



# **PAR Guide to the 2020 Constitutional Amendments**

## **An Independent, Non-Partisan Review**

Support for this report was provided by The Alta and John  
Franks Foundation and PAR's membership funds.

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***Plus! The sports betting proposition***

**September 2020 Publication 343**

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For more information, media interviews or public presentation requests regarding this constitutional amendment guide, please contact PAR President Robert Travis Scott at [RobertScott@parlouisiana.org](mailto:RobertScott@parlouisiana.org).



Please visit our website at [parlouisiana.org](http://parlouisiana.org) to access this guide, to be placed on PAR's mailing list or to become a member or donor.

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# PAR Guide to the 2020 Constitutional Amendments



## Voter Checklist November 3, 2020

YES NO

- ☐ ☐ **Amendment 1** "Do you support an amendment declaring that, to protect human life, a right to abortion and the funding of abortion shall not be found in the Louisiana Constitution?"
- ☐ ☐ **Amendment 2** "Do you support an amendment to permit the presence or production of oil or gas to be included in the methodology used to determine the fair market value of an oil or gas well for the purpose of property assessment?"
- ☐ ☐ **Amendment 3** "Do you support an amendment to allow for the use of the Budget Stabilization Fund, also known as the Rainy Day Fund, for state costs associated with a disaster declared by the federal government?"
- ☐ ☐ **Amendment 4** "Do you support an amendment to limit the growth of the expenditure limit for the state general fund and dedicated funds and to remove the calculation of its growth factor from the Constitution?"
- ☐ ☐ **Amendment 5** "Do you support an amendment to authorize local governments to enter into cooperative endeavor ad valorem tax exemption agreements with new or expanding manufacturing establishments for payments in lieu of taxes?"
- ☐ ☐ **Amendment 6** "Do you support an amendment to increase the maximum amount of income a person may receive and still qualify for the special assessment level for residential property receiving the homestead exemption?"
- ☐ ☐ **Amendment 7** "Do you support an amendment to create the Louisiana Unclaimed Property Permanent Trust Fund to preserve the money that remains unclaimed by its owner or owners?"
- ☐ ☐ **Proposition** Shall sports wagering activities and operations be permitted in the parish of \_\_\_\_\_?

## Introduction

You can throw the global economy into chaos and unleash pandemic commotion across the land, but you can't stop the Louisiana Legislature from passing constitutional amendments. Despite this year's truncated legislative sessions and awkward meeting conditions, state lawmakers managed to place seven proposed amendments on the Nov. 3, 2020, ballot. Only one of them is related to the crisis at hand. With 197 amendments already on the books, this may be the year we surpass 200 total amendments added to the Constitution since its adoption in 1974.

As an independent, nonpartisan educational organization, the Public Affairs Research Council of Louisiana (PAR) has been providing reports on constitutional amendments set before voters over the past four decades. This *PAR Guide to the 2020 Constitutional Amendments* provides a review of each proposal in the order they will appear on the ballot, plus a statewide sports betting proposition. The Guide is educational and does not recommend how to vote. It offers succinct analysis and provides arguments of proponents and opponents.

The degree of legislative debate on this latest set of proposals was as sparse as ever witnessed. Some of the amendments saw no testimony in opposition during the committee hearings. Granted, the spring of 2020 was a strange time. Expediency was seen as a virtue and precautions were needed to prevent the spread of the disease, understandably resulting in fewer participants at the Capitol. But it should be noted that some of these proposed changes for the state's foundational document were crafted with little or no critical discussion.

Amendment No. 1 addressing abortion rights is a clear exception. It passed in 2019, after debate among many different voices, but was held until this year to go before the voters. Amendment Nos. 2 through 6 were passed during the 2020 regular session and No. 7 passed in the first special session in June. Each bill received at least a two-thirds favorable vote in the House of Representatives and in the Senate and now needs a majority vote at the polls for passage. The governor cannot veto a constitutional amendment bill.

**Some of these proposed changes for the state's foundational document were crafted with little or no critical discussion.**

A constitution is supposed to be a state's fundamental law that contains the essential elements of government organization, the basic principles of governmental powers and the enumeration of citizen rights. A constitution is meant to have permanence. Statutory law, on the other hand, provides the details of governmental operation and is subject to frequent change by the Legislature. The concept of the constitution as a relatively permanent statement of basic law fades with the adoption of many amendments, especially when those changes are of a more statutory or regulatory nature.

Voters must do their part. To develop informed opinions, they must evaluate each amendment carefully and make a decision based on its merits. One important consideration should always be whether the proposed language belongs in the Constitution.

PAR's website – [parlouisiana.org](http://parlouisiana.org) – contains a wealth of information under its publications section for constitutional amendments, including data, voting results and analysis that records every amendment since the 1974 Constitution. Further guidance can be found in PAR's publication, *Louisiana Constitutional Reform PART I: Getting the Foundation Right*.

# Amendment 1 No Right to Abortion

## YOU DECIDE



### A VOTE FOR WOULD

State that nothing in the Constitution protects a right to abortion.

### A VOTE AGAINST WOULD

Leave the Constitution with no specific language on abortion.

## CURRENT SITUATION

Abortion is legal in all states. The U.S. Supreme Court has upheld the right to abortion under the U.S. Constitution, most notably in its *Roe v. Wade* decision in 1973. Louisiana has a statutory “trigger” law in place that would ban abortion if the Supreme Court overturned *Roe v. Wade*. The Louisiana Constitution has no language specifically supporting or opposing abortion. However, some might contend that Louisiana’s constitutional rights of privacy or due process may be construed in the future by state courts to allow or support abortion. Abortion opponents want to ensure that the state Constitution is never interpreted in such a way.

