



# PAR Guide to the 2017 Constitutional Amendments

An Independent, Non-Partisan Review



## Voter Checklist – October 14, 2017

YES NO

- Amendment 1** – Establish a property tax exemption for construction work in progress
- Amendment 2** – Establish a property tax exemption for the surviving spouses of first responders who died while on duty
- Amendment 3** – Establish a "Construction Subfund" of the Transportation Trust Fund

Support for this report was provided by the  
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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).



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## Introduction

Voters statewide will be asked to decide yes or no on three proposed amendments to the Louisiana Constitution on the October 14, 2017, ballot. These amendments address how property tax assessors should deal with construction work, whether surviving spouses of some first responders should be exempt from property tax and if a special transportation fund should be created in anticipation of future new fuel tax revenue.

This PAR Guide to the 2017 Constitutional Amendments provides a review of each item in the order they will appear on the ballot. The Guide is educational and does not recommend how to vote. It offers concise analysis and provides arguments of proponents and opponents. These proposals were passed during the regular legislative session earlier this year. 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 as required for passage of constitutional amendments. The governor cannot veto proposals for constitutional amendments.

A constitution is supposed to be a state's fundamental law that contains the essential elements of government organization, the basic principles of governmental powers and the enumeration of citizen rights. A constitution is meant to have permanence. Statutory law, on the other hand, provides the details of government operation and is subject to frequent change by the Legislature. Typically, constitutional amendments are proposed to authorize new programs, seek protections for special interests or ensure that reforms are not easily undone by future legislation. Special interests often demand constitutional protection for favored programs to avoid future legislative interference, resulting in numerous revenue dedications and trust fund provisions. The concept of the constitution as a relatively permanent statement of basic law fades with the adoption of many amendments.




Since its implementation in 1974, the Louisiana Constitution has been amended 186 times. Louisiana has a long history of frequent constitutional changes. Notably, Article VII of the Constitution, which focuses on financial, budget and tax issues, has seen more amendment activity over the years than any other article. Until this year, the Legislature had proposed 144 amendments to Article VII, with the public passing 92 of them. All three of this year's proposed amendments would change some part of Article VII. This constant revision of Article VII is one reason some legislators have advocated a formal review or convention focused on the Louisiana Constitution's fiscal provisions.

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

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

# 1. Establish a property tax exemption for construction work in progress

**YOU DECIDE**



**A VOTE FOR WOULD**  
Establish a property tax exemption for construction work in progress.

**A VOTE AGAINST WOULD**  
Continue to leave no exemption in the Constitution for tax assessments of construction work.

## CURRENT SITUATION

Businesses and homeowners pay property tax to local governments based on the assessed value of their property on an annual basis. The state Constitution allows certain exceptions, such as the homestead exemption, which excludes the first \$75,000 of a primary home's value, and the Industrial Tax Exemption Program, allowing temporary property tax relief for manufacturers. During the building phase for new or expanded manufacturing plants, businesses or houses, these improvements are called "construction work in progress," or CWIP. The Louisiana Constitution does not specifically address CWIP.

The Louisiana Tax Commission sets the rules for property assessments and hears appeals from taxpayers who do not agree with their local assessor's appraisal of their property. The Commission has no specific rules related to CWIP. The closest is Section 113 (A) which states that: "Assessments shall be made on the basis of the condition of things." Statutory law makes a similar point. Many parish assessors have interpreted this to mean that if the new building is not complete it is not added to the tax rolls. Other assessors, particularly in areas with a lot of industry, have interpreted this differently by assessing at least some portion of development for some large projects based on how close to completion they are.

Practically speaking, since the great majority of private sector construction is completed within a year or so, CWIP is not taxed for most projects in Louisiana. But large industrial projects can take years to build with voluminous construction and machinery materials on site. Historically, many such projects have been covered by the state's Industrial Tax Exemption Program and so CWIP often has not been assessed. A recent dispute about CWIP assessments for a major gas export plant in Cameron Parish has led local government, industry and other stakeholders to negotiate for a more permanent and accepted method of dealing with construction projects. As a result, the Legislature sought a constitutional solution during the 2017 regular session, resulting in proposed Amendment No. 1.

## OTHER STATES

Across the country, states regulate tax assessment of construction work in various ways. Some states assess improvements upon completion (e.g., Connecticut, Idaho, Oregon, Pennsylvania and South Carolina). Utah assesses the full value of a project when construction begins. Others look for substantial completion, such that the work becomes taxable when it is useful for its eventual purpose (e.g., Arizona, Florida, Maryland, Virginia and West Virginia). The method used in those states would be similar to Louisiana's new standard if the constitutional amendment passes. Several states use a prorated approach based on the percentage of construction completed, but even then there are important differences. Arkansas uses a one-year grace period and then a prorated

assessment. Texas uses a prorated assessment based on the percentage of project completion, but with no grace period. This method is potentially how assessments would be done in Louisiana if grace periods were to be ruled unconstitutional. Several states also have PILOT programs (payment in lieu of taxes), which allow industry and government to negotiate the timing and amount that industry will pay; these negotiations can include payments related to CWIP. Louisiana has significant barriers to private property PILOT deals.

