Legislature has never passed a measure to eliminate a fund from the Constitution. Instead, history has shown that once a dedicated fund is enshrined in the Constitution, it is there to stay, regardless of how the state's fiscal needs and priorities may change over time.

Louisiana's Constitutional Dedications

In recent years, there has been much public discourse about "locked-up" spending. These discussions have focused primarily on the structure of the state's finances and the amount of dedicated funding that has made it difficult for the Legislature to craft a budget each year to satisfy current needs and priorities. And while many might agree that freeing up more state general fund dollars and granting the Legislature greater flexibility to fund priorities are desirable goals, there has been little attention toward exactly how to get there.

To get to the bottom of this, let's look at the types of dedications in the Constitution and how they fit into the state's overall budget landscape. There are different types of dedications, each with a distinct set of conditions.

Diversions of the State General Fund

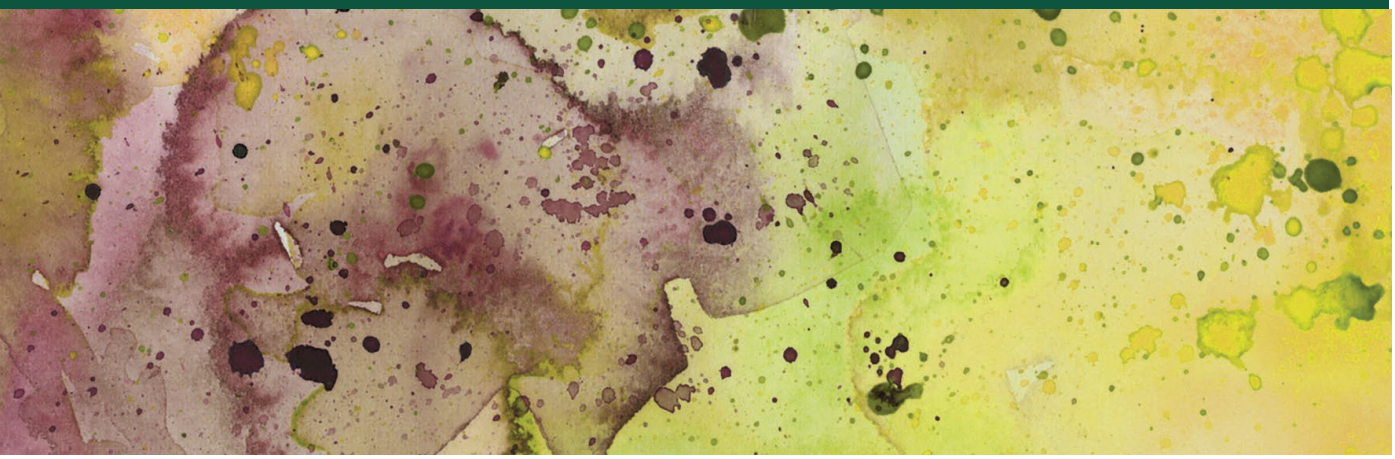
The first broad category is diversions of state general fund dollars. These are state taxes set aside for specific purposes and that otherwise would flow into the general fund. The general fund is basically the annual amount of money drawn from state taxes and fees, minus dedications. Most of these diversions are contained in statute, but

Guidance on Funds and Dedications

The principles listed below reflect these competing policy rationales for and against certain constitutional dedications. They therefore aim to reduce the number of constitutional dedications to provide the Legislature greater fiscal flexibility while also recognizing that certain dedications may be necessary to operate important budget mechanisms or to adequately prioritize the state's long-term needs. The Constitution should allow our state to be economically competitive and flexible enough to respond to the needs of its citizens.

- The Constitution should contain only those structural budget rules that are essential to ensure the basic function of state government. That is, state government would not be able to function effectively if only protected in statute. These protections may include a balanced budget requirement, a Budget Stabilization Fund and a Bond Security & Redemption Fund.
- Other constitutional funds that are designed to protect important state interests should be moved to statute but granted some heightened protection, such as a 3/5 or 2/3 vote to change or remove.
- Any spending limits in the Constitution should allow for catastrophic events and the potential for paying debts and pension obligations in a way that would reduce long-term costs to the state.
- Constitutional funds that are designed to protect the same general priority (e.g., healthcare, education, environment) should be merged or consolidated.
- The spending priorities of state funds should be re-examined and redesigned to meet the current and future needs of the state.
- The Constitution should require the Legislature to periodically re-evaluate the Constitution, including all constitutional funds, to analyze the document's effectiveness and the impact of specific funds and provisions on the state budget.
- Defunct funds, funds with long-standing zero balances or inactivity, and funds that have been declared unconstitutional should be removed from the Constitution.

Source: Part I: Getting the Foundation Right



some are also contained in the Constitution through designated funds and sub-funds.

The Revenue Estimating Conference, as part of its duty forecasting state revenue, estimates the amount that certain statutory and constitutional funds will divert from the general fund. For fiscal year 2019, approximately $4.2 billion of Louisiana's total budget of $30.6 billion was "dedications" of state general fund revenue, which included both constitutional and statutory dedications.[1]

One example is the Transportation Trust Fund, which generates approximately $600 million in annual proceeds from excise taxes on motor fuels. The Constitution dedicates those dollars to construction and maintenance of roads, bridges and other major infrastructure. Another example would be the Lottery Proceeds Fund, a lottery tax that generates $150 million to $200 million each year. The Constitution dedicates those dollars to the state's Minimum Foundation Program (MFP), which supports school districts and is largely drawn from the state general fund.

The effect of removing the dedications from these funds would vary. For example, removing the dedication from the transportation fund would allow the $600 million of state fuel tax revenue to go to the general fund. It would be new money for the general fund that could be spent elsewhere in the budget, at the expense of the transportation program. There would be important considerations, such as the need for state matching money for federal highway projects and long-term bond financing.

On the other hand, removing the dedication from the Lottery Fund in practice might not change much, since most of its money is going to the Minimum Foundation Program, which is supported by the general fund anyway. So, the supposed gains from freeing up the general fund diversions should not be overestimated. Still, eliminating general fund diversions would, at a minimum, create greater budget flexibility.

Fee-based Dedications

The other major category is fee-based dedications, or fees and "self-generated revenue" collected from particular groups to be spent on related programs. These vary widely and are contained in both statute and in the Constitution. Within the Constitution, the Oil Spill Contingency Fund (Art. VII, § 10.7) assesses a fee on Louisiana refineries that store or process crude oil. These funds are then used to pay for operations of the Louisiana Oil Spill Coordinator's Office and to fund oil spill prevention and response efforts. Likewise, a significant portion of the money deposited

1. See Governor's Executive Budget, Fiscal Year 2018-2019 at 22, available at https://www.doa.la.gov/opb/pub/FY19/FY19_Executive_Budget.pdf.

A Tax or a Fee?

Article VII of the Constitution requires a 2/3 vote of both legislative chambers to levy a new tax, increase an existing tax or repeal a tax exemption. The Constitution also requires a 2/3 vote for the imposition of any new fee or civil fine, or the increase in a fee or civil fine. During even-numbered years, the Constitution prohibits the Legislature from levying or authorizing a new tax or increasing any existing tax but does not place a similar restriction on imposing or raising fees.

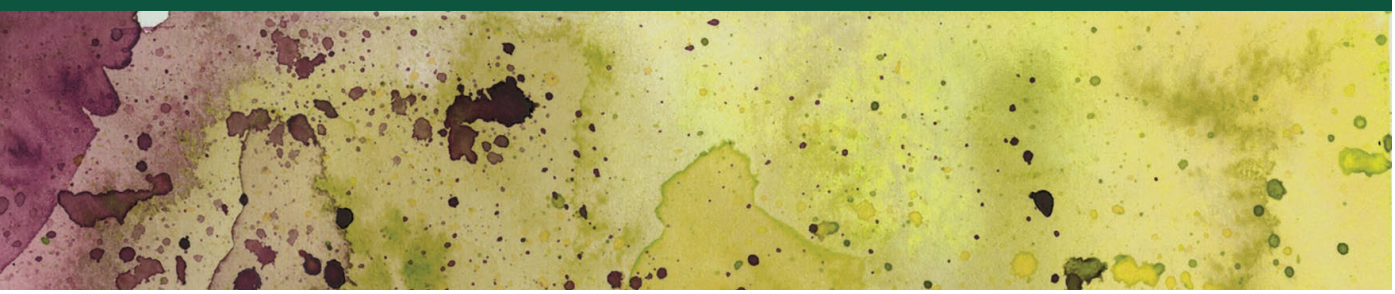
Despite treating taxes and fees differently in some ways, the Constitution does not provide definitions for either. As a result, there has been much litigation and many Attorney General opinions over the years regarding whether new revenue is a tax or a fee. Controlling caselaw from the Louisiana Supreme Court requires that in making this determination, courts must examine why the revenue is being raised. *(See Audubon Ins. Co. v. Bernard, 434 So. 2d 1072 (La. S. Ct. 1983)).*

In general, if an assessment is mandatory and is levied to fund the general operations of government, it is a tax. By contrast, if the principal purpose of the imposition is not to raise revenue, but rather regulation, then it is an exercise of the police power and is categorized a fee rather than a tax.

While both the power to tax and the power to impose a fee affect the raising of revenues, the power to levy fees is more limited. Revenue raised through a fee must be used to support a specific regulatory function or program that is related to the fee. Moreover, if a fee is out of proportion to the regulatory purpose to be served, or fee monies are dedicated to a purpose other than funding the regulatory function, the fee can become a tax.

This distinction between a tax and a fee is relevant when analyzing the need for dedicated funds. Many of the existing constitutional funds are composed of fee-based revenue, such as the Conservation Fund, which is funded in part by hunting and fishing license fees. Based on existing caselaw and Attorney General opinions, even if the Conservation Fund were eliminated, the fee revenue could not be spent on things wholly unrelated to wildlife or the regulation of hunting and fishing since the fee was intended to support the state's regulatory functions in this area.

To minimize any uncertainty regarding the limitations on how fees are spent and to assuage concerns about eliminating constitutional protection of any fee-based funds, the Constitution should be revised not only to clarify the legal distinction between a tax and a fee but also to add the requirement that fee revenue may only be used to support regulatory functions related to the activity upon which the fee is levied.



in the Conservation Fund (Art. VII § 10-A) comes from fees collected by the Department of Wildlife and Fisheries for hunting and fishing licenses and permits. Monies in the fund are appropriated each year to fund the department's operations.

The problem with eliminating these dedications is that legally the money might not be used to support general fund programs such as healthcare. For example, certain businesses or agricultural interests, often by mutual agreement, are required to pay a fee to fund particular regulatory programs for their industries. The amount collected from a fee is supposed to be commensurate with the cost of providing the related service. Thus, removing the Oil Spill Contingency Fund would not necessarily allow those dollars to be spent legally on whatever appropriation the Legislature decides.

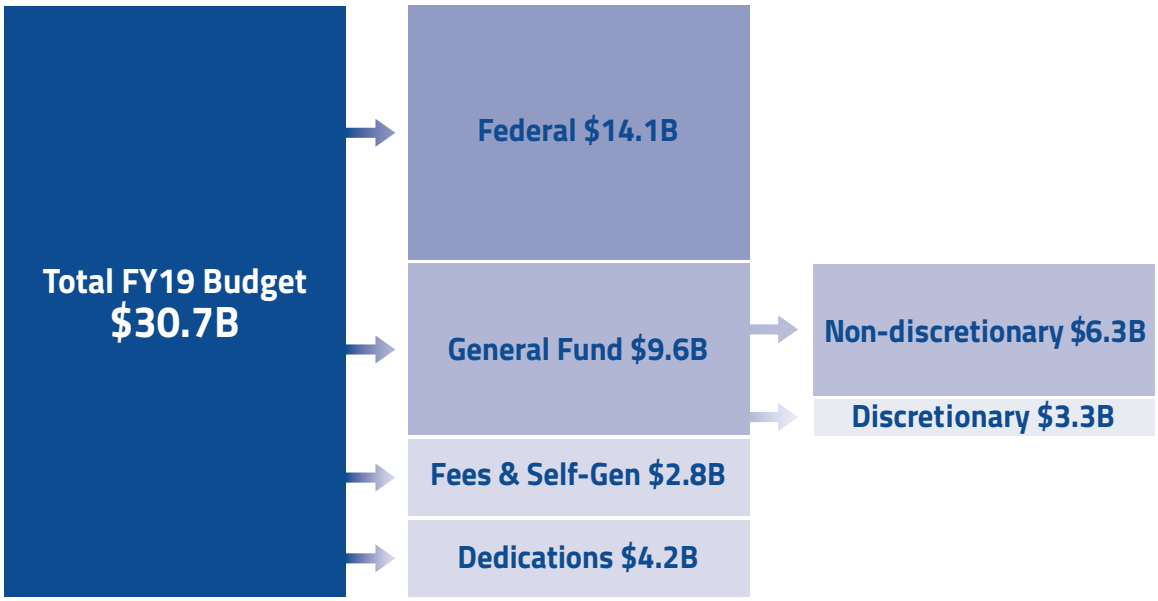
However, that does not mean there is no value in removing some dedications from the Constitution. Doing so would, at a minimum, give lawmakers flexibility to better prioritize state needs and make changes to the dedication without the lengthy and expensive constitutional amendment process. Louisiana is unusual as a state that details so many dedications in its constitution.

Mandated Expenditures

In addition to revenue dedications, the Constitution also mandates and protects certain expenditures that do not necessarily have a related funding source. This often means that state general fund revenue must be used to meet an expenditure requirement. Many of these categories of expenditures are labeled as "non-discretionary spending," meaning that the Legislature believes it does not have discretion to eliminate the expenditure or reduce funding below a certain level. As illustrated below, approximately 2/3 of all non-discretionary spending ($4.1 billion) is mandated by the Constitution.

For example, the state is also mandated by the Constitution to distribute $90 million from the general fund to local governments each year through the Revenue Sharing Fund and to provide supplemental pay to local law enforcement officers, firefighters and other officials.

Likewise, the Constitution requires that the state pay the debt owed to bondholders

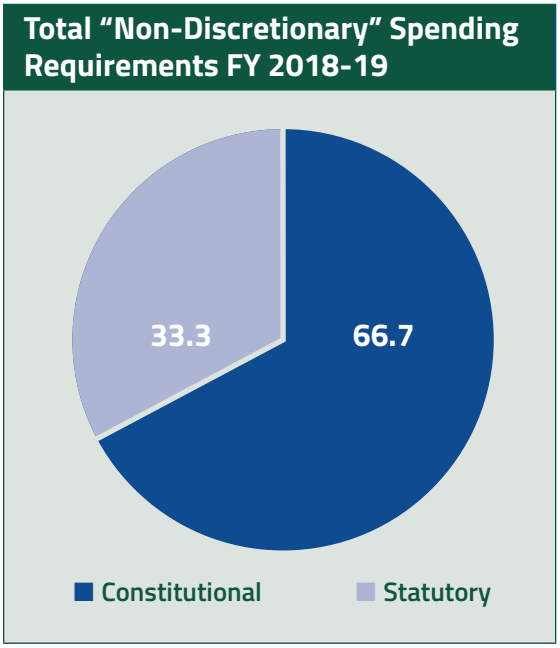


through the Bond Security & Redemption Fund and to finance pension obligations of state employees.

In fiscal year 2019, approximately 70% ($6.3 billion) of all general fund dollars in the state budget were classified as "non-discretionary." Ten years ago, 52% of the general fund was non-discretionary. The proportional growth in the use of general fund dollars for these "non-discretionary" expenses has left relatively fewer dollars every year for so-called "discretionary" items in the budget. And that's not counting the billions of dedicated dollars that contribute to special programs and do not go into the general fund.

One of the largest constitutionally mandated expenditures is the Minimum Foundation Program, or MFP. The state is constitutionally obligated to fund K-12 school districts through the MFP with an annual cost currently around $3.8 billion. Removing its constitutional protection would not change the need for the expenditure. Some type of statewide education funding structure is required to ensure equity in funding across school districts. If the MFP was not in the constitution, there is a good chance it would be mandated by the courts. The main public policy issues for the MFP are how the distribution formula is designed, the amount appropriated and the accountability of school districts, not whether the MFP or something like it should exist.

Total "Non-Discretionary" Spending Requirements FY 2018-19



Source: Louisiana Governor's Executive Budget, Fiscal Year 2018-2019, available at https://www.doa.la.gov/opb/pub/FY19/FY19_Executive_Budget.pdf.

Rationales For and Against Dedications

The growing number of revenue dedications protected in the Constitution has multiple effects on the operation of state government. Dedications take away the Legislature's flexibility to prioritize state expenditures. Dedicated constitutional and statutory funds are earmarked for specific programs and uses before the governor and Legislature begin to craft the annual operating budget. While eliminating dedications in the Constitution would not necessarily create additional net revenue, it would nonetheless provide the Legislature with greater flexibility to finance today's priorities.

