



PAR Guide to the 2019 Constitutional Amendments

**An Independent,
Non-Partisan Review**

Support for this report was provided by the
Collins C. Diboll Foundation and PAR's membership funds.



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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.



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PAR Guide to the 2019 Constitutional Amendments



Voter Checklist October 12, 2019

YES NO

- Amendment 1**- Create a property tax exemption for certain goods destined for the Outer Continental Shelf.
- Amendment 2**- Allow the Education Excellence Fund to finance three more schools and public TV.
- Amendment 3**- Allow the Board of Tax Appeals to rule on constitutional questions.
- Amendment 4** - Give New Orleans the ability to create a residential property tax exemption for affordable housing developments.

Introduction

Here we go again. Voters statewide will be asked to decide yes or no on four proposed amendments to the Louisiana Constitution on the Oct. 12, 2019, ballot. This year's lineup will be especially challenging as the four in question are among the more arcane proposals citizens have faced yet.

As an independent, nonpartisan educational organization, the Public Affairs Research Council of Louisiana (PAR) has been providing a primer regularly on constitutional amendments set before voters over the past four decades. This *PAR Guide to the 2019 Constitutional Amendments* provides a review of each proposed amendment in the order they will appear on the ballot. The Guide is educational and does not recommend how to vote. It offers succinct analysis and provides arguments of proponents and opponents. These proposals were passed during the regular legislative session earlier this year. The House Committee on Civil Law and Procedure reviewed each one for clarity. 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.



Whatever their individual worth for the state of Louisiana, the amendments this year illustrate how our Constitution has evolved from a concise foundational document to a lengthy throng of regulatory minutia. One amendment calls for a minor appropriation of several hundred thousand dollars, something the Legislature rather than voters statewide could handle were it not for the lock-and-store habits of Louisiana's fiscal culture. Another amendment attempts to use the Constitution to resolve a newly arisen legal dispute over an obscure form of property tax. The Constitution has accumulated a lot of detailed amendments that in turn call for more amendments to tweak those details. This trend is more a reflection on our constitutional condition than a knock against any specific proposed amendment this October.

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. 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, especially when those changes are of a more statutory or regulatory nature.

And Louisiana excels at pitching amendments. Since the 1974 Constitution was adopted, voters have been asked to decide on nearly 300 proposals, or about seven per year on average since the changes began. So far, 195 have been approved, with more than half of those on Article VII, the money section. Three of the four on this year's ballot are within Article VII. Louisiana's Constitution has doubled in size and is the fourth longest state constitution in the nation.

Amending the constitution should require thoughtful analysis of the potential impacts of any change. Language should be carefully vetted to make sure legislators and citizens understand what is proposed. Unfortunately, the time demands on the Legislature, combined with authors seeking swift passage, do not always result in thorough reviews. These four amendment bills got an average discussion of 6 ½ minutes in each committee hearing during the legislative process. Basically, a Louisiana constitutional amendment bill typically clears both a House and a Senate committee in about the same period as a football halftime. This again reflects the regard for the Louisiana Constitution as a collection of detailed laws and regulations that can be changed swiftly and often.

Voters must do their part. 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.

Strong consideration should be given to whether the state Constitution should be revised and simplified. PAR has undertaken a major project to provide guidance to those seeking to revise the Louisiana Constitution and return it to the form of a foundational document. The reports for *Louisiana Constitutional Reform* can be found on PAR's website at parlouisiana.org.



Amendment 1 Offshore Goods Property Tax Exemption

**YOU
DECIDE**



A VOTE FOR WOULD

Create a property tax exemption for certain goods destined for the Outer Continental Shelf.

A VOTE AGAINST WOULD

Continue such taxation unless ruled unconstitutional under the U.S. commerce clause.