## PROPOSED CHANGE

The proposed amendment says that nothing in the Constitution shall be construed to secure or protect a right to abortion or require the funding of abortion. It would have no immediate effect but would limit any future state judicial interpretation that might otherwise find a right to abortion.

## ARGUMENT FOR

The purpose of this amendment is to place the abortion issue in the hands of the people through their elected officials and their statewide vote on this amendment, rather than with their state court judges. Supreme courts in 13 other states have interpreted their constitutions to discover a state right to abortion and have used that to strike down laws for mandatory ultrasounds, 72-hour waiting-periods and other limitations. This amendment will prevent that from happening in Louisiana. Judicial consideration of such important issues should be decided on the clear intent of law passed by the Legislature rather than on legal ambiguities.

## ARGUMENT AGAINST

If *Roe v. Wade* is not overturned, this amendment at best would be pointless and at worst could result in the courts allowing further restrictions on access and funding. Women who want to end a pregnancy cannot wait for long court battles to determine their rights. Louisiana law already withholds state and local funding for abortion and bans Medicaid funding up to the extent of federal law. Funding prohibitions restrict access to women least able to afford abortions. The amendment has no exceptions for cases involving rape, incest or the mother’s risk of death. Louisiana already has a law to ban abortion if *Roe vs. Wade* is overturned.

**Legal Citation:** Act 447 (House Bill 425) by Representative Katrina Jackson of the 2019 Regular Session, adding Article I, Section 20.1.

## Amendment 2 Oil and Gas Well Assessment

### YOU DECIDE



#### A VOTE FOR WOULD

Allow for a well's oil and gas production when valuing it for property tax assessment.

#### A VOTE AGAINST WOULD

Keep the current methods of oil and gas well assessment.

### CURRENT SITUATION

Severance taxes are the only taxes constitutionally permitted on oil and natural gas. Local property taxes can be levied on oil and gas wells, but without consideration given to the minerals that the wells produce. Louisiana is unusual in this respect. This prohibition makes it difficult to value oil and natural gas wells for purposes of property tax assessment. Local assessors must try to determine the value of a well without considering the income it might produce from the oil or gas it contains. This situation has forced assessors to use other approaches, such as the replacement cost of a well or its market value. But many believe those methods are inadequate for determining the real fair market value of a well. The state's current technique is widely viewed as a cumbersome and arcane assessment system fueling frequent clashes among assessors, oil and gas producers and the Louisiana Tax Commission, which is the chief regulatory body for this type of tax assessment.

### PROPOSED CHANGE

Supported jointly by assessors and the oil and gas industry, this amendment specifies that the production of an oil or gas well may be included in the methodology when determining the fair market value of a well for the purpose of ad valorem, or property, taxes. The Louisiana Tax Commission would create rules for how the production of a well's oil and gas would be incorporated into the method used by local assessors. The intent is not to raise or lower taxes on oil and gas wells in general. However, a shift in tax burden would occur. Low-producing or shut-in wells may be assessed less, and wells with higher production potential may be assessed more.



## ARGUMENT FOR

Assessors and the oil and gas industry came together to create this amendment after decades of disagreement. This amendment is narrow and does not affect severance taxes. The amendment only allows the income approach to be considered when assessing an oil or gas well, along with the market and cost approaches. It will mean that newer, richer wells will tend to be valued higher than older, poorer wells, which is not necessarily the case now. This change will give the local assessors and the Tax Commission the tools they need to assess wells logically and fairly. It could reduce litigation. It may lessen the unfair tax burden on some low producers. A mere statute will not suffice and there is no foreseeable resolution outside of a constitutional amendment. No one spoke against the amendment during committee hearings.

## ARGUMENT AGAINST

Although assessors and the oil industry have said this change would not raise taxes, the Legislative Fiscal Office stated that any effect on local tax bases is speculative. Some parishes could receive more in property taxes while others could receive less as a result of this amendment. While the amendment allows a new assessment method, a better solution would be a broader and more fundamental change to create a Constitution that allows the Legislature more flexibility with state fiscal policy.

**Legal Citation:** Act 368 (House Bill 360) by Representative Mike Huval of the 2020 Regular Session, amending Article VII, Section 4(B).

## Amendment 3 Rainy Day Fund and Disasters

### YOU DECIDE



#### A VOTE FOR WOULD

Allow the Budget Stabilization Fund to be tapped when there is a federally declared disaster.

#### A VOTE AGAINST WOULD

Continue to restrict use of the Budget Stabilization Fund to revenue shortfalls.

### CURRENT SITUATION

The Budget Stabilization Fund, often referred to as the Rainy Day Fund, provides the state government a cushion in times of financial hardship that result in revenue shortfalls. For example, the fund can be tapped when the state's general fund revenue forecast falls below the previously expected level. The amount that can be siphoned from the fund is limited. Lawmakers cannot take more than the projected deficit or more than one-third of the total fund balance, whichever is smaller. Tapping the fund requires the support of two-thirds of each house of the Legislature. The fund has several potential sources of money to fill it, primarily a portion of state mineral revenue above a certain threshold or 25% of any officially designated nonrecurring revenue such as state surplus.

### PROPOSED CHANGE

The amendment allows the fund to offset state costs associated with a federally declared disaster. It does not change any of the other constitutional reasons for tapping the fund. The amount used still cannot exceed more than one-third of total money in the fund. A two-thirds vote of the House and Senate would still be required to tap it. Companion legislation (*Act 182 of the 2020 Regular Session*) provides in statute a mandate for repaying the fund when federal emergency dollars reimburse the state for emergency costs. The statute also provides details of the mechanisms for spending the emergency money.