An additional consequence of revenue dedications, particularly those in the Constitution, is that they often immunize certain state government operations and programs from meaningful oversight and scrutiny. The Louisiana Department of Wildlife and Fisheries, for example, is funded almost exclusively by the Conservation Fund, not by state general fund dollars. The practical effect of this funding structure is that the Legislature has much less discretion or inclination to make changes to the department's budget or to scrutinize the department's use of funds.

Similarly, not a single dollar of the Department of Transportation and Development budget comes from the state general fund. Roughly 80% of the

department's funding comes from the Transportation Trust Fund and the rest comes primarily from federal funds and other statutory dedications. Thus, unlike most other state agencies, the transportation department does not have to rely on the Legislature's appropriation of general fund dollars each year to support its operations. In turn, this means the Legislature has little ability to use funding to influence the department's operations or as a way to incentivize efficiencies within the agency.

Despite the aforementioned drawbacks, there are sound policy rationales for retaining certain dedications in the Constitution. Some dedications are necessary for the functioning of key budgetary mechanisms. The Budget Stabilization Fund, also known as the Rainy Day Fund, helps prevent temporary surges of overspending and allows the state to set aside revenue during good fiscal times to use when the state's economy takes a downturn or encounters an emergency. Another example is the Bond Security and Redemption Fund, which is necessary to ensure that the state sets aside money to meet its debt obligations. These funds, if managed properly, lead to higher credit ratings and more favorable pricing of the state's bonds.

Other dedications in the Constitution help force the Legislature to prioritize long-term needs, such as safe and effective roads and bridges, protection and restoration of Louisiana's disappearing coast, and funding the state's pension obligations. State legislatures, influenced by political pressures of the day and special interests, have a tendency to be short-sighted, particularly with respect to fiscal planning. This feature is not unique to Louisiana. By mandating that certain sources of revenue be set aside for investment in specific long-term needs, the Constitution may help protect against short-term thinking.

A New Framework for State Funds

As legislators or convention delegates grapple with how to apply these principles to a rewrite of the Louisiana Constitution, they should seek to establish a basic constitutional framework for dedications and funds. The framework should assess the need for certain dedications to protect important or long-term priorities but also the negative consequences of too many detailed constraints on the Legislature's fiscal powers.

Additionally, when making changes to the Constitution's existing revenue and spending provisions, drafters should address constitutionally mandated funding mechanisms – and not just funds – to ensure a thorough review of opportunities for fiscal flexibility. That is, the changes we make to the Constitution should ensure that Article VII does not once again morph over time into an overly detailed constraint on the Legislature.

To achieve this dual goal of cleaning up our current constitution and preventing future troubles, a revised version should authorize the Legislature to establish three separate classifications of dedicated funds, each serving a different purpose based on the type and magnitude of revenue expected to flow into the fund and the fiscal purpose that the Legislature is seeking to achieve.

We will call these three classes Constitutional Funds, Permanent Trust Funds and Program Funds. The Constitutional Funds are a certain few funds that should be preserved in the Constitution with the same status as they have today. The Program Funds and the Permanent Trust Funds would be set up as classes of funds with some constitutional protections while being subject to limited statutory provisions. In addition, some unutilized constitutional funds could be

eliminated. Here is an explanation of the three fund categories followed by a list of how current funds in the Constitution could be treated under this structure.

Funds Category #1: Constitutional Funds

As the top class, a Constitutional Fund would be one of the few funds that already exist in the Constitution that should continue operating in a similar manner. These funds can be created or altered only with approval by 2/3 of both legislative chambers and a majority vote in a statewide election. There are sound policy rationales for including certain funds in the Constitution. The Bond Security and Redemption Fund and the Budget Stabilization Fund are necessary for important budget mechanisms to function properly. The Coastal Protection and Restoration Fund and the Transportation Trust Fund are necessary to force the Legislature to prioritize long-term needs in the face of short-term fiscal and political pressures. The number of funds that warrant constitutional protection should be small, but the Legislature and voters should continue to have the option to preserve or set up funds that enjoy this higher level of protection.

Funds Category #2: Permanent Trust Funds

The Constitution should create a class of funds known as Permanent Trust Funds. This class of funds would be recognized in the Constitution and the corpus of these funds would be protected by the Constitution. The spending of the investment earnings would be determined by statute and could be changed with a two-thirds vote of the Legislature.

Currently, the Constitution has protected funds that produce investment earnings, the spending of which are determined and protected by the Constitution itself. The big difference with a proposed Permanent Trust Fund is that the Legislature over time would be able to rethink the priorities of the spending targets without having to pass a constitutional amendment, while the corpus of the funds would continue to be constitutionally protected.

A transition to this type of structure would not have to be disruptive. Certain existing funds in the Constitution could be converted to the new system with the same spending priorities housed in statute. The Legislature at a later time – perhaps with a required transition period – could reconsider the spending targets or let them continue in perpetuity. Also, new such funds could be created by approval of the people with a constitutional amendment.

What are some examples? Occasionally the state receives a large, one-time infusion of revenue, such as a legal settlement or judgment, that political leaders believe should be protected. The traditional thinking

has been that these pots of money should endure for the long run and that any spending from interest or investment earnings should be aimed at specific targets and be set in constitutional stone for all future time.

A notable example in the current Constitution are the five separate funds established as a result of the 1998 multi-billion-dollar tobacco litigation settlement, which provides the state with lump-sum payments of roughly $140 million annually. Following the settlement, the Millennium Trust was established in the Constitution. Revenue in the trust was divided equally among three separate dedicated funds--the Health Excellence Fund, Education Excellence Fund and the TOPS Fund. Each fund was designed to protect against the Legislature blowing through the settlement money too quickly or using it to plug temporary budget holes. The fund structure also acknowledged the need to use some of the new revenue generated by the settlement for state needs. Thus, the Constitution restricts annual appropriations out of each fund to no more than the amount of earnings from interest, dividends and capital gains. As a result, a significant balance (the principal) in each fund has remained mostly constant over time, while modest annual revenues from interest earnings are spent down each year on permissible programs and activities. (See historical balance charts for each fund.)

Although Louisiana may never again receive a windfall as big as the tobacco settlement, the state might receive other large settlements or judgments in the future, whether from recent opioid litigation against drug companies or some other major case. Any constitutional rewrite therefore should establish a predictable structure for how the state should invest and spend these large revenue windfalls.

How the Permanent Trust Funds would work

To accomplish this, a revised Constitution should grant the authority, with a 2/3 vote of each legislative chamber and a statewide constitutional amendment vote, to create a new Permanent Trust Fund. A few existing funds in the Constitution could be converted into Permanent Trust Funds.

Since the mechanism would be intended only for large infusions of revenue, any such trust fund would need to have a minimum balance or secure revenue stream. Because the purpose of the trust fund would be to balance the state's need for long-term security with the desire to address shorter-term flexibility, the Constitution would limit annual appropriations from any new permanent trust fund to earnings from investments. However, unlike in today's Constitution, the Legislature would have the ability to direct how those earnings are spent provided the 2/3 vote threshold can be reached.

The Legislature could decide that the earnings should flow back into the fund, or allocated to the state general fund, or designated to a particular program. Once the spending target is identified in statute, it would remain the same unless the Legislature decided by a super-majority to change it. Flexibility – set at a high vote – is the key.

A Permanent Trust Fund would have no sunset provision. As its name suggests, a permanent trust fund is designed to provide a permanent, long-term investment and revenue mechanism for the state. Should the state eventually want to overhaul the purpose and rules of a Permanent Trust Fund, a constitutional amendment and vote of the people would be required.

The state's long-term investment practices could be reevaluated as part

of a restructuring of these state funds. Currently, most large state funds are limited to safe, low-yielding investments, delivering in the range of about 1% per year or slightly better. These earnings are scraped off and used for the authorized spending purposes of the funds. As a result, these fund balances do not grow and in fact diminish in value over time, counting inflation. The reason behind this investment strategy is to maintain at least a small amount of fairly reliable annual revenue and to avoid losing principal when the broader investment market declines.

Contrast this investment strategy to the state pension systems, which invest more broadly and profitably over time. Though the pension system portfolios have had investment declines in bad years, in the long run they produce much greater returns than the state's typical static trust fund. The state's current ultra-cautious investment policy for dedicated funds is not required by the Constitution and should be reconsidered.

Funds Category #3: Program Funds

Certain dedicated funds now enshrined in the Constittuion should be converted into a new type of fund with supermajority legislative authority to modify them.

This change would affect existing constitutionally dedicated funds for revenue that would otherwise flow into the state general fund. To help ensure that revenue is diverted by large consensus for the most critical priorities, the Constitution should require a 2/3 vote from both legislative chambers to amend or eliminate these dedications. This new standard would apply to certain existing constitutional funds. Recommendations for current constitutional funds are shown below.

The Constitution would define the general parameters of this class of fund, which could be called Program Funds to reflect that they are created from particular revenue sources for particular programs. Program Funds would enjoy a constitutionally mandated level of protection requiring a 2/3 vote for any changes in the structure or spending priorities of the funds. But with that supermajority, the Legislature could redirect the specifics of the fund and its spending targets.

What if the Legislature wanted to create a new dedicated fund? As it can today, the Legislature would be able to create a low threshold fund requiring only a simple majority vote to implement or change it. If the Legislature wanted a new fund with the constitutional protection of a 2/3 voting majortiy, it could create a Program Fund through the usual constitutional amendment process, as it can today. The constitutional language authorizing this system of statutory funds would need to be reviewed carefully. Just as taxes and fees can be changed and created in statute, they also are subject to constitutional limitations; Program Funds would likewise.

While this reform would not remove these existing funds from the Constitution, it would provide greater and much needed flexibility for modifications of how the funds are appropriated or structured.

Program Funds, as outlined above, will be most suitable for recurring revenues that the Legislature wishes to appropriate for programs and services that are, at least to some extent, constant. For the most part, revenue will come into each of these funds throughout the year and be spent on operational needs or new projects. The money tends to flow through the fund rather than sit still as an investment account.

It is significant to note that for statutory funds associated with revenue from fees or fines, the Constitution already requires a 2/3 vote of the Legislature to impose a new fee or to raise an existing fee. Requiring a 2/3 vote to dedicate the funds for a specific purpose therefore would not impose a more stringent standard than exists today. Moreover, to the extent the Constitution is revised to clarify that fee revenue may only be used to fund programs or services with a substantial nexus to the activity that generated the fee, there should be less need for fee-based dedicated funds.

Sunsets for Program Funds & Other Statutory Funds

Regardless of the level of security a fund enjoys, no dedication of revenue should last forever without reevaluation. The needs and priorities of the state and its citizens change over time, and as they do, it is prudent for the Legislature to reexamine existing revenue uses to ensure they align with current priorities. Despite adding new statutory dedications and funds year after year, the Legislature has consistently been unwilling to eliminate dedicated funds. Indeed, history has revealed that once a particular interest group is successful in siphoning off revenue for its special cause, it is politically dicey for legislators to get rid of the dedication. The practical result is that once a dedicated fund is in place, it is likely to stay for the long-term.

For this reason, the Constitution should require that all statutory dedications of revenue that would otherwise flow into the state general fund automatically sunset after 10 years, unless renewed by the Legislature with a 2/3 vote. This sunset rule should also apply to new statutory funds that are created in the future.

Sunset provisions are intended to provide a built-in process for the Legislature to evaluate the effectiveness of existing laws and programs. Sunsets are routine business in the Legislature; state law requires the eventual sunset of entire agencies. As it relates to dedicated funds, the sunset evaluation should aim to answer the question of whether the dedication continues to serve the public interest or whether, instead, the dedicated funds might be more effectively used on other priorities.

To assist the Legislature in making a well-informed decision regarding the continued existence of a fund, the Department of Treasury, working with the Dedicated Fund Review Subcommittee of the Joint Legislative Committee on the Budget and the implementing agency, should be required to prepare a report that describes all activity within the fund during the past 10 years, including fund balances and how fund monies have been spent. Armed with this information, the Legislature will be able to make more informed decisions regarding the continued usefulness or purpose of each dedication.

Constitutional Fund Recommendations

The first step in constitutional fund reform is to adopt a new structure for classifying them. The PAR recommendations explained above would provide a workable new structure that balances new flexibility with appropriate protections.

The next step is to decide how the existing constitutional funds would be classified under a new system and to determine which funds might be eliminated.
PAR counts 28 funds established in the Constitution that would require a constitutional revision or amendment to change.* PAR's constitutional fund recommendations follow here. A more in-depth look at each fund can be found in Chapter 4.

Constitutional Funds:

The highest and most protected category, **Constitutional Funds are those that should remain in the Constitution because they are necessary for important budget mechanisms to function properly and to make sure the state is ensuring its long-term financial and infrastructure needs.** This category includes the following funds:

1. The Bond Security and Redemption Fund (Art. VII, § 9)
2. The Budget Stabilization (Rainy Day) Fund (Art. VII, § 10.3)
3. The Revenue Stabilization Trust Fund (Art. VII, § 10.15)
4. The Coastal Protection and Restoration Fund (Art. VII, § 10.2)
5. The Transportation Trust Fund (Art. VII, § 27)

The Budget Stabilization and Revenue Stabilization funds could be combined and simplified into a more streamlined set of mechanisms and fund balance requirements under a single Constitutional Fund. In addition to its role for long-term infrastructure planning, the Coastal Fund is a matter of integrity for Louisiana's reputation in Congress and across the nation as a worthy steward of scarce resources applied to a vital mission.

The Transportation Trust Fund would continue to include the "Construction Subfund" that was approved by voters in 2017. As designed, this subfund would capture increased revenue from any new fuel tax and the money could not be used for state employee wages or benefits. Also, the recommended fund structure would not prevent the Legislature from shifting the transportation department's operational budget partly into the state general fund, thereby placing the agency under greater scrutiny in the yearly appropriations process, as some reform initiatives have suggested.

Permanent Trust Funds:

These are pots of money whose principal would be protected by the Constitution while the marginal spending authority for the investment earnings would be subject to a 2/3 vote of the Legislature. This category includes the following funds:

6. Health Excellence Fund (Art. VII, § 10.8)
7. Education Excellence Fund (Art. VII, § 10.8)
8. TOPS Fund (Art. VII, §§ 10.8, 10.10)
9. Louisiana Fund (Art. VII, § 10.9)

10. LEQTF Permanent Trust Fund (Art. VII, § 10.1)
11. LEQTF Support Fund (Art. VII, § 10.1)

Program Funds:

These funds would allow a 2/3 vote from both legislative chambers to amend or eliminate any function or dedication.

12. Conservation Fund (Art. VII, § 10-A)
13. Artificial Reef Development Fund (Art. VII, § 10.11)
14. Hospital Stabilization Fund (Art. VII, § 10.13)
15. Louisiana Medical Assistance Trust Fund (Art. VII, § 10.14)
16. Mineral Revenue Audit and Settlement Fund (Art. VII, § 10.5)
17. Oil Spill Contingency Fund (Art. VII, § 10.7)
18. Oil Site Restoration Fund (Art. VII, § 10.6)
19. Lottery Proceeds Fund (Art. XII, § 6)
20. Patient's Compensation Fund (Art. XII, § 16)

Funds to eliminate:

Defunct funds and funds with long-standing zero balances or inactivity should be repealed. This category includes the following funds:

21. Millennium Leverage Fund (Art. VII, § 10.10)
22. First Use Fund. (Art. IX, § 9)
23. Higher Education Louisiana Partnership (HELP) Fund (Art. VII, § 10.4)
24. Agricultural and Seafood Products Support Fund (Art. VII, § 10.12)
25. Atchafalaya Basin Conservation Fund (Art. VII, § 4(D))
26. Tideland Fund (Art. IV, 2(d) (1921 Constitution); Art. XIV, § 10 (1974 Constitution))
27. Louisiana Investment Fund for Enhancement (LIFE) (Art. IX, § 10)

Additional moves:

The 28th fund counted by PAR is the Revenue Sharing Fund. It is a constitutionally mandated automatic mechanism that distributes $90 million per year straight from the state general fund to local governments, based on a formula and annual legislation defining the distribution. If the fund is retained, it should require that local governments apply the revenue to programs of joint state and local interest, such as local matches needed for mental health facilities or early childhood education.

Other constitutional dedications contained in Article VII of the Constitution should be addressed on a case-by-case basis. These dedications include the Medicaid Trust Fund for the Elderly (Art. VII, § 10(F)(4)), which was established in statute but added to the Constitution in 2012 for the limited purpose of protecting it from being swept during budget downturns. This fund should be retained in statute but references should be removed from the Constitution.

The Parish Severance Tax and Parish Road Royalty Fund dedications (Art. VII, §§ 4(D), (E)) require that a portion of all mineral revenues from state-owned lands and waters be distributed to local governments. These dedications serve a valid purpose and should remain in the Constitution since local governments are otherwise prohibited from collecting revenue from natural resources contained in their parishes.

Further refinements would need to be considered, such as how to deal with the

state's mechanisms for treating budget shortfalls, which currently may include sweeps of cash from some constitutional funds. The recommendations in this report are not exhaustive.

Next steps and transitions

Reformers could overhaul the state Constitution with these new financial structures without simultaneously changing the existing revenue and funding streams. For example, an existing constitutional fund could be converted into the new structure while maintaining its current allocations of money and its constituency. Companion statutes tied to the reforms would accompany the constitutional changes. A transition period might even be mandated to keep the status quo for a year or two.