## **PROPOSED CHANGE**

This amendment would prohibit property taxes levied against construction work until a project is completed. The provision says a CWIP is deemed complete when it “can be used or occupied for its intended purpose.” If part of a project is complete and the facility is up and running, that part would be subject to taxation even if other construction work on the property is still taking place. Louisiana has a standard for taxing utility construction projects, and this standard would remain in place if the amendment passes. Otherwise the amendment exempts all forms of general construction, including housing, commercial and industrial projects.

Although the change brought by this amendment is fairly clear, the future conditions are unclear if the amendment fails at the ballot. Assessors might continue to follow their current practices, which generally avoid CWIP taxation but can differ parish to parish. Some assessors might decide to adjust their method, the Tax Commission could create new rules, the state board overseeing industrial tax exemptions could change its rules, or the Legislature might seek some way to influence the process. Notably, the assessment and taxation of CWIP for a particular industrial project already has become a case for the courts. Similar legal cases may follow, with implications about current practices and uniformity of assessments across the state. In sum, if the amendment fails to pass, the taxation of CWIP for construction projects—large and small—could become a question for the courts to decide.

## **ARGUMENT FOR**

The amendment codifies into the Constitution what has been the practice by most assessors on most development. Without protection, onerous taxation on capital-intensive projects could begin, potentially stifling future manufacturing plans, job growth and economic development. This could result in very different results even among adjacent jurisdictions, further disrupting economic conditions. It is unreasonable for government to force businesses to pay taxes on buildings under construction before those buildings produce a revenue stream that could pay the taxes. The new financial burden on developers and even individual homebuilders could be harmful, with impacts felt throughout the real estate industry. The potential added tax bills could discourage investors from taking on endeavors large and small, stunting growth for the state. Also, this amendment offers clarity about how CWIP should be treated by removing existing legal gray areas. The exemption would help meet the goals of uniform assessments across the state as required by the Constitution, statutory law and regulations. Businesses will be more willing to invest where there is greater predictability.

## **ARGUMENT AGAINST**

Businesses get too many tax breaks and this would be another one. Large manufacturing projects already can use the Industrial Tax Exemption Program to avoid property taxes for as many as 10 years. Local governments might need to tax construction work to pay for the increased services that will be needed once the new facility is completed. A large project can create a burden on local government as construction workers temporarily live in the area. The blanket exemption


provided by this amendment is too broad. A better approach would be a constitutional amendment allowing statutory controls, giving the Legislature the ability to fine tune the exemption over time. This method would eliminate the need for further constitutional amendments about CWIP just to make small adjustments. This amendment would negate the authority of assessors and the Tax Commission on how to handle CWIP. Assessors are locally elected and need flexibility to handle situations posed by different construction projects. This amendment would tie their hands.

**Legal Citation:** *Act 428 (Senate Bill 140 by Sen. Walsworth) of the 2017 Regular Session amending Article VII, Section 21(N).*





## 2. Establish a property tax exemption for the surviving spouses of first responders who died while on duty.

<b>YOU DECIDE</b> 	<b>A VOTE FOR WOULD</b> Give surviving spouses of volunteer firefighters, emergency medical responders, technicians and paramedics who died while on duty a full property tax exemption on their home.	<b>A VOTE AGAINST WOULD</b> Keep existing ad valorem property tax exemptions in place.
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### CURRENT SITUATION

The state constitution allows homeowners an exemption from most parish property taxes up to \$75,000 of the value of the homestead if they reside in the home. A constitutional amendment approved last year says that surviving spouses of National Guard members, state police, law enforcement or fire protection officers who died in the line of duty are exempt from paying any property tax on their primary home.

### PROPOSED CHANGE

The proposed amendment aims to extend the current exemption for other first responders. The extension would include the surviving spouses of volunteer firefighters, emergency medical responders, technicians or paramedics who died as a result of performing their duties. It would also apply to law enforcement officers who would have qualified but died before completing their first year of service.

### ARGUMENT FOR

This amendment deservedly adds other first responders to last year's amendment. While fire protection officers are already protected, the current law does not include some firefighters who also put their lives on the line for public safety. Also not included previously were emergency medical responders, technicians and paramedics. This amendment also would fix a technical oversight in last year's amendment by extending the exemption for law enforcement officers who die in the line of duty before completing their first year of service. The extension brings about fair coverage for all first responders and would clean up the language in last year's amendment.