## ARGUMENT FOR

Louisiana is frequently beset with disasters such as hurricanes and floods. The cost of the response is often expensive. The federal government will reimburse the state a large portion of disaster related expenses, but the state might not have adequate resources readily available to pay up front or to pay its share. To prevent a cash flow crisis, the state could tap the Rainy Day Fund quickly and get reimbursed later, if this amendment passes. Under the companion statute, the state would use the federal reimbursement to refill the money taken out of the fund. The state needs this tool in our belt for weather disasters and public health crises. The amendment retains the other requirements and protections that come with the Rainy Day Fund.

## ARGUMENT AGAINST

It is a close call whether natural disasters or fiscal crises are more common in Louisiana. Under this amendment the Rainy Day Fund could be tapped even if the state isn't facing a sudden shortfall in revenue. This new method of tapping the fund would be used way too frequently and undermine the original purpose and function of the Rainy Day Fund, which is to temper the state budget in times of revenue surges and boost the budget when revenue unexpectedly falls or economic cycles turn downward. The fund is already designed to handle state financial problems appropriately even in the case of disasters. If a disaster results in a forecast of lower state revenue, the fund can be tapped under current law, as it was in the early aftermath of Hurricane Katrina. If a disaster does not lower state revenue, then the Rainy Day Fund should be left alone and other means should be found to cover any emergency costs, including budget changes or tapping dedicated disaster funds. The state usually has years to pay back federal disaster aid. The companion statute's provision for refilling the fund has no teeth and could be overridden easily in the state budget process. The original purpose of the Rainy Day Fund would be undermined and the state's bond rating could suffer as a result. This amendment and its complicated companion statute were passed with virtually no committee debate supporting or opposing the legislation. The idea should be sent back to the Legislature for a more thorough hearing and process.

**Legal citation:** Act 367 (House Bill 267) by Representative Gary Carter of the 2020 Regular Session, amending Article VII, Section 10.3(C)(3) and (4); Adds Article VII, Section 10.3(A)(5) 3 and (C)(5)). Act 182 is the companion statute.

## Amendment 4 State Budget Expenditure Limit

### YOU DECIDE



#### A VOTE FOR WOULD

Create a new state budget spending limit with probable slower growth.

#### A VOTE AGAINST WOULD

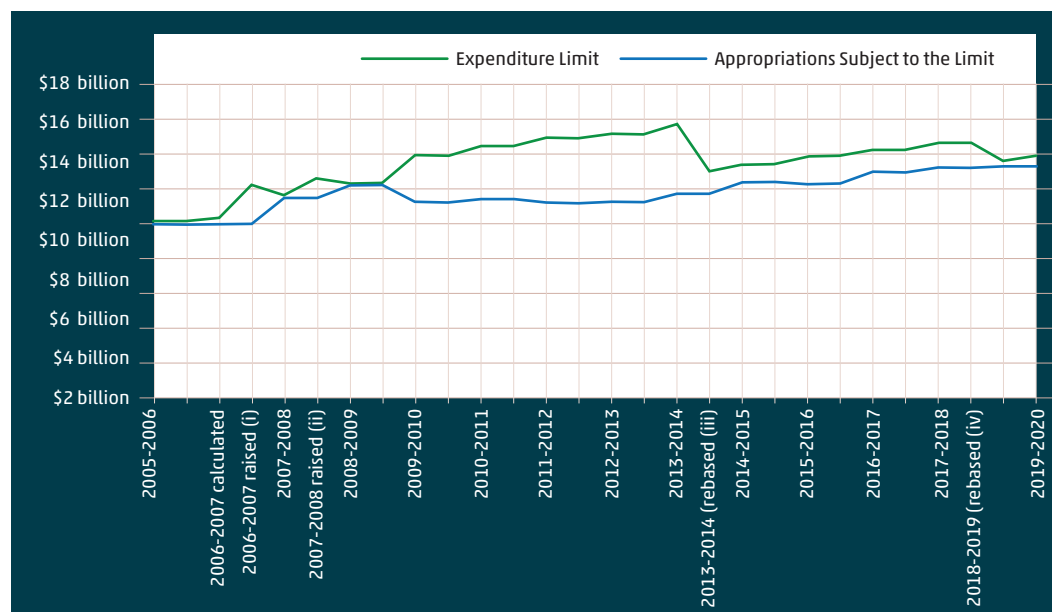
Continue the current method for an expenditure limit.

### CURRENT SITUATION

The Louisiana Constitution requires a balanced budget for state government and any deficit must be remedied immediately. The amount of state appropriations cannot exceed the estimated level of state revenue to be collected. In addition, state government appropriations cannot exceed a constitutionally mandated expenditure limit. The limit may increase each year based on a prescribed growth factor. Under the Constitution, the growth factor is based on changes in average annual personal income in Louisiana.\*

The limit applies to the state general fund and state dollars spent from dedicated funds and various fees. The spending limit does not apply to state expenditures of federal money, state surplus dollars or higher education tuition and fees. The current expenditure limit is \$14.3 billion based on a growth factor of 2.97% for the past year. The Legislature can change the expenditure limit up or down by a two-thirds vote.

### EXPENDITURE LIMIT HISTORY



Source: Legislative Fiscal Office

Note: This chart shows the Expenditure Limit over time as well as any changes initiated by the Legislature. The Expenditure Limit does not apply to the entire budget. It excludes federal funds as well as some state expenditures such as college tuition and fees. This chart shows the size of the budget that is subject to the limit.