This approach would reduce controversies in shifting to the new system. The constitutional reformers could focus on the best new structure for finances rather than on tweaks for the peculiar interests of the various fund beneficiaries. With a better constitution in place, the governor and Legislature could then evaluate the next steps for change and perhaps determine better uses for the state's limited resources.

A broader approach would be to retool both the Constitution and the details of the fund mechanisms at the same time. This approach would create a more heated battle between the financial winners and losers of the specific changes in the fund allocations. The risk is that fundamental constitutional reform could fail due to less important political skirmishes and needless detail.

Impact of recommended reforms

Is there some way to measure the advantages and added budget flexibility of implementing the recommended reforms? The answer is yes, but with managed expectations.

Once we eliminate the seven useless funds and create the five top-tier Constitutional Funds, the remainder of the funds combined represent about $1.14 billion in annual expenditures. That figure is not the total value of the money in the funds, which would be much greater. It is the amount passed through and drawn from the funds for certain dedicated purposes each year. The new structure therefore would indicate a potential increased state spending flexibility of an amount more than a billion dollars.

But there are important reasons why that number should not be confused with the notion of new money. The lottery fund supports K-12 education through an allocation to the state's Minimum Foundation Program and basically offsets state general fund money that would be needed to sustain the MFP at its required levels. The Medical Assistance Trust Fund – which accounts for more than $500 million in expenditures – is restricted to support services from a health care provider class;

a diversion would not alleviate the need for state money to maintain the program. The Conservation Fund uses fees to pay most of the bills to run the Department of Wildlife and Fisheries, which presumably needs operational money from somewhere.

In these cases, the virtue of the new fund structure is not necessarily new money for new priorities. The advantage is the ability of legislators and the governor to tweak and refine programs with greater flexibility and to do so in a statutory environment, albeit at a high bar with the 2/3 vote requirement. In the case of some fee-based agencies, the Legislature might be able to exercise greater oversight of their operations during the appropriations process.

The new structure for the Permanent Trust Funds offers an opportunity to rethink those spending priorities. Although the highly constrained earnings from these trust funds are applied to current state spending programs, their purpose could be re-evaluated and applied differently. They represent about $155 million in annual expenditures. If the funds used a slightly less cautious but still conservative investment plan, they could over time offer two or three times as much annual spending volume. Such an investment reform might also consider ways to keep the funds from slowly disintegrating in real value.

PAR's recommended reforms would not necessarily change the perception of funding requirements for state programs or the governor's and Legislature's consensus about state priorities, which would still be subject to limited resources and political influence. But the bottom line is that reforms for constitutional funds and dedications could increase spending discretion and agency oversight for the Legislature.

**PAR's count of 28 constitutional funds does not include so-called revenue dedications that are supervised by the Constitution but do not have an actual Department of Treasury fund associated with them. While a general estimate of constitutional funds can be said to be "around 30," for the purposes of this report PAR counts 28. This number includes only those funds that could be changed or eliminated through an amendment or constitutional convention. It does not, for example, count funds that were established by a previous constitution that still exist for various reasons. Auditors, accountants and legislative budget staff may look at it differently depending upon the standards they wish to apply. Some analysts count a larger number of constitutional funds; for example, they might count sub-funds within larger funds. The 28 funds counted by PAR capture the broad scope of real money in question.*

Chapter Four

STORED MONEY: FANTASTIC FUNDS AND WHERE TO FIND THEM

Twenty-eight creatures of all manner and sizes • The obvious ones you already know about • The odd ones you're curious about • The staple sources of income for lucky state agencies • The strange shadowy ones that no one ever sees • The undead zombies • A recommendation for each

Chapter Four

Stored Money: Fantastic Funds and Where to Find Them

Anyone who braves to "drill down" into the fiscal morass of the Louisiana Constitution will need to understand the scope and nature of its fantastic variety of "funds." Unfortunately, an entire chapter is required to review them, even succinctly.

Compared to other states, Louisiana is a national champion at packing away windfalls and dedications to serve specific causes that few even know exist. Built up one by one over the decades, they lead a sheltered life free of scrutiny or any question about whether their aged priorities match the needs of today. Some don't live at all, in fact, and are useless corpses in the Constitution that no one has bothered to bury. A very few of these instruments – such as the Rainy Day Fund -- are vital and should be maintained in the Constitution. Others need a re-evaluation or, at the very least, a bit of daylight shone on them.

The Public Affairs Research Council of Louisiana has presented here a short description of the purpose and money behind each of the constitutional funds. A PAR recommendation accompanies each entry and fits the structural reforms suggested in Chapter 3.

The Constitution's complexity is demonstrated by how tricky it is to even get a count on the number of funds it has. Auditors, accountants and state budget staff may all look at it differently depending upon their framework of analysis. While a good general estimate is "around 30," PAR counts 28 constitutional funds for the purposes of this report.

As covered in Chapter 3, PAR recommends a new fiscal structure creating three categories of funds affected by the Constitution:

- **Constitutional Funds:** Just like current constitutional funds, these can be created or altered only with approval of 2/3 of both legislative chambers and a majority vote in a statewide election.
- **Permanent Trust Funds:** The corpus of the funds would be protected by the Constitution and spending of the investment earnings would be determined by statute and altered only by a 2/3 vote of the Legislature.
- **Program Funds:** These funds would require a 2/3 vote from both legislative chambers to amend or eliminate any dedication.

This total only counts funds that could be changed or eliminated through an amendment or constitutional convention. It does not, for example, count funds that were established by a previous constitution that still exist for various reasons.

Each fund listed below contains a constitutional reference, short summary and if available or appropriate a fiscal history. This history includes the fund's annual beginning balance, revenue and expenditures. This review should serve to elevate the policy discussion about what could be changed by a constitutional revision and what the specific impacts would be.

1. Bond Security and Redemption Fund

Art. VII, § 9; La. R.S. § 39:451
1974
Oversight: Legislature

The Constitution requires that all revenue received by the state or any state board, agency or commission that flows into a dedicated constitutional fund must first be available to satisfy required allocations into the Bond Security and Redemption Fund. The main function of this Security Fund is to assure that the first priority of state revenue is to satisfy debt obligations that are secured by the full faith and credit of the state and which become due or payable within the current fiscal year.

In this regard, the Security Fund operates more like a mechanism than a fund. Almost every dollar of state revenue flows through it. Some money coming into the fund remains there for a short time before being spent to satisfy debt payments. All money coming into the fund that is not needed for debt payments immediately flows out of the fund and into the State General Fund or dedicated funds.

*Historical balance information is not available for this fund due to the nature of the Fund and the large sums of money moving quickly in and out of the fund.

Fund Recommendation

The Bond Security and Redemption Fund should remain in the Constitution.

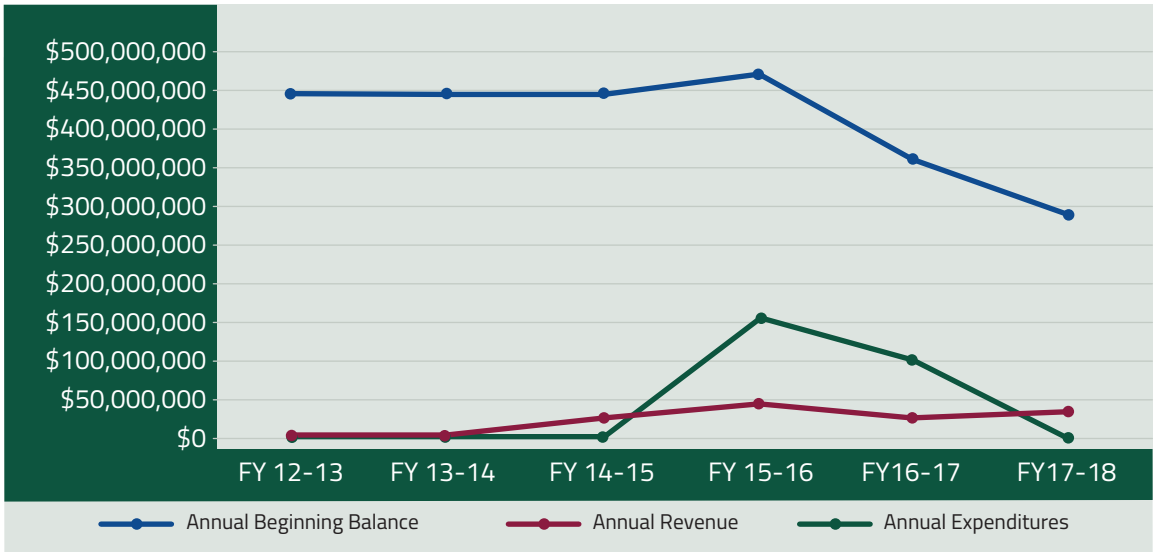
- Constitutional protection of the fund is necessary to ensure that the state is always able to satisfy its debt obligations to bondholders. Constitutional protection of the fund also has the effect of enhancing the marketability and interest rates of the state's bonds.

2. Budget Stabilization Fund ("Rainy Day Fund")

Art. VII § 10.3; La. R.S. § 39:94
1990
Oversight: Legislature

The Budget Stabilization Fund in theory helps to steady the state budget by taking the edge off of high revenue streams in boom times and providing a cushion during "rainy day" times of financial hardship. Although this type of fund is common

Budget Stabilization Fund



among the states, in the past it was especially relevant for Louisiana, where oil and gas revenue has been known to fluctuate wildly due to changing energy prices. Temporarily overinflated revenues can lead to unsustainable levels of state spending. If state revenue drops, a well managed piggy bank can help stabilize the operating budget without resorting to higher taxes or deep budget cuts.

The Legislature may choose to make appropriations to the fund but normally the fund's money comes from revenue sources triggered automatically. For example, the Constitution requires that the fund receive 1/4 of any non-recurring money, including budget surpluses and other designated one-time revenue boosts. State mineral revenue received in each fiscal year in excess of a base amount flows into the Rainy Day Fund (after first satisfying allocations to the Security Fund and a handful of other required appropriations).

The base, originally set at $750 million in the Constitution, may be adjusted every 10 years by a 2/3 vote of each legislative chamber. The current base is $950 million, meaning that annual mineral revenue exceeding that amount would flow into the Rainy Day Fund. However, oil and gas revenue in recent years has not been close to that level and therefore has not been a regular contributor to the fund.

There are limits on these flows. Once the fund reaches a level of 4% of the state's previous year's revenue, no more money may be placed into it. The Budget Stabilization Fund was due to grow to about $405 million as of August 2019. The cap is approximately $1.05 billion.

Money in the fund can be used in three situations:

- For Next Fiscal Year: If the official forecast of recurring money for the next fiscal year is less than the official forecast of recurring money for the current fiscal year, an amount up to 1/3 of the Rainy Day Fund may be appropriated after the consent of 2/3 of the elected members of each house.
- For Current Fiscal Year: If a deficit for the current year is projected due to a decrease in the official forecast, an amount up to 1/3 of the Rainy Day Fund — not to exceed the projected deficit — may be appropriated after the consent of 2/3 of the elected members of each house.
- Because of a federally declared emergency.

The fund balance at the end of FY19 was $405 million and as of March 2020 the total was $410 million. Appropriation from surplus funds could increase this amount further.

Fund Recommendation

The Budget Stabilization Fund should remain in the Constitution. The mechanisms could be combined with the Revenue Stabilization Trust Fund to create a simpler and more streamlined system. Due to the timing triggers, in some circumstances a tapping and subsequent mandated refilling of the fund could prove to be unproductive; this feature of the fund could be corrected.

- Credit rating agencies assess the strength of Louisiana's trust funds when calculating the state's fiscal health and its reliability to make good on its commitments. Irresponsible spending and fiscal mismanagement by the state could cause the rating agencies to downgrade the state's bond ratings, driving up the cost of borrowing money to finance important programs or long-term construction projects.

3. Revenue Stabilization Trust Fund

Art. VII, § 10.15; La. R.S. § 39:100.112
2016
Oversight: Legislature

The purpose of the Revenue Stabilization Trust 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. The mission and mechanics of this fund overlap with the Budget Stabilization Fund. None of the revenue thresholds have been triggered since the fund went into effect in 2016, but it was created as a long-term plan in anticipation of eventually coming into play.

All recognized annual corporate income and franchise tax revenue above $600 million would be deposited into the fund. Mineral revenue between $660 million and $950 million would be set aside as follows: 30% is used toward state retirement system unfunded accrued liabilities (UALs) and the remaining 70% is placed into the fund. Any mineral revenue over $950 million in any given year would flow back into the Rainy Day Fund until the cap set by the Treasury is reached. At that point, the returns to the Revenue Stabilization Trust Fund are to be allocated to the UAL.

In any given year, the Legislature can use the interest earnings or other income derived from the investment of the trust fund for appropriation, but expenditure of the corpus of the trust fund is limited. If more than $5 billion is in the account at the beginning of a fiscal year, the Legislature may appropriate up to 10% of the total balance for capital outlay projects and transportation infrastructure, but not for general fund expenditures.

In order to provide for emergency situations, which might include budget shortfalls, a 2/3 vote by the Legislature would permit the funds to be appropriated

for any use even if the total fund balance is below the minimum.

Until last year, there was no activity because the threshold amount of revenue for corporate and mineral revenues had not been met. However, in 2019, $30.5 million was added to the fund from corporate tax revenue.

Fund Recommendation

The basic function of the Revenue Stabilization Trust Fund should remain in the Constitution. For clarity and streamlining, the functions of this fund and the Budget Stabilization Fund could be combined. Some of the provisions should be rethought. The fund can build as high as $5 billion, a large amount of public resources to keep locked up. On the other hand, the 2/3 legislative vote requirement to tap it gives the Legislature extraordinary power to trump what is otherwise a constitutionally protected fund.

- Mineral revenues and corporate taxes are two of the state's most volatile revenue sources. Legislators likely do not have the willpower necessary to save money that comes in during years when these two revenue sources are robust. The fund helps reduce political pressure on legislators to spend new money on pet projects rather than long-term priorities like infrastructure and pension liabilities.
- The fund also provides the Legislature with an additional tool to address budget crises without having to make deep cuts or impose new taxes to raise necessary revenue.

4. Coastal Protection and Restoration Fund

Art. VII, § 10.2; La. R.S. § 49:214.5.4
1989

Oversight: Coastal Protection and Restoration Authority (CPRA)

The Coastal Fund draws money from a variety of sources, including mineral revenues from severance taxes, royalty payments, bonuses and rentals; federal funds such as GOMESA funds paid to Louisiana for offshore oil and gas production in the Gulf of Mexico; and various settlements related to the BP oil spill. Most money in the fund comes from the federal government or legal settlements. Post-Hurricane Katrina, a significant amount of surplus money was deposited into the fund. That balance has been steadily declining over the past decade.

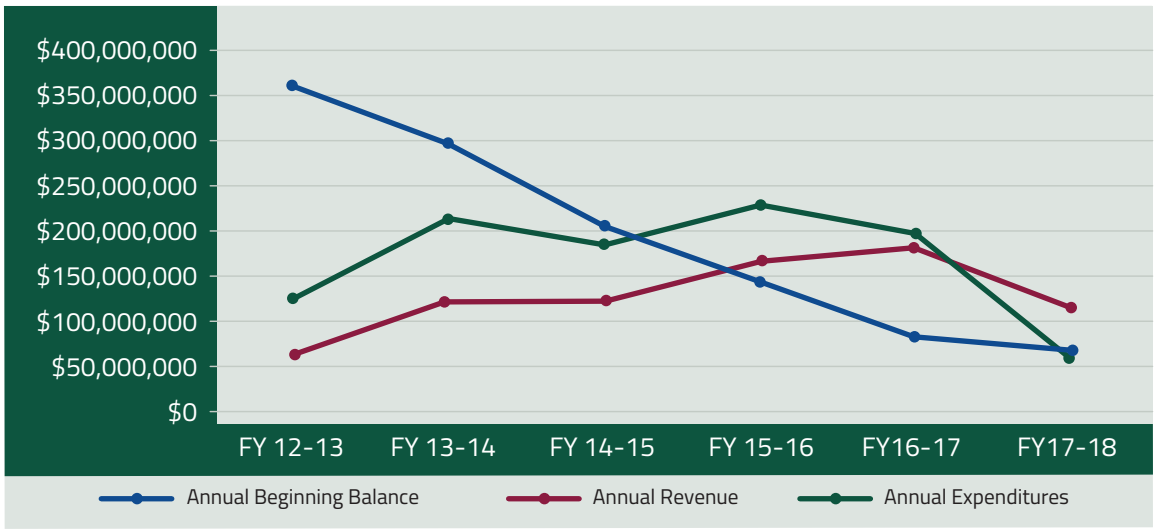
Coastal Fund money can be spent only on development and implementation of the Coastal Protection Plan and the Louisiana Coastal Wetlands Conservation and Restoration Program.

Fund Recommendation

The Coastal Protection and Restoration Fund should remain in the Constitution.