### ARGUMENT AGAINST:

While first responders perform very honorable jobs, this expansion – coming less than a year after a similar exemption was created – begs the question of when does the state draw the line for property tax exemptions. Although this expansion of the homestead exemption is a relatively minor loss of revenue from the local government standpoint, the combination of this and other special homestead exemptions has an impact on the local tax base. While no single exemption is a significant problem, the trend of creating more of these exceptions adds up to a negative impact, shifts the tax burden to fewer payers and should be stopped.

**Legal Citation:** Act 427 (House Bill 145 by Rep. Garofalo) of the 2017 Regular Session amending Article VII, Section 21(M)(1).

### 3. Establish a “Construction Subfund” of the Transportation Trust Fund

#### YOU DECIDE



#### A VOTE FOR WOULD

Establish a “Construction Subfund” within the state’s Transportation Trust Fund to contain any new fuel tax revenue, which could not be used for state employee benefits or wages.

#### A VOTE AGAINST WOULD

Continue to allot all revenue from fuel taxes, including any new fuel taxes, into the Transportation Trust Fund.

#### CURRENT SITUATION

To ensure that state gas tax dollars would go to transportation projects, the Transportation Trust Fund (TTF) was created with constitutional protections in 1990. Money in the Trust Fund can be used only for the costs associated with construction and maintenance of roads and bridges, flood control, ports, airports, transit, and state police for traffic control purposes. A portion is also set aside for local governments through the Parish Transportation Fund. In 1990, the Louisiana Legislature requested and received a legal opinion from the Attorney General stating that “... salaries and related benefits of employees of DOTD whose work is directly related to highway programs or other programs may be funded out of the [TTF], and the necessary administrative costs associated therewith.”

Following the 1990 Attorney General opinion, each year the Louisiana Legislature has utilized the Trust Fund to finance state transportation department employee salaries and benefits. Also since its establishment, the Trust Fund has intermittently been used by the Louisiana Legislature to fund the Louisiana State Police at an amount totaling approximately \$750 million over the years. These longstanding legislative actions have, in recent years, prompted critics of state road spending practices and trust fund diversions to claim there is not much “trust in the trust fund.” Consequently, in 2015, the Legislature capped Trust Fund allocations for the State Police at \$10 million annually. In 2016, The Legislature did not use the Trust Fund to support State Police. During the recent failed effort in the Legislature to increase in the state fuel tax, critics claimed that more accountability was needed on how new funds would be spent before the state should increase its revenue for transportation and infrastructure.

#### PROPOSED CHANGE

This amendment would require any new taxes on gasoline, motor fuels or special fuels to flow into a “Construction Subfund”, which would be part of the Transportation Trust Fund. Money in this subfund would be used specifically for the delivery, construction and maintenance of transportation and capital transit infrastructure projects of state and local governments. The subfund prohibits the Department of Transportation and Development from using any revenue generated from new taxes for employee wages and benefits, including retirement benefits. However, this restriction does not necessarily include paying engineers and other workers compensation for work dedicated specifically to project delivery.

#### ARGUMENT FOR

Almost everyone agrees Louisiana needs better infrastructure. The state has an estimated \$13.1 billion backlog of needs on its existing transportation system and another \$10 billion worth of major megaprojects that would increase the size and scope of the system. This amendment will



provide more confidence to taxpayers by guaranteeing that future new tax dollars will be used on more projects and not administrative overhead. While this amendment does not raise money for infrastructure itself, it may raise confidence in the state construction process and paves the way for future efforts to put more dollars into transportation. If this amendment, or something like it, does not pass, then solutions to our infrastructure needs would be unlikely in the foreseeable future.

### **ARGUMENT AGAINST**

This amendment is a symbolic gesture that does nothing to improve the poor condition of the state's transportation system. It creates a fund with no funds. More specifically, the amendment does nothing to prevent the Legislature from again choosing to fund State Police with Trust Fund dollars in the future, although current law caps the amount. If new fuel tax revenue is approved in the future, this fund mechanism will not work because the Legislature and administration still can move funds around in the budget process to meet their priorities. Increased employee costs will just be borne by the regular Trust Fund dollars that will not be placed in the subfund. A more direct way of restoring trust would be to ensure the transportation department runs efficiently and that the agency demonstrates that to voters before asking for additional taxes. Also, dedications of state tax proceeds, which limit state budgeting flexibility, are a recurring problem in the Louisiana Legislature. The creation of a transportation subfund further constitutionally dedicates state taxes, and in this case represents a dedication within a dedication.

**Legal Citation:** Act 429 (House Bill 354 by Rep. Thibaut) of the 2017 Regular Session amending Article VII, Section 27(B).