(i) raised \$1,878,637,947 above the calculated limit to accommodate post-Katrina FY06 surplus and excess revenue (one time only, not rebased)

(ii) raised \$1,014,658,270 above the calculated limit to accommodate post-Katrina FY07 surplus and excess revenue (one time only, not rebased)

(iii) rebased below the FY14 limit in order to reduce the calculated limits for FY15 and beyond as per HCR 6 of 2013R

(iv) rebased below the FY19 calculated limit in order to reduce the calculated limits for FY20 and beyond as per HCR 5 of 2018R

## PROPOSED CHANGE

The amendment requires the Legislature to establish a procedure to determine the expenditure limit. It does not alter the existing constitutional balanced budget requirement. The procedure would allow an annual growth factor that cannot exceed 5% in a year. The growth factor can be negative. Once established, the procedure for the growth rate shall not be changed except by a law enacted by a two-thirds vote of the elected members of each house of the Legislature. However, the Legislature will continue to have the same option it does now: to change the expenditure limit directly up or down to any extent with a two-thirds vote, regardless of the new 5% limit on the growth factor. The amendment would become effective in June 2022 and would establish a baseline in fiscal year 2023. It would affect spending starting with fiscal year 2024 (*July 1, 2023, to June 30, 2024*).

The amendment's companion statute (*Act 271 of the 2020 Regular Session*) would create the new growth factor and set some rules. The new growth factor would be the average of four statistics: three-year average growth in Louisiana personal income, the change in state gross domestic product, inflation and population change. The Legislature's joint budget committee will be required to approve the data sources and the methodology.

**TABLE 1: COMPARISON OF CURRENT AND PROPOSED GROWTH FACTOR ESTIMATES**

	CURRENT LAW				PROPOSED LAW
FACTORS	PERSONAL INCOME	GDP	CPI	POPULATION	AVERAGE
FY '24	2.84%	2.16%	1.98%	0.09%	1.77%
FY '25	4.59%	6.09%	2.65%	0.17%	3.37%
FY '26	5.51%	6.41%	2.67%	0.13%	3.68%

**Source: Legislative Fiscal Office; economic projections**

Note: The current growth factor for the state expenditure limit is the average personal income (PI) in Louisiana. If Amendment 4 passes, the new method would include the state personal income combined with the state's gross domestic product (GDP), inflation as measured by the consumer price index (CPI) and the state population. Using standard economic projections, we can compare the outlook for the method under the current law with the outlook for the proposed law starting in fiscal year 2024, when the new limit would take effect. With these assumptions, the new growth factor would be lower than the current one.

There is no guarantee this new growth factor would be lower than the current method in every year going forward; for example, the inflation rate has been low for many years but some economists foresee higher inflation in the near future. However, based on the current consensus outlook for these metrics, the proposed new growth factor would be significantly lower than the current one over the next few years. As shown in Table 1, the average of the four metrics is expected to increase more slowly than the single measure of personal income growth. This result is assured by using Louisiana's stagnant population growth as one of the four factors.

The statute restricts growth in another significant way: each year the baseline would be reset to match either the previous year's expenditure limit or the previous year's actual budget appropriation, whichever is less. This can be a significant difference. For example, the state budget for last year was \$500 million lower than the expenditure limit. The new limit for each new year will be whatever was just appropriated the previous year plus the growth factor. The combination of lower growth rates and reduced baselines will have the cumulative effect of imposing a much lower ceiling over the long term.

## ARGUMENT FOR

Louisiana government grows at either an unpredictable rate or too fast. Once a budget is increased, it is politically difficult to cut it. State government spends every tax dollar it gets and when times get tough politicians either resort to budget gimmicks or raising taxes. Cutting the budget is rarely

considered seriously. Tightening the expenditure limit would attack this problem on the front end by slowing how much can be added to the budget. This amendment does not prevent the budget from growing, but likely reduces the maximum growth and brings predictability when compared to the current system. It is also more flexible because legislators will be able to adjust the growth formula with a two-thirds vote rather than having to amend the Constitution, which already is too filled with details. With a supermajority vote, the Legislature would be able to adjust the expenditure limit in cases of emergency, such as after a major hurricane. Since this would not affect the budget until fiscal year 2024, there is plenty of time to recover from our current economic crisis.

## **ARGUMENT AGAINST**

This amendment does not ensure more efficient government; that will only come with changes to fiscal mandates and constraints. No protected funds or mandated spending increases would be eliminated. Therefore, this new system will make the Legislature's options less flexible. This amendment seeks to treat the symptoms of budget growth without curing the root problems. State government is ultimately constrained by the amount of revenue it receives. If citizens want to shrink government, the proper remedy is to elect people who will do so. Limiting the growth will disproportionately affect those areas that are not protected by fiscal provisions in the Constitution, primarily higher education and healthcare. This may result in declining or slower growth in government service levels and fails to account for disproportionate growth of intensive government service populations such as the elderly and school-age children. It is not clear that the new formula uses the appropriate statistics or that averaging the four metrics makes sense. The state already has an expenditure limit that is working. This new limit would be too harsh and could hamper appropriate levels of government spending. The idea should be sent back to the Legislature for a more thorough vetting.

**Legal citation:** *Act 366 (House Bill 464) by Representative Gerald "Beau" Beaulieu of the 2020 Regular Session, amending Article VII, Section 10(C)(1). The implementing statute is Act 271.*

\*Specifically, the budget growth rate calculation currently is the average annual percentage rate of change of personal income for Louisiana as defined and reported by the U.S. Department of Commerce for the three calendar years prior to the fiscal year for which the limit is calculated.

## Amendment 5 Payments instead of property taxes

### YOU DECIDE



#### A VOTE FOR WOULD

Provide new options for manufacturers and local governments to schedule payments instead of property taxes for industrial expansions.

#### A VOTE AGAINST WOULD

Leave the current system as the only set of options for property taxes, payments or exemptions for manufacturers.