- Coastal land loss and sea-level rise represent an existential threat to Louisiana's communities, residents and economy. The consequences of not properly planning for these threats are too significant to risk allowing legislators to spend mineral revenues on pet projects or other priorities rather than on the long-term priority of protecting Louisiana's coast.
- Long-term financing strategy is essential to a successful coastal restoration and protection plan.
- Trust, accountability, and transparency are critical to ensuring that the federal government continues to send money to Louisiana to protect our coast and our citizens. Placing federal dollars into a constitutionally protected fund that can only be used on important coastal projects vetted and informed by objective data signals to the federal government that Louisiana is committed to using the money wisely.

Coastal Protection and Restoration Fund



5. Transportation Trust Fund (TTF)

Art. VII, § 27; La. R.S. § 48:77
1989
Oversight: Department of Transportation and Development (DOTD)/Legislature

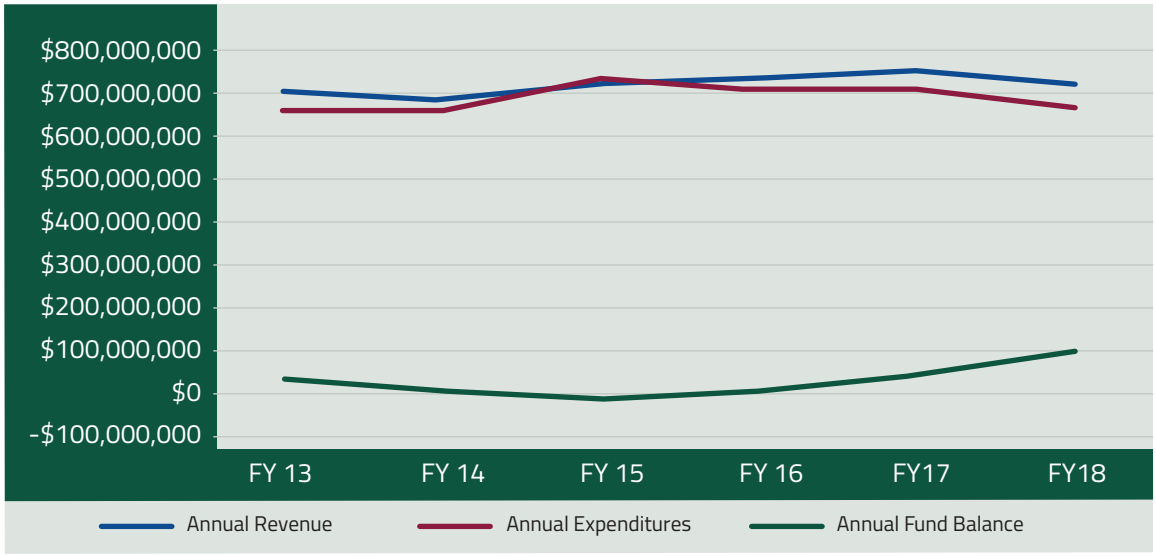
To ensure that state fuel tax dollars would go to transportation projects, the TTF was created with constitutional protections. All state excise taxes on gasoline and motor fuels flow into the fund, including the original 16-cent per-gallon tax, as well as the additional 4-cent tax approved in 1989 and dedicated to the TIMED program (Transportation Infrastructure Model for Economic Development). Money in the fund can be used only for the costs associated with construction and maintenance of roads and bridges, flood control, ports, airports and transit. A portion is also set aside for local governments through the Parish Transportation Fund (La. R.S. §§ 48:715-56) pursuant to a formula based on population and mileage.

Fund Recommendation

The Transportation Trust Fund should remain in the Constitution.

- Proper funding to maintain and build state roads, bridges, ports and other major infrastructure projects is critical both to ensure a good quality of life for Louisiana residents but also to ensure that infrastructure is able to adequately support and encourage economic activity.
- A large portion of TTF revenue is pledged to secure bonds to fund major infrastructure projects. Eliminating constitutional protection of the fund would almost certainly impair existing contractual obligations to bondholders. Additionally, future

Transportation Trust Fund



* The negative balance in the fund occurred in FY 14-15 when the fund seeded (loaned) itself money across fiscal years. This interfund loaning means the annual fund balance can change over time as these seeds are paid back. This is why it does not have a beginning fund balance like the other funds listed in this chapter. This is one of the complexities associated with the TTF.

bonds secured by TTF revenues would likely be less attractive to bondholders and therefore priced less favorably for the state were the fund to be removed from the Constitution.

- Although the TTF should remain in the Constitution, the Legislature should consider changes to the fund to increase accountability and transparency. Today, a significant portion of TTF money is used to fund DOTD operations, including personnel and regional offices supporting maintenance. Because DOTD's operating budget is funded almost exclusively by the TTF, the Legislature typically exercises little insight into or oversight of how the money is spent within DOTD.

6. Health Excellence Fund

Art. VII, § 10.8; La. R.S. § 39:98.1
1999

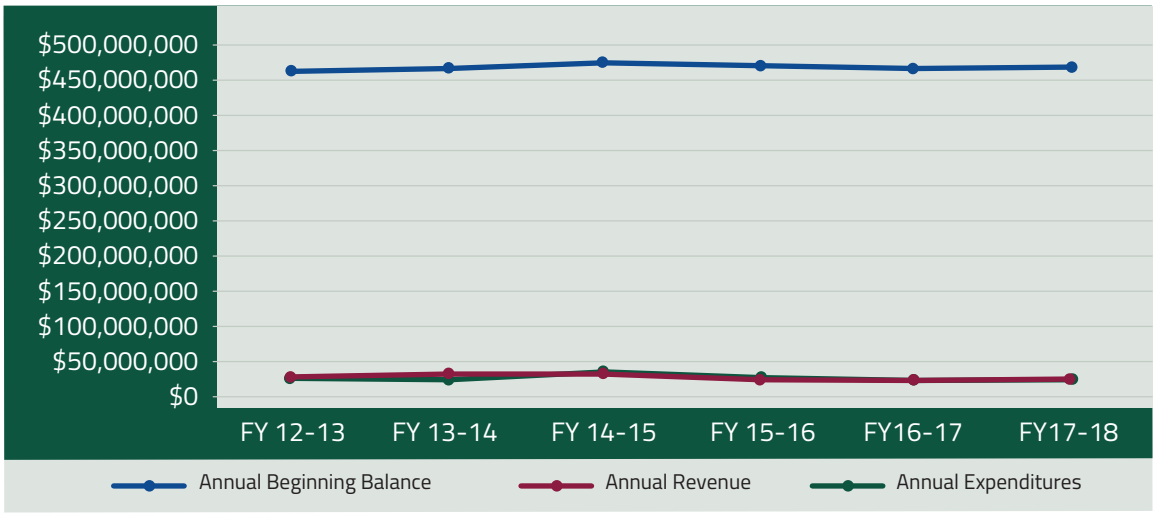
Oversight: Louisiana Department of Health (LDH)

The Health Excellence Fund is one of the three funds that comprise the Millennial Trust along with the Education Excellence Fund and the TOPS Fund. One-third of all earnings from the investment of the Millennium Trust created with the proceeds from the tobacco settlement agreement flow into the fund. Revenues derived from the tobacco tax are also deposited into the fund. While the dedication is in statute, the constitution sets a minimum cigarette tax in Art. VII Section 4.1. This is another example of tax policy that would be better left to statute rather than the constitution.

Money in the fund can be spent on:

- Initiatives to ensure optimal development of children through appropriate health care, including health insurance, school-based health care, rural health clinics, primary care clinics, and early childhood intervention programs to reduce infant mortality, or
- Initiatives aimed at innovation in advanced health care sciences and comprehensive chronic disease management services.

Health Excellence Fund

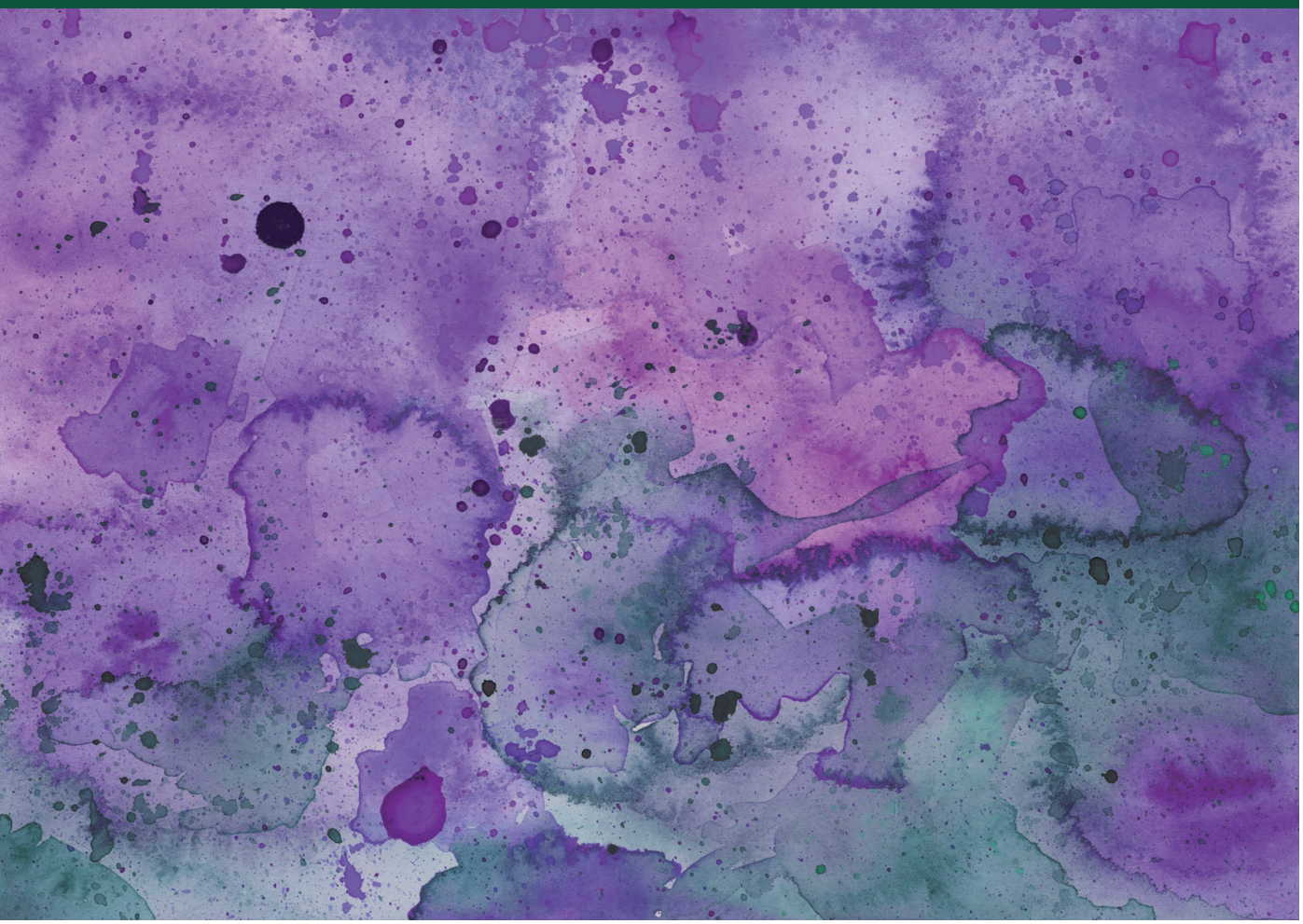


1998 Tobacco Settlement

In 1999, the Legislature and electorate adopted a constitutional amendment that created the Millennium Trust and the Louisiana Fund to receive a phased-in amount of the Tobacco Master Settlement Agreement (MSA) payment. The Millennium Trust is a not a fund itself but rather it is comprised of three separate dedicated funds: the Health Excellence Fund, the Education Excellence Fund, and the TOPS Fund.

Today, the state receives 40% of the annual tobacco settlement payments, while the remaining 60% goes to the Tobacco Settlement Financing Corporation to securitize bonds based on future revenue streams. Of the state's 40% share of the settlement payments, the Millennium Trust receives 75% and the Louisiana Fund receives 25%.

Originally, settlement monies deposited into the Millennium Trust were divided equally among the Health Excellence, Education Excellence and TOPS Funds. However, in 2011, a constitutional amendment was passed providing that once the balance in the Millennium Trust reaches $1.38 billion, 75% of the tobacco settlement payment must be deposited into the TOPS Fund rather than being divided equally among the three funds, as originally required. However, investment earnings from the Trust are still split equally among the three funds.



7. Education Excellence Fund

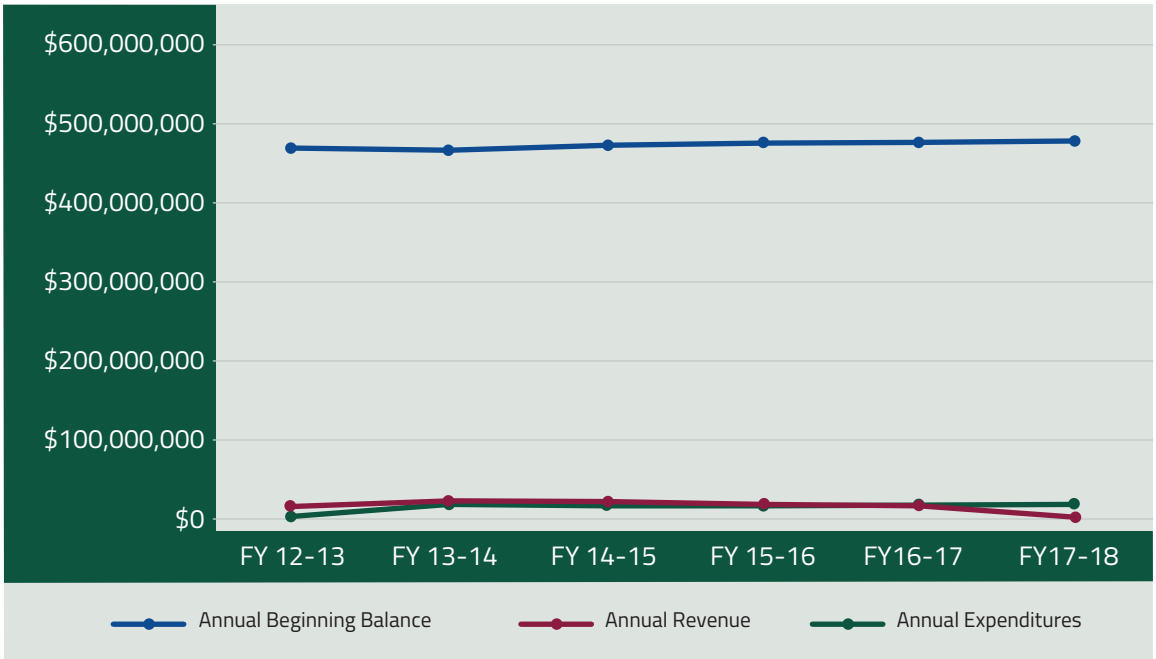
Art. VII, § 10.8; La. R.S. § 39:98.1
1999

Oversight: Department of Education (DOE)

One-third of all earnings on the investment of the Millennium Trust created with the proceeds from the tobacco settlement agreement flow into the fund.

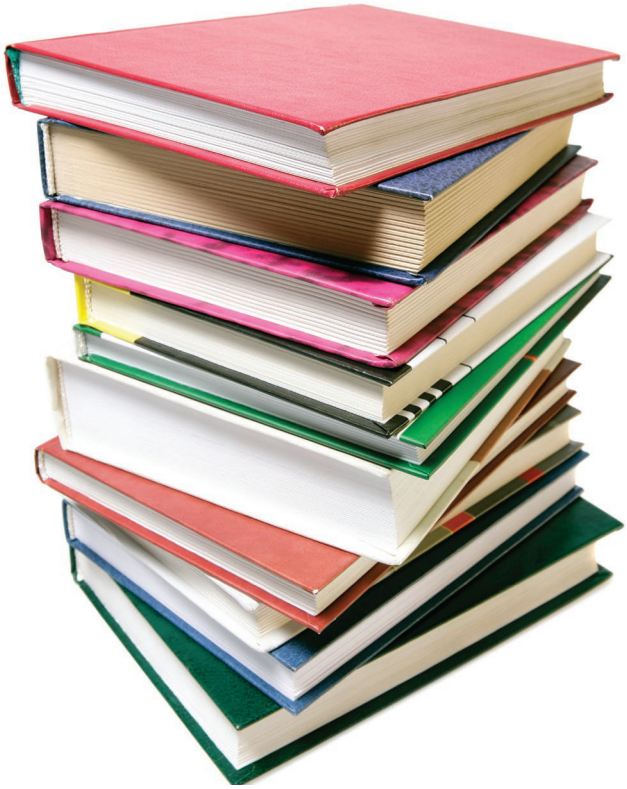
Money in the Fund can be distributed only to elementary and secondary schools for instructional enhancement including early childhood programs for at-risk children, remedial instruction, and assistance to children who fail to achieve the required scores on tests for advancement to a succeeding grade, or other approved programs.

Education Excellence Fund



8. TOPS Fund

Art. VII, §§ 10.8, 10.10; La. R.S. § 39:98.3
1999
Oversight: Legislature



Initially, one-third of the Tobacco Settlement proceeds deposited into the Millennium Trust, and one-third of all investment earnings on the investment of the Millennium Trust, flowed into the Fund. In 2011, a constitutional amendment was passed to require that once the Millennium Trust balance reaches $1.38 billion, 100% of Tobacco Settlement proceeds deposited into the Millennium Trust must be credited to the TOPS Fund. This threshold had already been reached when the 2011 amendment was passed.

Money in the TOPS Fund must be used on state financial assistance programs for students attending Louisiana postsecondary institutions.

9. Louisiana Fund

Art. VII, § 10.9; La. R.S. § 39:98.4
1999
Oversight: Legislature; Louisiana Department of Health (LDH)

Of the state's 40% share of the Tobacco Settlement payments, the Louisiana Fund receives 25%.

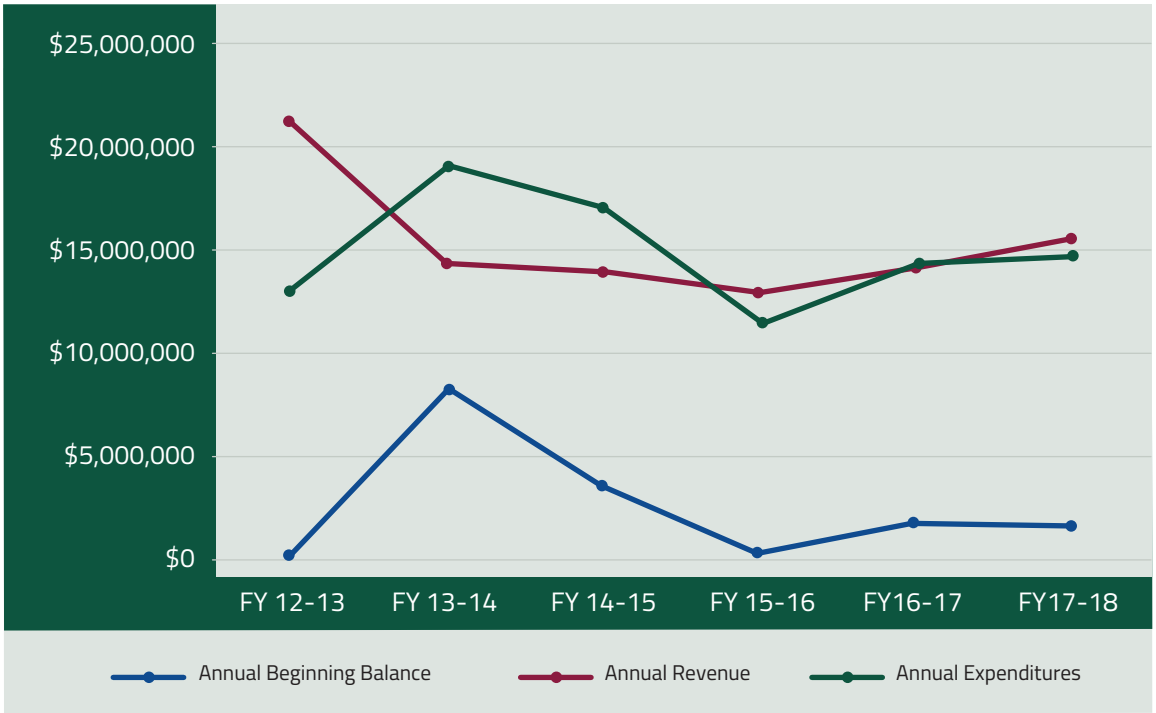
Money in the Fund may be used on:

- Initiatives to ensure the optimal development of children through educational opportunities and appropriate health care;
- Pursuit of innovation in advanced health care sciences and comprehensive chronic disease management services;
- Capital improvements for state health care facilities;
- Direct health care services for tobacco-related illnesses and initiatives to diminish tobacco-related injury and death; or
- Enforcement of the requirements of the Settlement Agreement by the Louisiana Attorney General.

Fund Recommendations:

The Education Excellence Fund, Health Excellence Fund, TOPS Fund, and the Louisiana Fund should all be converted to Permanent Trust Funds. This move would continue to protect the operation and corpus of the funds while allowing a modernization of fund spending priorities.

Louisiana Fund



"Sometimes you can't get rid of a fund"

State Highway Fund No. 2

Art. VI, §22(g) (1921 Constitution); Art. VII, § 14(D) (1974 Constitution)

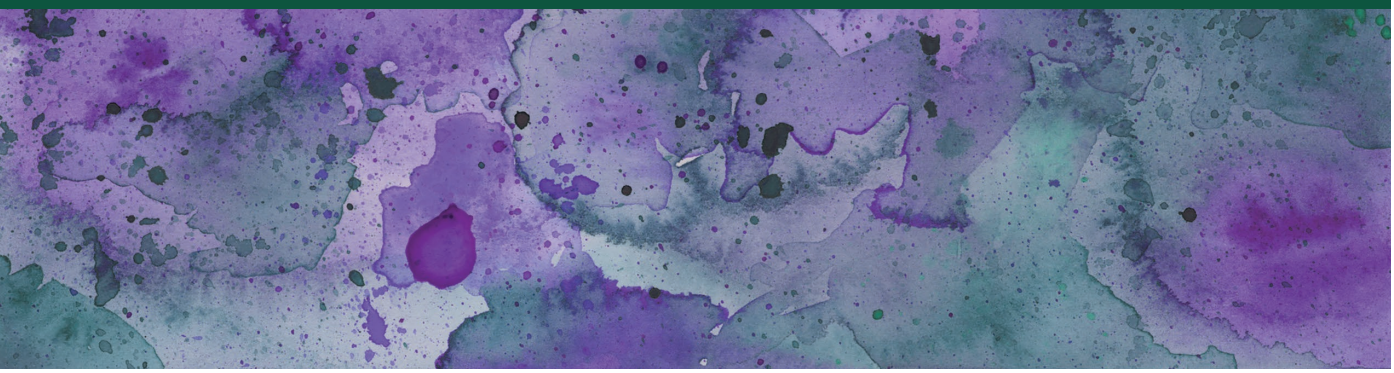
Oversight: Department of Public Safety (DPS)

Highway Fund No. 2 was originally established in the 1921 Constitution as a place to deposit vehicle registration license taxes collected in six parishes (Orleans, Jefferson, St. John the Baptist, St. Charles, Tangipahoa, and St. Tammany). The Constitution required that the funds be split equally for construction costs of two major projects: the Crescent City Connection (via the Mississippi River Bridge Authority), and the New Orleans Causeway Bridge (via the Greater N.O. Expressway Commission). Future revenue flowing into the fund was used to secure construction bonds for both projects.

Although the fund was not included in the 1974 Constitution, the Attorney General in numerous opinions nonetheless concluded that the fund carried over into the new constitution through Article VII, § 14(D), which requires that funds pledged for the issuance of bonds remain in effect for the full term of the bonds unless revoked by 2/3 of each legislative chamber. Thus, even though the 1973-74 convention delegates may have wished to shed the fund from the Constitution, the state's contractual relationship with bondholders has kept the fund in place.

The Crescent City Connection construction bonds were paid off in 2012, and that portion of fund revenue now goes to the Transportation Trust Fund. Bond payments for construction of the New Orleans Causeway Bridge will be paid off in 2034.

The **Free School Fund** is another example of a fund that the 1974 drafters tried unsuccessfully to leave out of the Constitution. The fund was originally established in the 1921 Constitution (Art. XIII, § 19) as a "perpetual loan" fund to hold proceeds of land given to Louisiana by the United States for the use or support of schools. The Constitution required that money in the fund be used only for the support of public schools and be paid to parish school boards for the acquisition, construction, and equipping of public school facilities. The transition provisions of the 1974 Constitution stated that the Free School Fund provision of the 1921 Constitution be moved to statute. However, the Louisiana Office of the Treasurer continues to treat the fund as a constitutional fund since it was created as a perpetual loan in 1921. The current balance in the fund is approximately $30 million.



10. Louisiana Education Quality Permanent Trust Fund

Art. VII, § 10.1; La. R.S. § 17:3801
1986

Revenue from offshore mineral production and leasing activity received through the Federal Outer Continental Shelf Lands Act flow into the fund.

Funds received are deposited into a Permanent Trust Fund. The Permanent Trust receives and holds 25% of earnings from investment and royalty income and 75% of earnings from net capital gains. Conversely, a separate Support Fund receives and holds 75% of the earnings from investment income and royalty income and 25% of earnings from net capital gains.

11. Louisiana Education Quality Support Fund

Art. VII, § 10.1; La. R.S. § 17:3801
1986

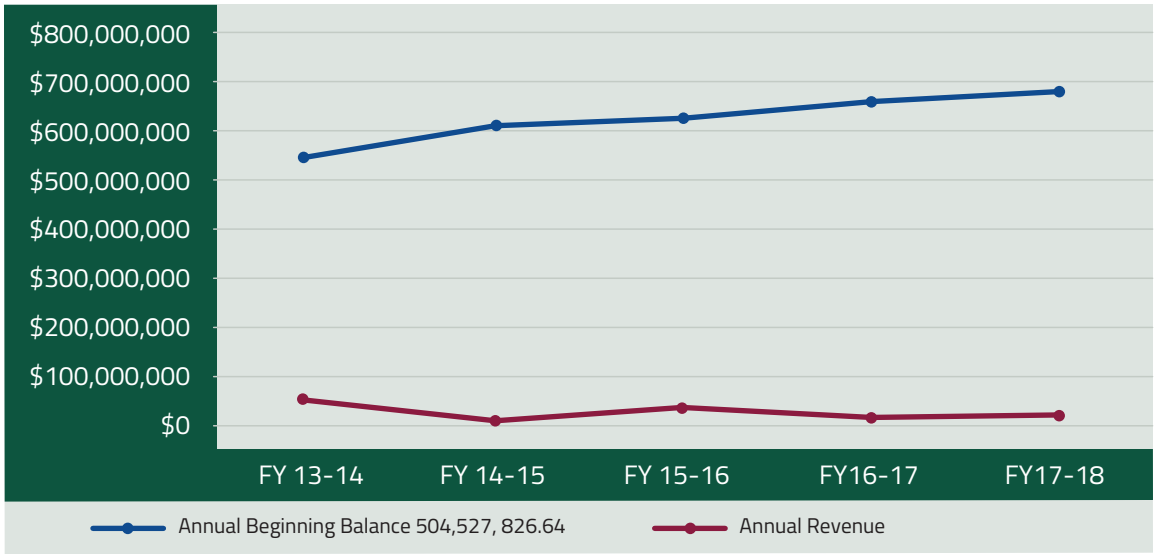
Oversight: Department of Education (DOE), Board of Regents

This fund receives and holds 75% of the earnings from investment income and royalty income and 25% of earnings from net capital gains/losses.

Annual monetary allocations are made only from the Support Fund and are split 50-50 between two state agencies:

- The Louisiana Board of Elementary and Secondary Education (BESE) 8(g) Program: Funding for Pre-K through 12th grade education. Funds are awarded to public and non-public school systems and independent schools through block grants and a competitive grant process for programs that improve student academic achievement or vocational-technical skills. DOE also uses some funds for statewide programs that provide goods, services or flow-through dollars to school systems.

Education Quality Permanent Trust Fund



- Board of Regents Programs: The Constitution mandates that funds be used for higher education efforts that enhance economic development. The Constitution and statutes outline four program areas that funds may be spent on: (1) research and development, (2) endowed chairs, (3) enhancement for academic, research, or agricultural departments within community college, college, or universities", and (4) graduate fellows. The Constitution establishes the four programs but provides the Board of Regents with discretion over sub-programs and annual funding allocations of each component.

Fund Recommendations

The Permanent Trust and Support Funds should be converted into Permanent Trust Funds. PAR identified extensive revisions needed for reforming the Regents Support Fund in its 2015 report, Innovation in Louisiana. The Support Fund is widely and thinly spent, does not adequately incorporate business input, and has fallen short of the impact of similar research funding for economic development in other states.

12. Conservation Fund

Art. VII, § 10-A; La. R.S. § 56:10
1987

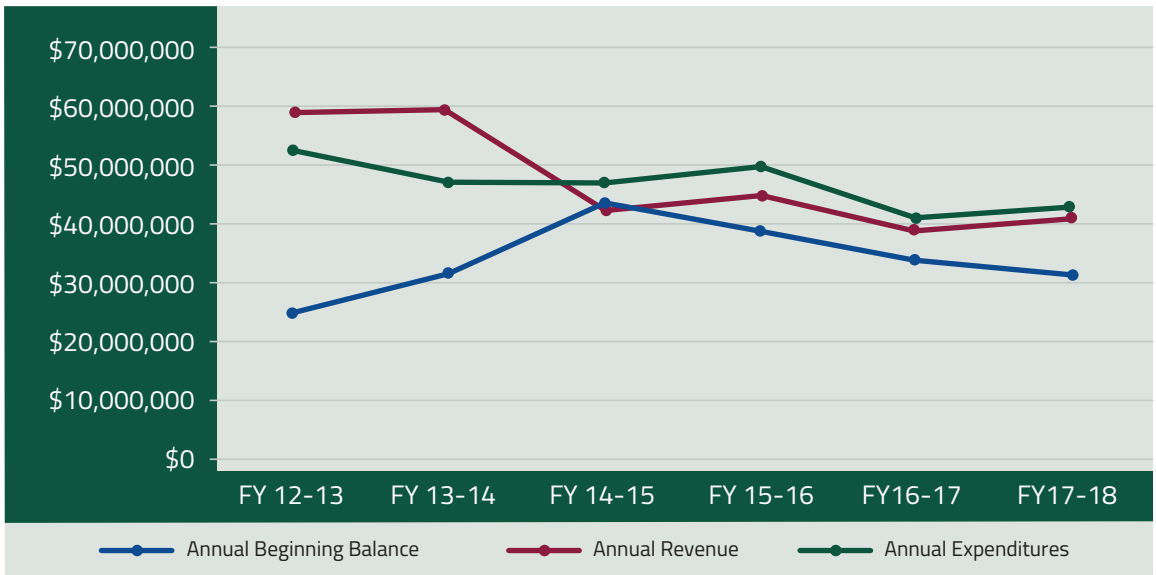
Oversight: Department of Wildlife and Fisheries (LDWF)

The Conservation Fund is made up of a variety of fund sources, including fees, licenses, and permits from hunting, fishing and other activities; royalties paid to the state for the use of state-owned lands; mineral revenues and leases; penalties and fines; and the shrimp excise tax.

The Legislature is required to appropriate money in the fund to the Department of Wildlife and Fisheries, which can then use the money on only two things: (1) "the conservation, protection, preservation, promotion, management, and replenishment of natural resources and wildlife and related research and education" or (2) the operation and administration of the department.

Within the Conservation Fund, there are also more than a dozen sub-funds.

Education Quality Support Fund



While the sub-funds are not created in the Constitution, they are essentially "boot-strapped" to the Conservation Fund and therefore enjoy constitutional protection. Each sub-fund was created for a specific source of revenue, which can only be spent on certain activities related to the source of revenue. An example is the "Derelict Crab Trap Removal Program Account." The sub-fund consists of funds received from state crab trapping fees, and sub-fund monies can only be used to run LDWF's derelict crab trap removal program.

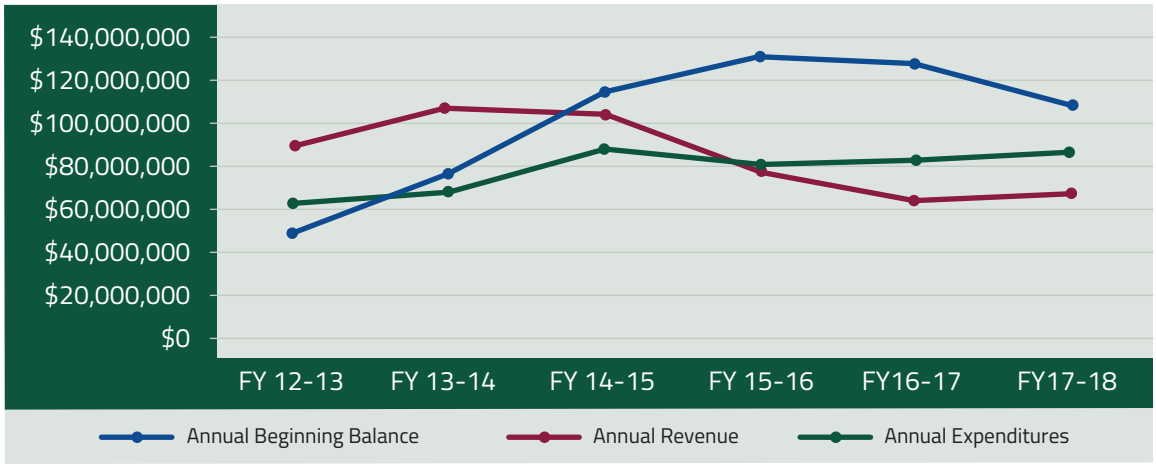
Today, LDWF's operations are funded almost exclusively by monies from the Conservation Fund.