### CURRENT SITUATION

The state Constitution requires assessments and the levy of local taxes on business and residential properties annually. Any exceptions to the payment of ad valorem taxes (i.e., property taxes) must be approved in the Constitution. One constitutional exception is the Industrial Tax Exemption Program (ITEP), which allows a 100% exemption for up to 10 years for new or expanding manufacturing projects. An industrial tax exemption requires approval by the state Board of Commerce and Industry, whose members mainly are appointed by the governor. The Board and the governor recently restructured ITEP to provide an 80% exemption of up to eight years for manufacturing projects. The revised program lets local government entities deny the exemption.

Although not specifically named in the Constitution, payments in lieu of taxes (PILOTs) are available to various types of businesses – not just manufacturers – if a deal can be struck with local governments. With a PILOT, a governmental agency can take legal title to an economic development project and lease it back to the developer at minimal cost. As publicly owned property, the project is exempt from property taxes under the Constitution. But the developer instead agrees to make scheduled payments to local government bodies in lieu of the ad valorem taxes that would otherwise be owed. Used as an economic development incentive, the payments over the term of the PILOT usually are less than what the full property tax bill would have been. But a PILOT usually results in local government receiving more funding than it would during a 10-year ITEP term. PILOTs provide a business with a long-term predictable cost structure and a more reliable calculation for the return on investment. Local governments can use the payments to issue bonds for infrastructure projects and other purposes. PILOTs take various forms and are common in Louisiana. In many other states PILOTs are used extensively as a primary economic incentive tool.

### PROPOSED CHANGE

The amendment lets manufacturers and local government bodies negotiate deals for payments in lieu of taxes for new projects or additions without the need to transfer legal title of the project. Property covered by an agreement for payments in lieu of taxes would be exempt from the payment of property taxes. The manufacturer must meet the same qualifications as required by ITEP to be eligible for this PILOT. The local assessor would list the value of the new property on the parish rolls but the payments would be whatever is negotiated in the cooperative endeavor agreement between the company and each local taxing authority. This amendment does not change or replace the laws that allow ITEP or the regular taxing process. It just adds the option of doing a PILOT – but with an important difference: the manufacturer can retain ownership of the property. This option would be especially relevant for existing major industrial sites that want to expand capacity or add equipment.

A companion statute (*Act 240 from the 2020 Regular Session*) would regulate this new option if the amendment passes. Any further statutory changes to the program would require a two-thirds vote of the Legislature. This legislation lets each local taxing authority – school district, parish, etc. -- negotiate its own agreement with the manufacturer. The maximum duration of any PILOT would be 25 years, which can be designed to assist local governments with financing long-term bonding projects. Local assessors and the Louisiana Economic Development department would be consulted before any agreement although adoption would be left to the taxing authority.

## ARGUMENT FOR

The Louisiana School Board Association, the Police Jury Association, the Louisiana Sheriff's Association and multiple business organizations support this amendment. It gives local governments an additional, optional tool for incentivizing business investment and empowers local governments to negotiate a more "front-loaded" funding schedule for local needs without having to wait out the eight- or 10-year ITEP period. The payments can be used by local governments for a variety of purposes, including operations or to service bonds for public infrastructure projects. These arrangements would be completely voluntary for all sides. Unlike the rigid ITEP program controlled by the governor, this PILOT program is locally run and has the flexibility to be tweaked and improved by the Legislature over time. PILOTS are used successfully in other states and promote economic development while giving locals more control and providing more certainty to both sides.

## ARGUMENT AGAINST

Assessors generally oppose this amendment. These PILOTS have the potential to be more generous than the ITEP tax break. Although the manufacturer might begin paying earlier than under ITEP, the company could get a better tax break by paying less taxes than would be due after the eight- or 10-year ITEP period expires. If a business pays taxes in advance, it will want to be compensated for doing so. That means the local government will receive less tax revenue, which could lead to spending cuts or an increase in taxes. Locking in an agreement for 25 years is too long. Politicians will make deals to enjoy revenue streams in the short term that hamper tax revenues in the long term. If payments are delinquent, the local government will not be able to wield the usual property tax enforcement system. The program creates more potential for corruption on the part of business interests and local officials. A law was passed in 2018 that lets businesses enter agreements to make advance property tax payments. We should give that program time to work before passing this amendment.

**Legal Citation:** *Act 370 (Senate Bill 272) by Senator Mark Abraham of the 2020 Regular Session, adding Article VII, Section 21 (O). Act 240 is the companion statute.*

## Amendment 6 Expanded property tax freezes

### YOU DECIDE



#### A VOTE FOR WOULD

Allow homeowners with higher incomes to qualify for the property tax assessment freeze.

#### A VOTE AGAINST WOULD

Keep the current income threshold for property tax freezes.

### CURRENT SITUATION

The Louisiana Constitution provides many special property tax breaks. Property tax assessments are frozen, and therefore do not increase, for homeowners of certain income levels who are: age 65 or older; disabled veterans; surviving spouses of members of the military who were killed in action; and the totally disabled. Only primary residences that qualify for the homestead exemption are eligible for the freeze. Also, the homeowner income level must be no more than \$77,030. That threshold was originally \$50,000 in 2001 but the number has been adjusted each year for inflation. The freeze is on the assessment of the value of the home, not on the final calculation of the tax bill. In Louisiana, special assessments apply to 180,803 homes, of which 90% are for those age 65 or older, according to the state tax commission.



## PROPOSED CHANGE

The amendment keeps the property assessment freeze program in place but raises the income limitation level to \$100,000. This new threshold would be effective upon adoption and would be adjusted for inflation each year starting in the 2026 tax year. The number of affected homeowners and the local revenue impacts are unknown. The Legislative Fiscal Office notes that most age-65 or older homeowners in the state are already eligible for the assessment freeze.