Fund Recommendation

The Conservation Fund should become a Program Fund, no longer in the Constitution but protected with a 2/3 legislative vote requirement.

- The fund can operate effectively in statute.
- Case law already requires that fund revenue generated by user fees, licenses, and permits be spent on activities related to the fees imposed.
- A move to statute could improve legislative oversight of the agency and its programs.

Conservation Fund



13. Artificial Reef Development Fund

Art. VII, § 10.11; La. R.S. § 56:639.8
2014

Oversight: Department of Wildlife and Fisheries (LDWF)

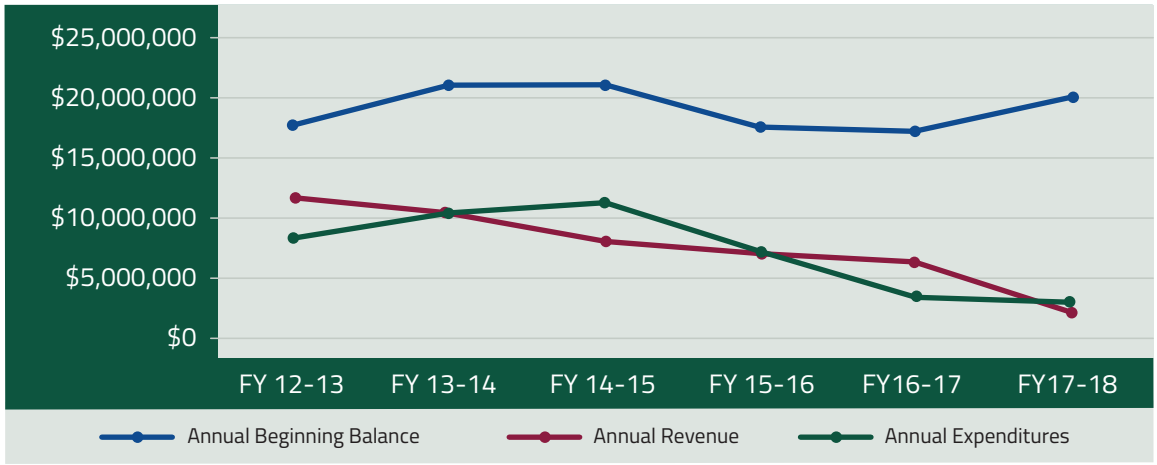
When oil and gas companies decommission offshore drilling platforms, they have an opportunity to participate in the state's Artificial Reef Program, through which LDWF uses dormant rig structures for artificial reef habitats beneficial to marine life. Participating companies are required to deposit into the Artificial Reef Development Fund one-half of the savings realized from moving the structure to a reef site rather than removing the platform in a traditional manner. Fund monies can be used on either the maintenance of existing artificial reef sites or the construction of new artificial reef habitats and other related program expenses.

The fund was created initially in statute in 1986. In 2009, the Legislature began taking money from the fund to fill non-related budget shortfalls and drained the fund of approximately $46 million over five years. In 2014, a constitutional amendment was passed granting the fund constitutional protection.

Fund Recommendation

The Artificial Reef Development Fund should be eliminated from the Constitution but should remain in statute as a Program Fund.

Artificial Reef Development Fund



14. Hospital Stabilization Fund

Art. VII, § 10.13; La. R.S. 46:2901
2013
Oversight: Louisiana Department of Health (LDH)

The fund is part of a funding mechanism in which eligible hospitals are assessed a fee that is then used as a match to draw down federal Medicaid dollars. The federal matching dollars flow back in the form of Medicaid provider rates to the hospitals, which ultimately receive more money than the original assessments. The purpose of the program is to compensate hospitals that are not fully reimbursed for the care they give to Medicaid patients and the uninsured. While many other states use this hospital fee system, Louisiana is unusual in housing this function in its Constitution. The measure was passed as a constitutional amendment rather than in statute to avoid the risk of a gubernatorial veto.

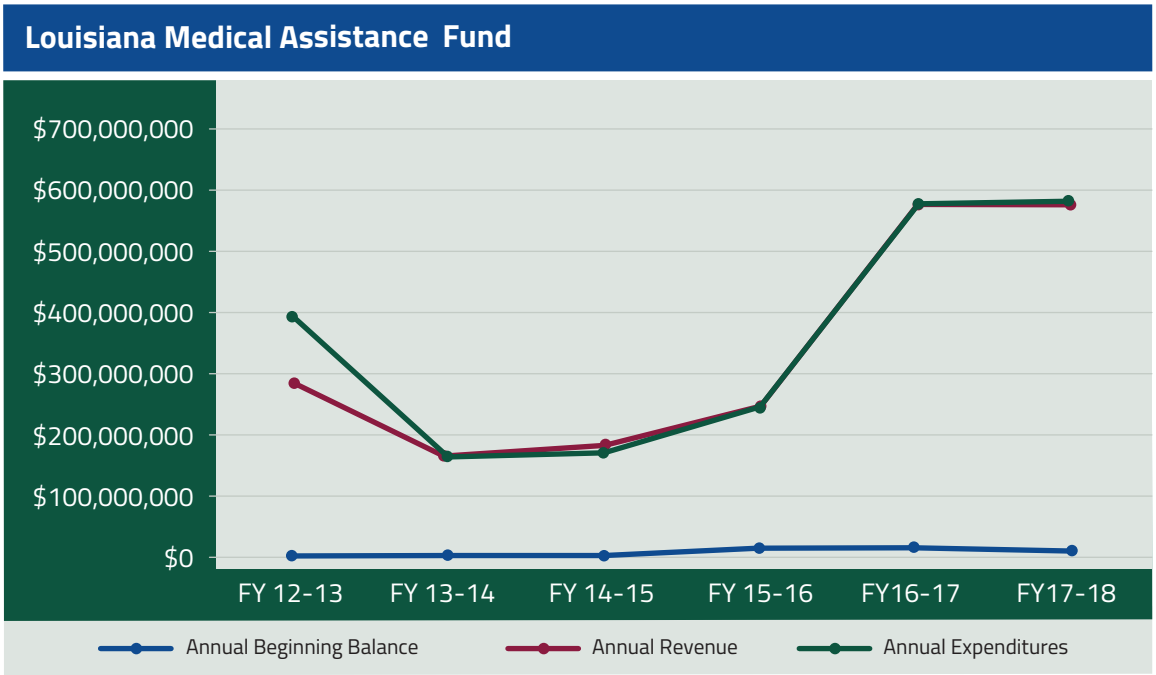
Although approved in 2013, the fund only became active in FY 2017-18 when the Centers for Medicare & Medicaid Services (CMS) approved the formula used by LDH to levy the hospital assessments.

For FY 2017-18, both revenues and expenditures were equal to $47,447,375, indicating that all monies that came into the fund were paid out to hospital providers.

15. Louisiana Medical Assistance Trust Fund

Art. VII, § 10.14; La. R.S. § 46:2623
2013
Oversight: Louisiana Department of Health (LDH)

Nursing homes, intermediate care facilities for the developmentally disabled and community pharmacies are assessed a charge that is deposited into the fund. That money serves as a state match to draw down federal dollars through the Medicaid program. The Medicaid dollars are used to compensate the facilities for the care provided to those with low incomes and others qualified for Medicaid assistance. The fund was originally established only in statute but was added to the Constitution in 2013 after the federal flow-back dollars were often diverted to other state



healthcare needs rather than to the healthcare groups that paid the provider fees.

Fund Recommendations

The Hospital Stabilization Fund and Louisiana Medical Assistance Trust Fund should be converted to Program Funds.

Despite almost every other state imposing one or more healthcare provider taxes, no other state constitution protects dedicated funds established for this purpose. Additionally, because regulations from the federal Centers for Medicare and Medicaid Services (CMS) impose certain restrictions on the way states may use provider tax revenue, there may be less reason for concern that the state might use the revenue for non-Medicaid related purposes.

16. Mineral Revenue Audit and Settlement Fund

Art. VII, § 10.5; La. R.S. § 39:97
1991
Oversight: Department of Natural Resources (DNR)

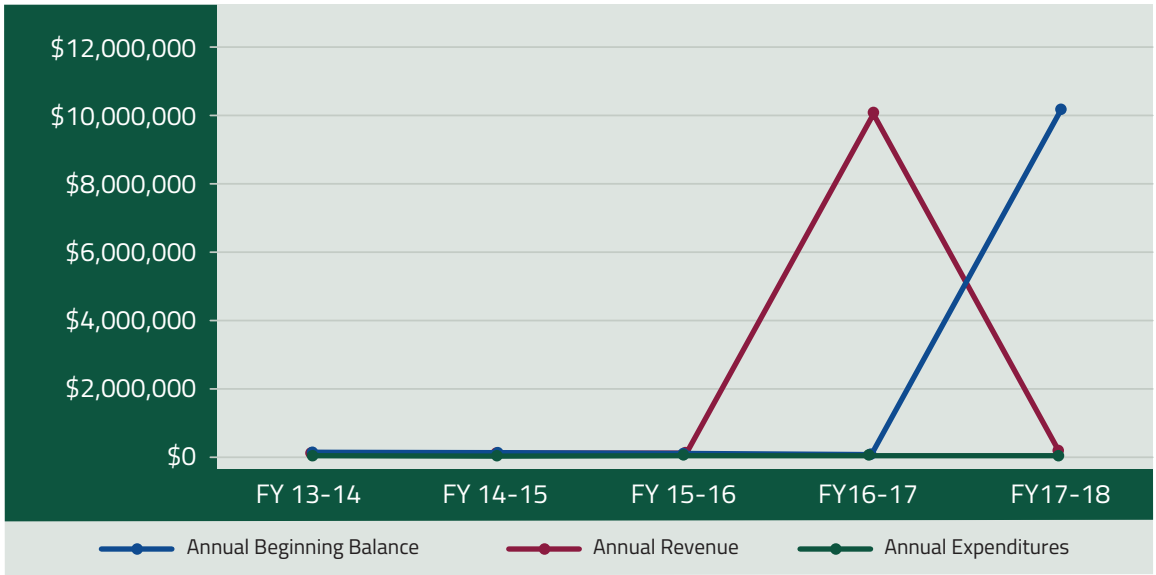
Money from mineral settlements or judgments of $5 million or more resulting from underpayment to the state of severance taxes or other mineral revenues are deposited into the fund. After required allocations to the Bond Security and Redemption Fund and required allocations to local governments, $35 million must be credited to the Coastal Protection and Restoration Fund. To the extent there is a balance remaining in the fund, the money can only be used for the early retirement of state debt or advanced payments on the unfunded accrued liability (UAL) of public retirement systems.

In 1999, $19.4 million went to the UAL. For bond defeasance, $23 million was used in 2001 and $66.4 million was used in 2003. The fund had an increase in revenue for 2016-17 due to a large, one-time settlement.

Fund Recommendation

The Mineral Revenue Audit and Settlement Fund should be converted to a Program Fund. The Legislature should consider requesting that the Revenue Estimating Conference classify settlements separately to ensure that legislators recognize this is one-time money.

Mineral Revenue Audit and Settlement Fund



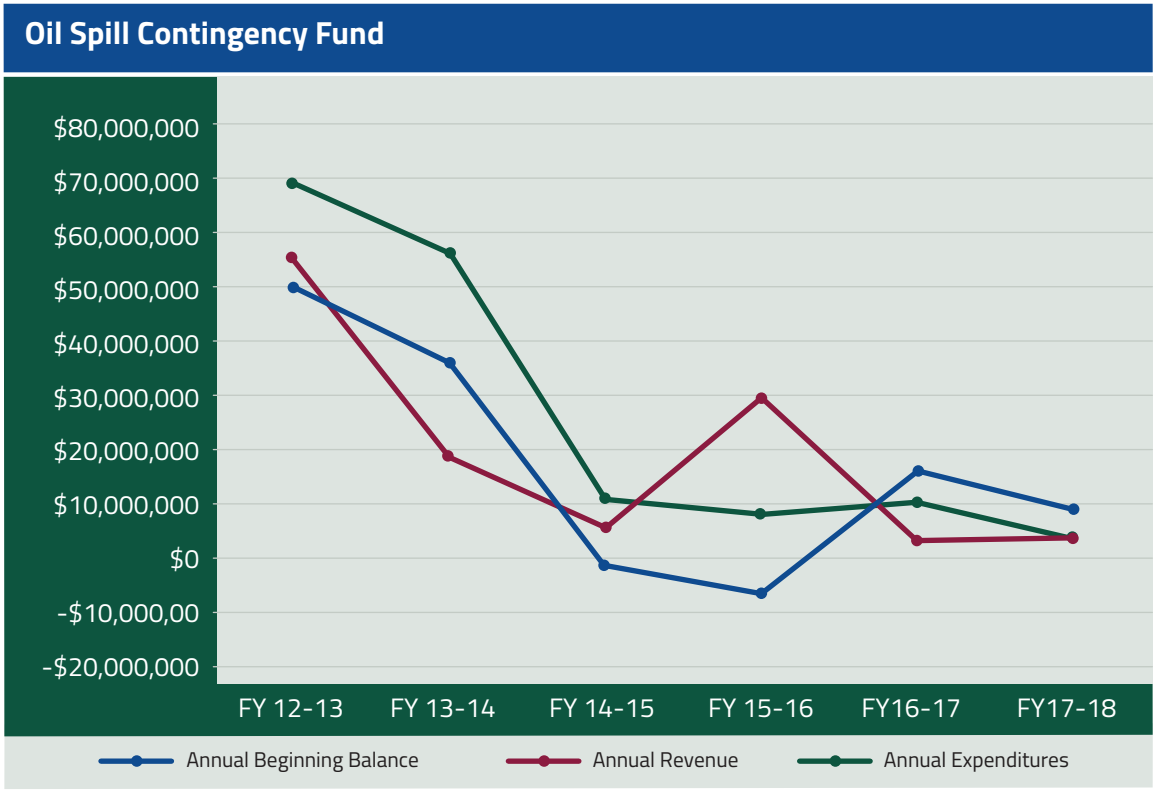
- But for this fund, revenue from mineral settlements or judgments would be treated as mineral revenue. The Budget Stabilization Fund, together with the Revenue Stabilization Fund, are already in place to protect against volatility in mineral revenues by ensuring that during "good times," a portion of excess mineral revenues are set aside for the "bad times." In this regard, the Mineral Revenue Audit and Settlement Fund serves no additional purpose. In addition to moving the fund to statute, the statute should also be amended to clarify that interest and penalty revenue from the fund should also be treated as mineral revenue.
- To the extent that the fund serves as a safeguard against the Legislature coming to rely on one-time settlement monies in the state budget, nothing would prevent the Legislature from mandating that any settlement money over a certain amount must be classified by REC as "non-recurring revenue."

17. Oil Spill Contingency Fund

Art. VII, § 10.7; La. R.S. § 30:2483
1995

Oversight: Department of Public Safety (DPS)

Louisiana refineries that store or process crude oil are charged a per barrel fee that is deposited into the fund. In addition to this fee, the fund can receive reimbursements from the National Pollution Funds Center (NPFC) for reimbursable expenses associated with specific incidents as well as monies from responsible parties to reimburse for response, assessment, restoration or monitoring costs associated with an incident. These additional sources of revenue are



* Negative balances in the fund occurred in FY 14-15 and FY 15-16 when the fund borrowed state general fund money in anticipation of BP Deepwater Horizon Oil Spill settlement money. The SGF was repaid once the settlement money was received.

usually paid after expenses have been incurred on a particular incident. These monies reimburse the state and its respective agencies for agency-specific costs associated with oil spills.

The operations of the Louisiana Oil Spill Coordinator's Office (LOSCO) are financed through the fund. The money may be used on oil spill prevention and response efforts, including removal costs related to abatement and containment of actual or threatened hazardous material spills; restoration of natural resources; and grants, including for research, testing, and development of discharge and blowout prevention and training.

18. Oilfield Site Restoration Fund

Art. VII, § 10.6; La. R.S. § 30:86
1995

Oversight: Department of Natural Resources (DNR)

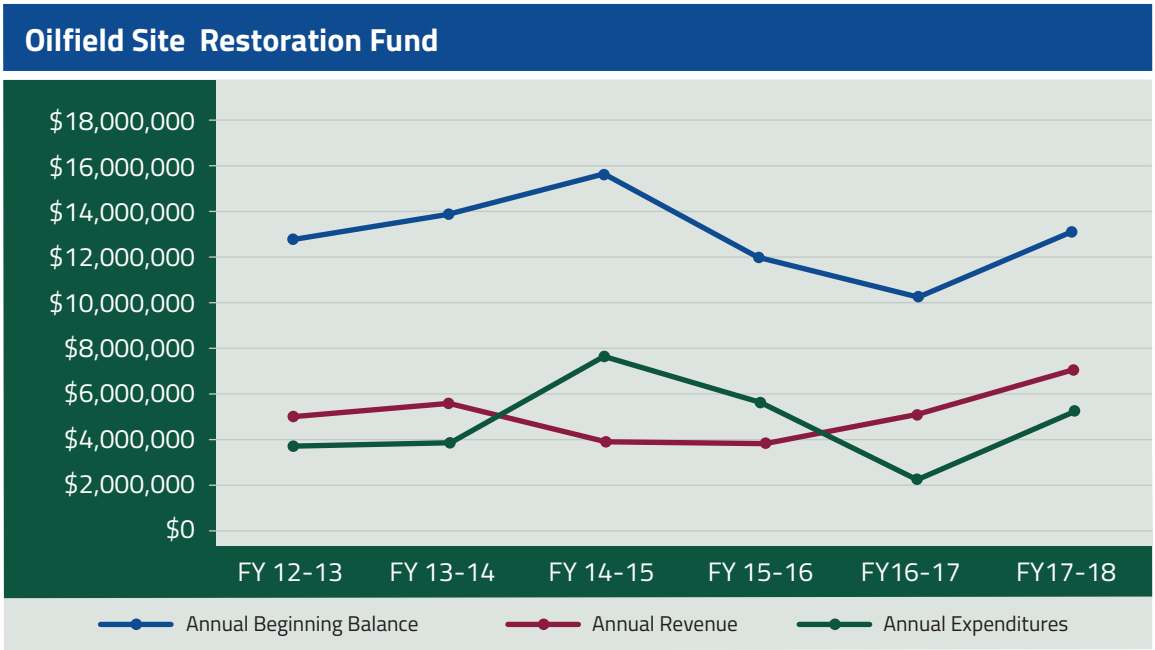
The Louisiana Oilfield Site Restoration Program was created in 1993 within the Department of Natural Resources to address the growing problem of unrestored orphaned oilfield sites across the state. Orphan wells are abandoned oil and gas wells for which no viable responsible party can be located, or such party has failed to maintain the wellsite in accordance with state rules and regulations. The focus of the program is to properly plug and abandon orphan wells and to restore sites to approximate pre-wellsite conditions suitable for redevelopment.

Revenue for the program is entirely generated from a fee on oil and gas production. The flat-rate fees are deposited to the fund, along with certain fines, penalties and judgments associated with site cleanup activities.

Money in the fund may be used, among other things, on oilfield site assessment or restoration projects on orphaned wells; DNR's costs associated with administering the program (up to $750,000 per year); and costs associated with response to an oil and gas environmental emergency.

Fund Recommendations

The Oil Spill Contingency Fund and Oilfield Site Restoration Fund should be converted to Program Funds.



- Both of these funds would operate effectively in statute. Additionally, because both are funded by fees imposed on oil and gas companies for the production or storage of oil and gas, there are already limitations that would prevent the fee revenue from being used on unrelated programs or functions.

19. Lottery Proceeds Fund

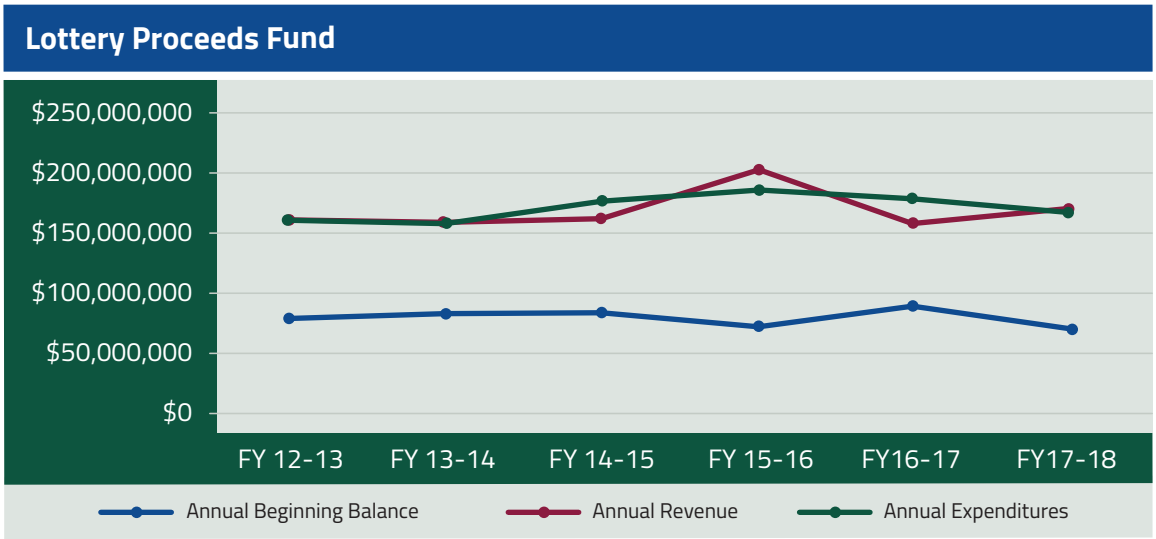
Art. XII, § 6; La. R.S. § 47:9029
1990
Oversight: Louisiana Department of Health (LDH); Department of Education (DOE)

Net proceeds from the operation of the Louisiana Lottery -- deducting administrative costs and the payment of prizes -- are deposited into the fund. In 2003, a constitutional amendment was passed which mandated that the Legislature may only appropriate monies from the Fund (1) to the Minimum Foundation Program (MFP) to fund K-12 education and (2) up to $500,000/year for services related to compulsive gaming.

Recommendation

The Lottery Proceeds Fund should be converted to a Program Fund.

- Because the Constitution already requires that the state fund the MFP, pursuant to the formula adopted by the Legislature (Art. VIII, § 13), there is already a constitutional mandate to appropriate the required amount of state general funds to the MFP. Thus, moving this fund to statute, or even eliminating it altogether, would have no effect on the amount of money appropriated for the MFP in any given year.
- Because the Constitution prohibits any form of gaming or gambling without a vote of the people, removal of the Lottery Fund from the Constitution does not eliminate the need to legalize the state lottery in the Constitution. Language in Article VII, § 6 granting the Legislature authority to "provide for the creation and operation of a state lottery" therefore would need to remain intact to allow the lottery to exist.



Medicaid Trust Fund for the Elderly

Medicaid Trust Fund for the Elderly

Art. VII, § 10(F)(4); La R.S. § 46:2691

2000 (fund created by statute), 2012 (limited protected in the Constitution)

Oversight: Louisiana Department of Health (LDH)

The Medicaid Trust Fund for the Elderly was established by statute in 2000. It used a windfall of federal dollars intended to provide a permanent source of support for health care programs for the state's poor and elderly, mainly through nursing homes. The state acquired the money for the fund by borrowing from parish-owned nursing homes and using the money to obtain federal matching funds. The original intent of the fund was to leave the principal intact and mainly use the interest and investment earnings so the trust fund would provide a stream of funding for decades to pay for nursing home care and other health care services.

In 2010, after federal CMS rules were tightened, Louisiana agreed to pay the federal Medicaid agency $122 million to settle claims that the state had violated rules regarding Medicaid payments to public nursing homes. The settlement money was taken from the Medicaid Trust Fund. Later, in 2012, Louisiana lost $550 million in Medicaid funding when Louisiana's match rate became less favorable.

The fund is not created in the Constitution, but rather only has a very limited, narrow constitutional protection from mid-year sweeps. Under Article VII, § 10(F) of the Constitution, the Legislature and the governor under certain conditions can withdraw money from government trust funds to eliminate a projected deficit. For example, the governor can make mid-year adjustments by taking 5% from each available fund if a revised revenue forecast shows a certain decreased level of state income for that year. However, the Constitution provides special protection from such "sweeps" to an elite group of trust funds, including the Millennium Trust, the Louisiana Education Quality Trust Fund, the Revenue Stabilization Trust Fund, public pensions, and bond security funds. The Medicaid Trust Fund was added to this list in 2012 after interest groups that paid fees into the fund and received benefits from the fund became concerned that the Fund might be tapped to help balance the state's

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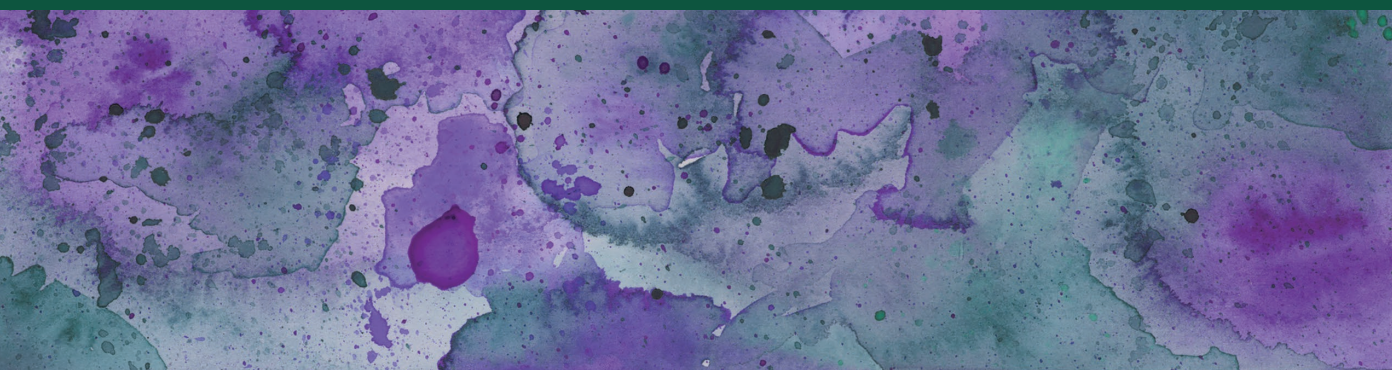


Medicaid Trust Fund for the Elderly

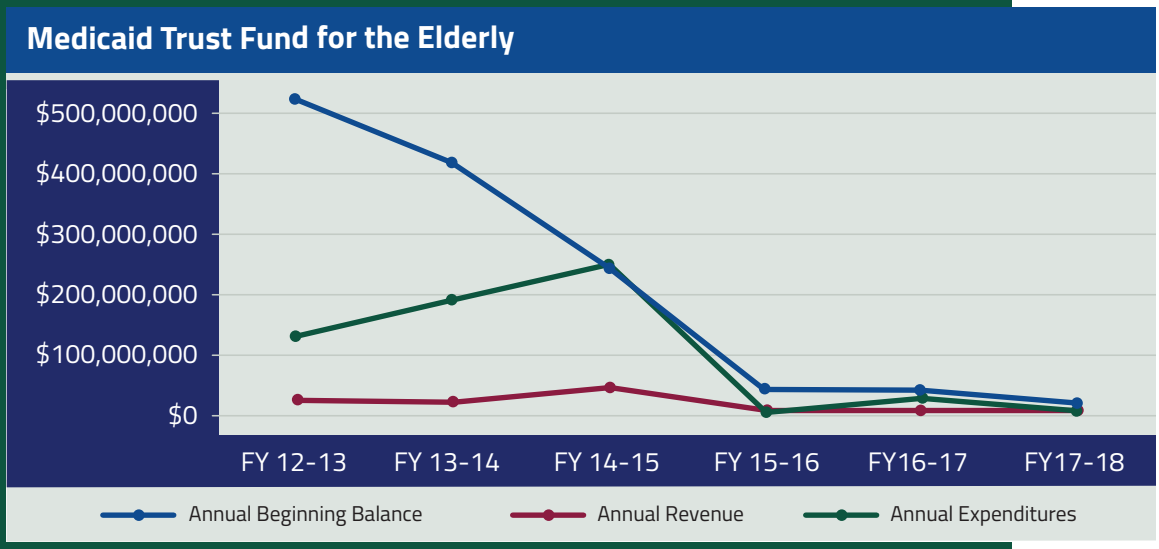
operating budget. In this regard, the fund is not a traditional constitutional fund but does enjoy some constitutional protection.

Despite this added protection, the state continued to deplete the fund after 2012 by aggressively spending down the principal, rather than living off the interest, as intended, primarily to cover rapid increases in nursing home rates. As shown in the chart below, by 2015, the fund was almost empty.

The only money that has been put into the trust fund since 2010 has come from investment earnings and a few other minor sources. What little money is left in the fund is still used as state match to provide payments to nursing homes.

Fund Recommendation

The fund should be removed from the list of funds in § 10(F)(4) that are immune from being swept during budget downturns. Providing the fund with limited constitutional protection during times of a deficit has had little effect on safeguarding the long-term sustainability of the fund, as the Legislature has continued to tap into the fund each year to ensure that it can fund normal state operating expenses.



20. Patient's Compensation Fund (PCF)

Art. XII, § 16; La. R.S. § 40:1231.4
2011

The Patient's Compensation Fund was established to ensure that private healthcare providers have affordable and guaranteed medical malpractice coverage and to provide a reliable source of compensation for medical malpractice claims. Healthcare providers in the state pay a surcharge on medical malpractice insurance premiums, which goes into the fund.

Under Louisiana medical malpractice laws, providers who pay into the fund have financial responsibility for the first $100,000 of exposure per claim but are able to use the fund for excess coverage up to the statutory cap on damages.

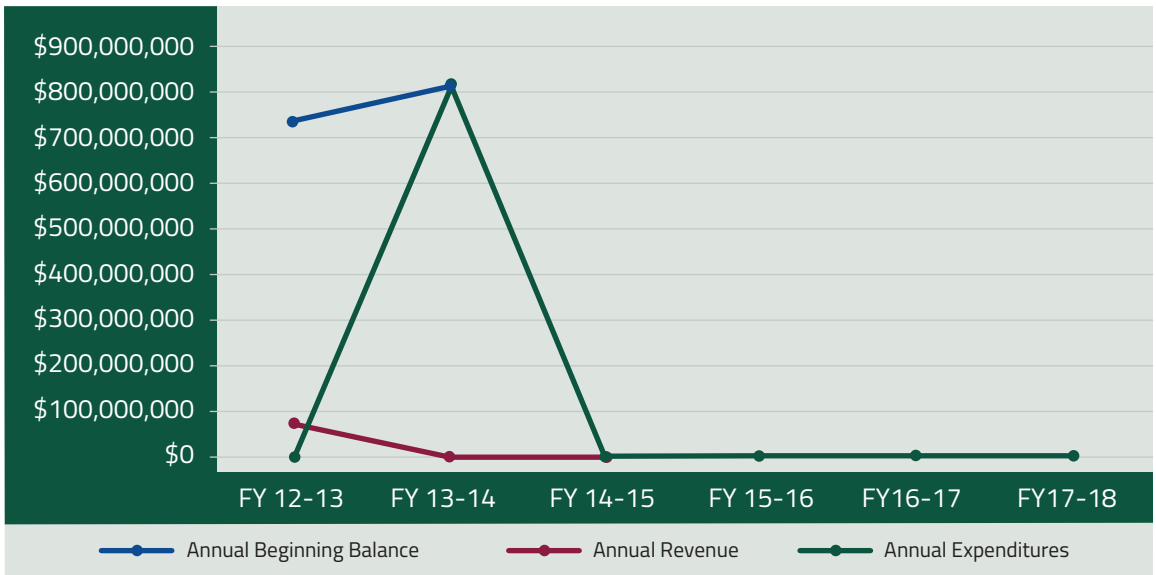
The PCF was created by statute in 1975 and was originally a budget unit of the state regulated by the Department of Insurance. In 2010, the requirement that the PCF Oversight Board seek spending authority from the Legislature was abolished, and in 2011, a constitutional amendment was passed that made clear that monies deposited into the PCF are not public dollars available for appropriation by the Legislature. The amendment stemmed from concerns that with only statutory protection, the Legislature might raid the PCF during tight budget cycles. Although the amendment passed in 2011, transfer of the existing PCF balance from Treasury to the PCF did not happen until FY 2013-14. Today, the PCF is an off-budget unit of the state that is 100% self-funded and not pooled in the state general fund. But, in accordance with a Cooperative Endeavor Agreement, the state treasurer is authorized to invest a portion of the private money comprising the corpus of the fund.

Fund Recommendation

The Patient's Compensation Fund should be converted to a Program Fund.

- Funds deposited into the PCF are not state-owned funds, and the state does not make decisions regarding how the funds are spent. Removing the PCF from the Constitution should

Patient's Compensation Fund



have no effect on the state's ability to appropriate from the fund, as current statute already states: "Neither the fund nor the board shall be a budget unit of the state. The assets of the fund shall not be state property, subject to appropriation by the Legislature, or required to be deposited in the state treasury." (La. R.S. § 40:1231.4)

While at least nine states have some type of patient compensation fund, Louisiana is the only state to include such a fund in its constitution.

21. Millennium Leverage Fund

Art. VII, § 10.10; La. R.S. § 39:98.5
1999
Oversight: Legislature

The fund was originally established as a vehicle for the state to bond out future Tobacco Settlement payments and invest the proceeds back into the three other settlement funds (Health Excellence, Education Excellence, and TOPS). However, in 2001, the state created the Tobacco Settlement Financing Corporation (Act 1145 of 2001) as a conduit to securitize 60% of the annual revenue payment streams. To date, only the Corporation has been used to bond out future settlement payments, and there is no expectation that the Leverage Fund will be used for this purpose.

Fund Recommendation

The Millennium Leverage Fund should be repealed.