## ARGUMENT FOR

More seniors are skipping retirement at 65 and are still in dual-income households. Full social security benefits do not kick in until well after age 65. Many older working residents have incomes above the current freeze threshold and deserve the break alongside their retired peers. We have a growing retiree population and a shrinking population of workers, so keeping more people in the workforce is a good idea for Louisiana. This amendment would make Louisiana a more attractive place for retirees.

## ARGUMENT AGAINST

If people are working longer and making more income later in life, then this amendment moves us in the wrong direction. As the population ages, we will have more retirees and fewer people paying full property taxes. Special assessments or “freezes” were created to help those on a fixed income, not so much for those gainfully employed. According to the U.S. Census the median household income for those aged 65-74 is \$52,465, so the current freeze already works for the vast majority of seniors. It is hard to see the need for special treatment for those making over \$80,000. Already, vast amounts of household property values are untaxed in Louisiana due to the homestead exemption, the assessment freezes and other tax breaks. Local governments are being denied this vital and stable tax base.

**Legal Citation:** Act 369 (House Bill 525) by Representative Stephanie Hilferty of the 2020 Regular Session, amending Article VII, Section 18(G)(1)(a)(ii).

## Amendment 7 New fund for unclaimed property protection

### YOU DECIDE



#### A VOTE FOR WOULD

Protect unclaimed property money in a new trust fund.

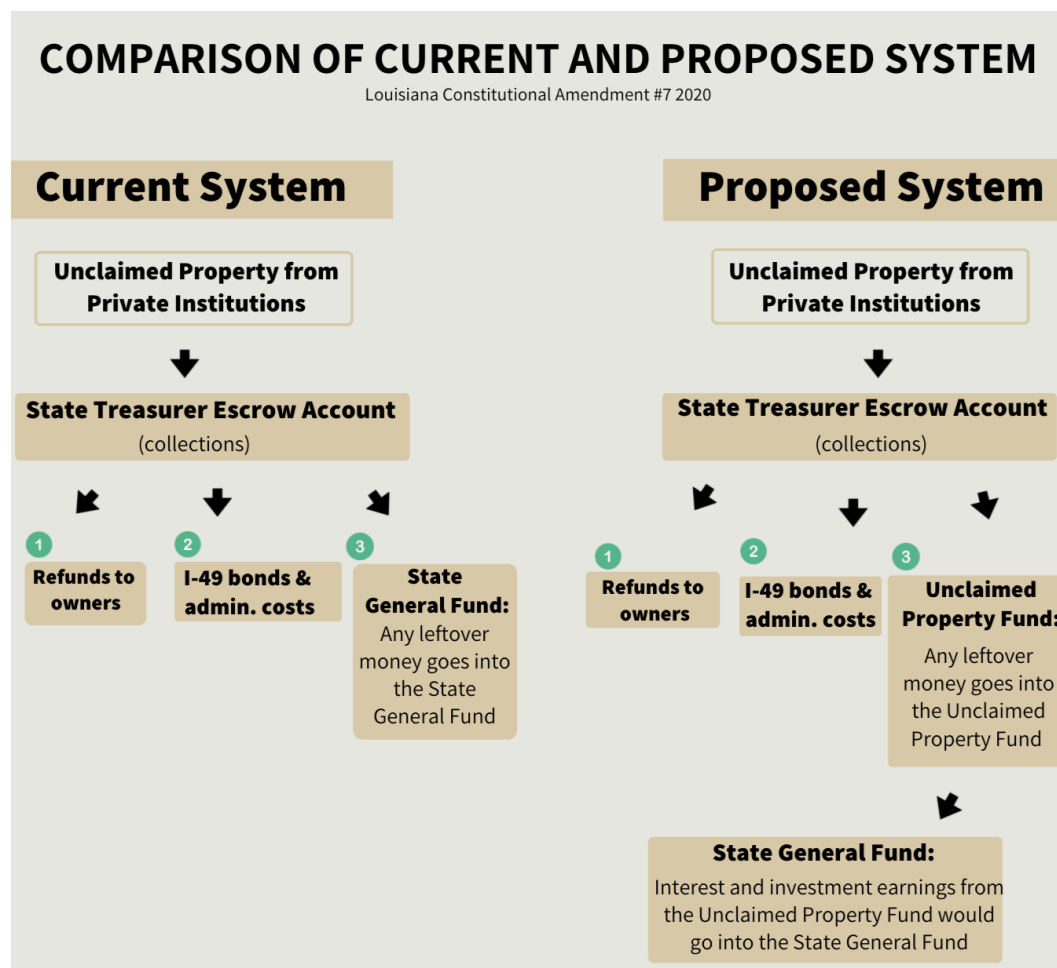
#### A VOTE AGAINST WOULD

Keep the current program that benefits the state general fund.

### CURRENT SITUATION

Every year, thousands of people have claims to money they don't know about. This consists of unclaimed bank accounts, insurance payments, energy bill excesses that were meant to be reimbursed but the original utility customer could not be found, and similar rebates. These batches of money – or “unclaimed property” – eventually are turned over to the Treasurer's office and placed into the Unclaimed Property Program. The program seeks the owners of the funds in an attempt to return the money. Similar programs operate in other states.

Each year, if the new collections entrusted to the Treasurer exceed the amount of money claimed by the rightful owners, the excess can be spent on other things. By law, \$15 million of the excess must be dedicated to Interstate-49 bond payments and about \$2.5 million goes to administrative



costs. After that, the excess dollars can be placed in the state general fund for government spending. At the end of every year going back to 1973, there has been excess money for the general fund. The state literally counts on the excess unclaimed property being converted into state spending cash. However, due to an upgraded effort recently, the number of refunds as well as the total dollar amount of returned claims has increased substantially.

Citizens still have a claim to their property even if the money has been spent by the state. In Louisiana there is no time limit to recover unclaimed property. Over \$1.4 billion has been collected by the state and only \$520 million has been returned, leaving the state with a possible liability approaching \$900 million. No one is predicting that one day the state will be on the hook for that much money. But the state Treasurer has warned that better communication and new technologies in the information age are testing our old assumptions about how much unclaimed property will find its true home.

### **FOLLOW THE MONEY: THE PATH OF UNCLAIMED PROPERTY CASH**

<b>FISCAL YEAR</b>	<b>UNCLAIMED PROPERTY COLLECTED</b>	<b>NUMBER OF REFUNDS</b>	<b>AMOUNT REFUNDED</b>	<b>REMAINING COLLECTIONS</b>	<b>TRANSFER TO STATE GENERAL FUND</b>
<b>2013</b>	\$88.2	26,037	\$31.1	\$54.9	\$38.5
<b>2014</b>	\$90.4	44,457	\$32.2	\$56.2	\$39.2
<b>2015</b>	\$95.9	24,049	\$34.1	\$60.2	\$43.4
<b>2016</b>	\$88.5	26,956	\$35.2	\$51.7	\$33.2
<b>2017</b>	\$76.1	26,467	\$27.6	\$47.6	\$29.1
<b>2018</b>	\$85.8	45,402	\$30.6	\$54.3	\$36.9
<b>2019</b>	\$81.5	207,906	\$50.9	\$29.6	\$12.0*
<b>2020</b>	\$92.9	196,797	\$62.4	\$29.2	\$11.7

**Source: State Treasurer's Office**

*All dollar figures are in millions.*

*Remaining collections do not include auditor fees. Transfers to the state general fund are after removal of administrative costs and the \$15 million per year I-49 bond payments.*

*\*Was not transferred to State General Fund until FY2021 because of a legal dispute.*

### **PROPOSED CHANGE**

The amendment creates the Louisiana Unclaimed Property Permanent Trust Fund. The fund principal would be used solely for the payment of claims. Any money not refunded in a given year would stay in the Unclaimed Property Fund rather than flow into the general fund. The state Treasurer would invest the balance, including up to 50% in stocks and other equities. If the claims ever exceed collections in a given year, the Treasurer would tap into the balance of the Unclaimed Property Fund to handle the claims. Any investment income or interest earnings from the fund would be deposited into the state general fund, while the value of the unclaimed properties would remain protected. This process would not interfere with the continuing I-49 bond payments. The amendment would constitutionally protect the owners of unclaimed property by stating the funds are private property and only held in trust until the owner makes a claim.

### **ARGUMENT FOR**

This amendment protects money that belongs to individuals. Unclaimed property comes to the state with somebody's name on it and the state's job is to try to find those people. This money does not belong to the state; it's for the citizens with rightful claims. This new fund is needed because the

recent increase in returns to claimants has created a cash flow issue in the Treasurer's office. Twice the escrow fund has temporarily run dry resulting in a slowdown of payments. This improvement in finding claimants could continue due to advances in technology and efforts by the Treasurer's office. This amendment would arrest the growing liability associated with habitually moving excess unclaimed property to the general fund. By allowing the fund to be invested, it creates a future revenue stream for the state that would not be dependent on spending other people's property.

## **ARGUMENT AGAINST**

The Unclaimed Property Program has existed for almost 50 years and has never had more claims than collections in a year. Even with increased returns in 2019 there was still an excess of about \$12 million after dedications. The cash flow issue of the program has existed from its inception because state law requires remittances to be paid to the Treasury at particular times of the year, while refunds can come in at any time. State law could be adjusted to reduce this problem. This money is put to good use by funding important programs such as K-12 education, healthcare and state colleges. While the investment earnings of the proposed fund would eventually put money into the state general fund, it could take years before that new revenue source would approach anything close to \$12 million in a year. The state needs every dollar it can get if it is going to fund government without raising taxes.

**Legal Citation:** Act 38 (Senate Bill 12) by Senator Michael Fesi of the 2020 1st Special Session, adding Article VII, Section 10(F)(4)(i) and Part V Section 28. Act 20 is the companion legislation.

**Do you have unclaimed property? You can check on this website to see:**  
<https://louisiana.findyourunclaimedproperty.com/>

## Proposition to allow sports betting by parish

Although not a proposal for a constitutional amendment, this proposition will appear on all ballots statewide on November 3.

### YOU DECIDE



#### A VOTE FOR WOULD

Permit sports wagering in the voter's parish.

#### A VOTE AGAINST WOULD

Forbid sports wagering in the voter's parish.

### CURRENT SITUATION

The only sports wagering currently allowed in Louisiana is online fantasy sports contests and only in those parishes that approved it in a 2018 vote. Otherwise, sports betting is prohibited by law in Louisiana and would be a crime punishable by a fine up to \$500 and imprisonment for up to six months. While “gambling” remains forbidden under the Louisiana Constitution, court rulings nevertheless have allowed many forms of “gaming” – including casinos, video poker, lotteries, racetracks and fantasy sports contests. Nationally, sports wagering was illegal except in four states including Nevada until a landmark U.S. Supreme Court decision in May 2018. The court ruled that the federal ban on sports betting violated the rights of states and thus opened sports betting for those states wishing to legalize the activity. Some states moved quickly to legalize, including Mississippi, where Gulf Coast casinos compete with venues in the New Orleans area.