22. First Use Fund

Art. IX, § 9
1978

The First Use Tax sought to tax the use of natural gas that was produced outside of Louisiana but first used within Louisiana. Proceeds from the tax were to be deposited into the fund. The tax was declared

unconstitutional by the United States Supreme Court in 1981 but the fund was never removed from the Constitution.

The law required that 75% of proceeds and interest from the fund were to be divided between three separate accounts: (1) the Initial Proceeds Account for investment only; (2) the Debt Retirement and Redemption Account to purchase, call, pay, or redeem any outstanding bonds or debt of the State prior to maturity; and (3) the Barrier Islands Conservation Account for capital improvement projects to conserve and maintain the barrier islands, reefs, and shores of the coastline.

Recommendation

Eliminate the fund because it has had no activity since inception.

23. Higher Education Louisiana Partnership (HELP) Fund

Art. VII, § 10.4
1991
Oversight: Board of Regents

The fund was established in statute and in the Constitution in 1991 as a vehicle for investing private donations, grants, gifts and other monies appropriated by the Legislature in higher education. Money in the fund may be used only on endowed professorships, endowed undergraduate scholarships, library acquisitions, lab enhancement, research and instructional equipment acquisitions, or facilities construction or renovation. No immediate source of revenue was identified when the fund was established in 1991.

Fund Recommendation

The HELP Fund has had no activity and should be eliminated.

24. Agricultural and Seafood Products Support Fund

Art. VII, § 10.12; La. R.S. § 3:4712
2004
Oversight: Department of Economic Development (LED)

This fund was originally established to assist farmers and fishermen. Monies received by the state from licensing of trademarks or labels for use in promoting Louisiana agricultural and seafood products are required to be deposited into the fund. Monies in the fund may be appropriated only for programs to assist farmers and fishermen through the support and expansion of their industries.

Recommendation:

The Agricultural and Seafood Products Support Fund has had no activity and should be eliminated.

25. Atchafalaya Basin Conservation Fund

Art. VII, § 4(D); La R.S. § 49:214.8.7
2012
Oversight: Coastal Protection and Restoration Authority (CPRA)

Fifty-percent of revenues received from severance taxes and royalties on state lands in the Atchafalaya Basin are deposited into the fund after first satisfying required allocations to the Bond Security and Redemption Fund, parish mineral revenue allocations, and other required allocations into the Conversation Fund and Coastal Protection and Restoration Fund. Monies in the fund may be used only for projects in the state or federal basin master plans or to provide matching dollars for the Atchafalaya Basin Floodway System Project. Since the fund's inception, severance taxes and royalty revenues have not been high enough to trigger a deposit into the fund.

Fund Recommendation

The Atchafalaya Basin Conservation Fund has had no activity and should be eliminated.

26. Tideland Fund

Art. IV, § 2(d) (1921 Constitution); Art. XIV, § 10 (1974 Constitution)
Oversight: Legislature/Treasury

The fund was established as a result of historical litigation between the state and the federal government regarding ownership of submerged lands off the Louisiana coast that are used for offshore drilling. The fund originally held monies derived from offshore mineral leases and held in escrow under agreement between the state and the United States pending settlement of the dispute between the parties.

Money in the fund could only be used to purchase, retire, or pay in advance of maturity the bonded indebtedness of the state which existed at the time the fund was created. If any money in the fund cannot be expended within one year, the Constitution allows the Legislature to appropriate 10% of the remaining funds, up to $10 million per year, for capital improvements or the purchase of land. The current fund balance is zero.

Fund Recommendation

The Tideland Fund should be eliminated. Since 1997, the only activity in the fund has been an expenditure in 2014 of a remaining balance of $5,000 to pay for state debt service.

27. Louisiana Investment Fund for Enhancement (LIFE Fund)

Art. IX, § 10; La. R.S. § 30:302
1981
Oversight: Legislature

This fund was established to siphon off "excess" mineral revenues. Accordingly, the Constitution requires that 50% of all mineral revenues that accrue above a "base" level be deposited into the fund. The original base level was established in the 1974 Constitution, which contains a formula for adjusting the base each year going forward. Money in the fund may be appropriated for any public purpose by a 2/3 vote of each house of the Legislature. The base level of mineral revenue collections has not been reached since fiscal year 1992-93.

Fund Recommendation

The LIFE Fund should be eliminated. The fund has had no activity since 2003-2004. The current balance is $603.95.

28. State Revenue Sharing Fund

Art. VII, § 26
1974
Oversight: Legislature

The Constitution requires that the Legislature appropriate at least $90 million of state general funds annually to the fund. The money is distributed to parishes in proportion to population and the number of homesteads as a means of offsetting parishes' lost revenue from constitutionally mandated homestead exemptions. Some money from the fund is also distributed to local retirement systems and to local tax collectors in the form of a commission.

Each fiscal year, the Legislature passes a bill appropriating and distributing the $90 million to local governing authorities. (See, e.g., Act 335 of the 2020 Regular Session.) While the distribution formula is based on parish population and homesteads, the bill also includes numerous restrictions on how funding must be allocated among the various taxing authorities within each parish. These taxing authorities include, for example, fire protection districts, school boards, and recreation districts.

After passage of the bill each year, $90 million of state general funds are transferred to the Revenue Sharing Fund and distributed to local governments in three equal installments on December 1, March 1, and May 1. Since the same amount of money comes into the fund and is transferred out to local governments each year, a historical fund balance graphic is not necessary here.

Fund Recommendations

The Revenue Sharing Fund should be gradually eliminated or, at a minimum, revised to require that local governments align their fund expenditures with the collaborative priorities of both state and local interest, such as early childhood education or mental health services. The success of state programs sometimes depend upon local governments' participation and allocation of resources toward common goals. Direct state support for local governments would have greater strategic impact for Louisiana if the money were spent collaboratively on priorities that create better socio-economic conditions and rankings. Although local governments are allowed to bond their revenue streams from the annual fund allocations, few do so, meaning that an elimination of the fund or a change in spending priorities will not impact specific indebted projects on the local level.

CONSTITUTIONAL DEDICATIONS

For each of the dedications listed above, the Louisiana Department of the Treasury maintains a separate fund and invests each in a distinct class of assets. However, the Constitution also mandates some dedications of state revenue without creating a distinct fund. In these cases, while getting rid of the dedication in the Constitution would not technically require eliminating an existing fund, it would nonetheless result in more state general fund dollars that the Legislature would have flexibility to spend on current priorities.

Two examples of this type of constitutional dedication without a corresponding fund include the Parish Severance Tax and Parish Road Royalty Fund.

Parish Severance Tax

Art. VII, § 4(D); La. R.S. § 47:645
1974
Oversight: Department of Natural Resources (DNR)

The Constitution requires that a portion of all severance taxes collected be remitted to the governing authority of the parish in which the severance or production occurred. The Constitution does not establish a separate "special fund" to hold and distribute these funds to local governments but does establish a mandatory dedication. During calendar year 2018, a total of $45,367,035 was distributed to parishes from general and timber severance payments.

Parish Road Royalty Fund

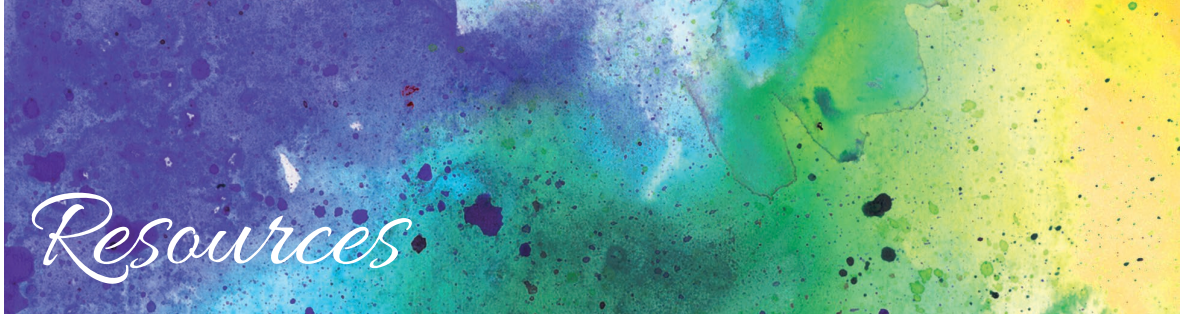
Art. VII, § 4(E), La. R.S. §§ 30:145-46, 47:633.2, 48:484, 56:797
1952
Oversight: Local Governments

The Parish Road Royalty Fund was created in 1952 to pay local governments a portion (1/10th) of mineral lease royalties from state-owned lands, lakes and river beds. In the original 1974 Constitution, the reference to a specific Parish Road Royalty Fund was removed, but the dedication of royalty revenues remained in place. Most royalties are paid directly to parish governing authorities, while some are paid into specific funds or sub-funds established to hold mineral revenues generated in specific geographic areas. The requirement that local governments use the funds on road projects was also removed in the 1974 Constitution, which in its current form allows parishes to use the money on general obligation bonds of the parish or for any other lawful purpose.

During calendar year 2018, a total of $18,271,253 was distributed to local governments, the Conservation Fund (for distribution to geographic sub-funds) and the Atchafalaya Basin Conservation Fund.

Recommendations

Both of these constitutional dedications of state mineral revenues help local governments benefit from natural resources in their parishes since the Constitution otherwise prohibits local governments from imposing their own severance tax. A system to allow local severance taxes would be hard to manage administratively and might also make it harder for the state to incentivize economic development in the energy industry through coordinated tax policies. For these reasons, among others, PAR is not recommending changes to the current system of distributing a portion of state mineral revenues to local governments.



Chapter 1

Louisiana Constitutional Reform Part I: Getting the Foundation Right

This PAR report initiates a discussion of constitutional principles, including the purpose and function of a constitution, as well as more specific subject-matter guidelines regarding what an ideal constitution should contain.

Part I: Getting the Foundation Right

Current Constitution

The Constitution adopted in 1974 is fully updated with amendments. The Louisiana State Senate updates this document each year with any amendments. *Note: If downloaded into publication readers such as iBooks, readers can conduct searches by word.*

Current Constitution

PAR Guides to the Amendments – Comprehensive List

The Public Affairs Research Council of Louisiana has been providing a primer regularly on constitutional amendments set before voters over the past four decades. The Guide is educational and does not recommend how to vote. It offers succinct analysis and provides arguments of proponents and opponents.

Comprehensive List

PAR Guide to the 1992 Constitutional Amendments

Proposed Amendment #2

Initiative and Referendum Institute

The Initiative and Referendum Institute at the University of Southern California is a non-partisan educational organization dedicated to the study of the initiative and referendum.

Initiative and Referendum Institute

Initiative Petitions

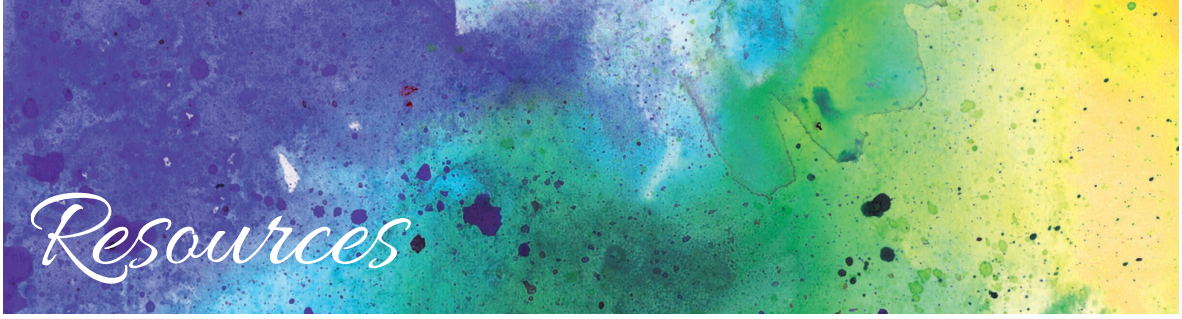
Signature, Geographic Distribution and Single Subject (SS) Requirements for Initiative Petitions

Initiative Petitions

1974 Constitution

Louisiana's Original 1974 Constitution

1974 Constitution



Chapter 2

Task Force on Structural Changes in Budget and Tax Policy

The Louisiana Legislature created the Task Force on Structural Changes in Budget and Tax Policy during the First Special Session of 2016. The purpose was to look beyond recent temporary revenue fixes and recommend permanent solutions for the growing and possibly intractable imbalance between annual state revenues and spending levels.

Task Force on Structural Changes in Budget and Tax Policy

HCR 11 Report- House Concurrent Resolution No. 11 Report

House Concurrent Resolution No. 11 directed the Task Force "to make recommendations of changes to the state's tax laws in an effort to modernize and enhance the efficiency and fairness of the state's tax policies for individuals and businesses, to examine the structure and design of the state budget and make recommendations for long-term budgeting reforms."

House Concurrent Resolution No. 11 Report

Tax Foundation- Louisiana

The Tax Foundation website is an interactive resource that highlights a number of tax rates, ranks, and measures detailing Louisiana's income tax, business tax, sales tax, and property tax systems.

Tax Foundation- Louisiana

Legislative Fiscal Office

The Legislative Fiscal Office is an independent agency created by statute to provide factual and unbiased information to both the House of Representatives and the State Senate

Legislative Fiscal Office

Louisiana Department of Revenue 2017-18 Annual Report

The tax collection program brought in $9.2 billion dollars during the reporting period.

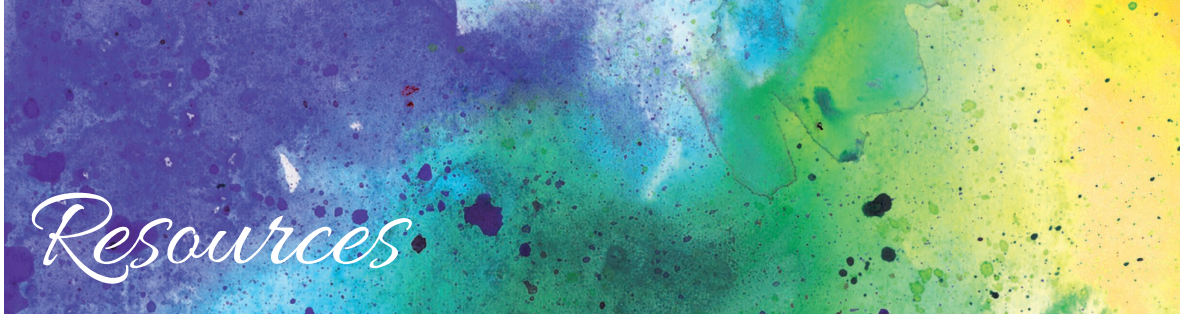
2017-18 Annual Report 2018-2019 Annual Report

Louisiana Department of Revenue 2018-19 Tax Exemption Budget

The purpose of the report is to provide information to facilitate a regular, comprehensive legislative review of tax exemptions.

2018-19 Tax Exemption Budget

2019-2020 Tax Exempt Budget



General Resources

Committee of 100 & Tax Foundation

The Committee of 100 commissioned the Tax Foundation to prepare this review of the Louisiana tax system and recommend possible solutions.
Louisiana Fiscal Reform: A Framework for the Future

Tax Commission Annual Report

The Louisiana Tax Commission publishes an annual report with property tax information.
Tax Commission Annual Report 2018
Tax Commission Annual Report 2019

RESET Louisiana

RESET is a targeted, nonpartisan effort led by The Committee of 100 (C100), the Council for A Better Louisiana (CABL), and the Public Affairs Research Council (PAR) focused on four essential issues: education, state finance, criminal justice/public safety, and transportation/ infrastructure.
RESET Louisiana

State survey – Chart 1

Comprehensive State Constitution Survey including estimated word count and year of current constitution for all 50 states. This chart also includes stipulations for passing any revisions.
Chart 1

State survey- Chart 2

Comprehensive State Constitution Survey including rainy day fund, balanced budget requirement, mandate for education funding, protection of transportation funding, and other dedicated funds for all 50 states.
Chart 2

State survey - Chart 3

Comprehensive State Constitution Survey including numerical caps on taxation, mandated homestead exemption, civil service provision, and pension protection for all 50 states.
Chart 3

PAR Constitutional Advisory Council

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Breazeale Sachse &
Wilson LLP
Managing Partner

Dennis Blunt, Vice-Chair
Phelps Dunbar LLP
Partner

Clay Allen
Allen & Gooch
Managing Partner

Caitlin Berni
Berni Consulting,
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Partner

Doreen Brasseaux
American Council of Engineering
Companies of Louisiana
President & CEO

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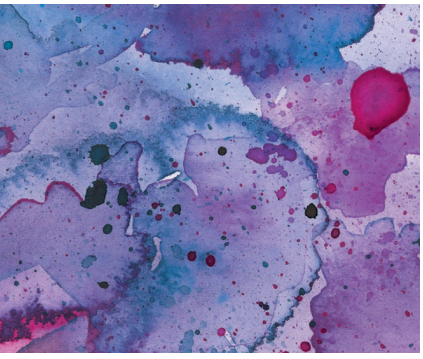
Founding Partner

Jim Tucker
CommCare Corp.
President & CEO
Former Speaker of the Louisiana
House of Representatives



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