### PROPOSED CHANGE

This vote makes no change to the state Constitution. Under this act, sports betting would be permitted in any parish where the majority of voters say yes on the Nov. 3 proposition for the new form of wagering. However, even in those parishes, the wagering would not happen immediately. Such bets would continue to be illegal until state laws and regulations are adopted, including methods of taxation. Net gambling winnings already count as income for state personal income tax purposes, but it is possible if not likely that additional state and local taxes and fees could be created. Regulation would fall to the Louisiana Gaming Control Board, which is already responsible, along with State Police, for overseeing video poker and casinos. The Legislature did not provide a fiscal impact report on the bill.

### What is sports betting?

The type of sports betting allowed under Act 215 is defined broadly under the bill: “ ‘Sports wagering’ shall be defined as the business of accepting wagers on any sports event or sports contest by any system or method of wagering.” In places where sports betting is allowed, the types of wagers go well beyond the traditional notion of simply betting on the winner of a game. States may legalize certain types of betting and on certain types of contests. Key questions are whether to allow gambling on college as well as professional sports, and whether the betting should be constrained to “retail” transactions – such as at a casino – or include digital or online wagering as well. The definition in Act 215 would seem to place no restrictions in Louisiana. However, Act 215 requires additional legislation for sports betting to become legal, and so future regulation could further refine the meaning. Meanwhile, so-called fantasy sports betting is already legal in Louisiana parishes that have approved it. Fantasy wagering receives a different legal classification based partly on the notion that players are competing against each other and that it is a game of skill rather than luck, although these distinctions are often disputed in debates on the issue.

## ARGUMENT FOR

People already bet illegally on football, basketball and other games. This vote would just legalize and formalize the activity and allow the state and local governments to regulate and tax it. Louisiana could win back some of this business and tax base from Mississippi and other states that are capturing the market, as well as unsanctioned online betting platforms that are hosted overseas. Retail and digital gambling companies could earn net revenue of up to \$330 million per year in Louisiana, according to a gambling consultant's study for the state economic development department. Those business profits could generate new casino jobs and up to about \$50 million annually in tax revenue if standard rates are used. The wagering could be especially helpful to Louisiana's ailing tourism industry. In principle, the wagering should be allowed because government should not tell citizens what they can and cannot do with their money except for truly serious abuses such as sponsorship of criminal activity.

## ARGUMENT AGAINST

This is a major expansion of gambling in Louisiana. It is an overt effort by casinos to draw in younger people, a cohort that does not have a high propensity to gamble at traditional casino games. Permitting digital sports betting would expand it further to homes and mobile devices across the state. That means an expansion of all the ills that come with "gaming," which is just a legal fiction developed in Louisiana, a state that leads the nation in allowing the most types of gambling. According to a recent analysis by Wallethub, Louisiana is the fifth most gambling addictive state. Government should not encourage citizens to gamble and then force the taxpayers to pay for the financial and societal problems it causes. The initiative could have been limited to casino activity but instead is aimed at encouraging online gambling also. Claims of increased revenue and beneficial business associated with gambling are often overstated.

**Legal Citation:** Act 215 (Senate Bill 130) by Senator Cameron Henry of the 2020 Regular Session.

### Amendment 1 Out-of-State Members of College Boards

#### YOU DECIDE



#### A VOTE FOR WOULD

Allow a person who lives out-of-state to serve as a member on the state's public college management boards.

#### A VOTE AGAINST WOULD

Keep the membership of college boards restricted to Louisiana residents.

#### BACKGROUND

The Dec. 5 ballot contains one constitutional amendment proposal. This item was adopted by the Legislature on Oct. 21 in the second special session, too late to be included on the Nov. 3 ballot. Dec. 5 is the runoff for congressional and local races around the state. Four parishes – Claiborne, Pointe Coupee, Red River and Sabine – do not have runoffs, so in those parishes this amendment will be the only item on the ballot. The additional estimated cost of having the amendment on a statewide ballot is \$376,000. The state's total cost of the Dec. 5 election is estimated to be \$6 million. The companion statute, known as the Lod Cook Act, is named after one of the most famous alumni and benefactors of Louisiana State University. In his later years, Cook lived out of state and would have been constitutionally prohibited from serving on the LSU Board of Supervisors, a circumstance this amendment would change. Cook passed away in September.

#### CURRENT SITUATION

The Louisiana Constitution establishes a management board for each of the state's college and university systems: Louisiana Community and Technical College, Louisiana State University, Southern University and University of Louisiana. Each system board has 15 voting members appointed by the governor. The members are comprised of two from each of the state's six congressional districts and three from the state at large.

#### PROPOSED CHANGE

The amendment would allow up to two of the at-large members to reside out of state. The out-of-state members would still be appointed by the governor with the consent of the Senate but would also require a recommendation of the board. The Board of Regents would not be affected. All four of the college supervisory boards supported this proposal and no one testified against the legislation.

#### ARGUMENT FOR

Louisiana colleges have a lot of graduates and other supporters who live out of state. Allowing two of 15 members to be from outside the state provides for a bigger pool of candidates. These members could bring a wealth of knowledge, perspective and support to Louisiana's higher education systems. Several other states allow out-of-state members on their college boards.

#### ARGUMENT AGAINST

There is no requirement that the out-of-state members be graduates of the institutions they will govern. A broader reform might have moved the details of the composition of these boards out of the Constitution and into statute where they can be adjusted as necessary by the Legislature.

**Legal Citation:** Act 10 (Senate Bill 44) by Sen. Cleo Fields of the 2020 Second Special Session, amending Article VIII, Sections 6(B)(1), 7(B)(1), and 7.1(B)(1)). Act 38, known as the Lod Cook Act, is the companion statute.