CURRENT SITUATION:

Businesses and homeowners pay property tax to local governments based on the assessed value of their property on an annual basis. Property might include land, homes, buildings, machinery or business inventory. The state Constitution allows certain exceptions, such as the homestead exemption for homeowners and the Industrial Tax Exemption Program for manufacturers. The only property tax exemptions are those listed by the state Constitution. However, the U.S. Constitution trumps state law. For example, our nation's Constitution prohibits states from regulating interstate commerce. This "commerce clause" has been interpreted to mean that Louisiana cannot tax property merely in transit or destined for other states or countries.

Historically, businesses have interpreted the law to exclude from taxation property stored in Louisiana but destined for the Outer Continental Shelf (OCS), such as offshore drilling equipment. In the Gulf of Mexico, the OCS is roughly the area in U.S. waters 200 miles beyond the state jurisdiction, which for Louisiana is three miles. Recently, some local assessors have started to assess certain equipment and other property headed for the Outer Continental Shelf. This assessment is based on their interpretation of the state Constitution and rulings related to interstate commerce. No specific ruling has been made by either the Louisiana Supreme Court or the U.S. Supreme Court to clarify the issue of property destined for the OCS.



PROPOSED CHANGE

This amendment would prohibit property taxes on raw materials, goods, commodities and articles stored for maintenance if destined for the Outer Continental Shelf. While part of the United States, the OCS is not subject to the jurisdiction of individual states. If the amendment does not pass, the tax on such property would continue to be levied. Lawsuits could follow to determine if the tax passes muster with the U.S. Constitution. The number of parishes immediately affected by this amendment would be relatively small and mostly confined to areas near the Gulf of Mexico.

ARGUMENT FOR

The U.S. Constitution's interstate commerce clause allows for goods to travel unimpeded from or through Louisiana to other places. Although the commerce clause does not specify that materials going offshore are included in that category, goods destined for the Outer Continental Shelf had been understood to be exempted from property tax assessments. For years businesses thought this property was exempt and only recently have a few assessors called the exemption into question, leading to the current controversy. This amendment offers necessary clarification so as not to cause undue burden or confusion for tax assessors or oil and gas companies or cause a shift in storage or repair of materials to other states. Passage would also help avoid lengthy and expensive battles in state and federal court that would create uncertainty for business for many years.

ARGUMENT AGAINST

Adding yet another tax exemption would only further clutter the Constitution and restrict the local tax base. Oil and gas companies should be required to pay tax on the property they own in Louisiana. If the U.S. Constitution's commerce clause prohibits taxation of materials destined for offshore, then the courts should be the place to decide that question. A vote against this amendment would allow those few parishes that tax this class of property to continue to collect this much-needed revenue. Some equipment from inactive oil rigs is already exempt under another section of the Louisiana Constitution, and we do not need more tax breaks.

Legal Citation: Act 444 (House Bill 234 by Rep. Miguez) of the 2019 Regular Session amending Article VII, Section 21 (D)(2) and (3). Companion bill Act 432 (House Bill 301 by Rep Miguez) to amend R.S. 47:1951.2 and 1951.3.

Amendment 2 Adds Schools to the Education Excellence Fund

YOU DECIDE



A VOTE FOR WOULD

Allow the Education Excellence Fund to finance three more schools and public TV

A VOTE AGAINST WOULD

Keep the Fund's money limited to the current recipients

CURRENT SITUATION

The Education Excellence Fund is a component of the Millennium Trust created in 1999 with a specific purpose to support excellence in educational practice. The Louisiana Department of Education is responsible for providing the appropriations and oversight of the Fund. Money in the Fund can be distributed only to elementary and secondary schools and special schools that include educational programs 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.

Last year the Fund allocated \$15.6 million for education. The vast majority (\$15.1 million) was appropriated to 153 local schools and school systems and 43 non public schools. In addition, \$75,000 plus the average per pupil amount was paid to specific public schools that are not part of a local school system but have been authorized by the Legislature. These distributions were made to the Louisiana School for the Deaf and Visually Impaired (\$153,646), the Louisiana Special Education Center (\$75,648), the Louisiana School for Math, Science and the Arts (\$81,458), and the New Orleans Center for the Creative Arts (\$79,219). Each recipient is required to submit an annual plan to the Department of Education that outlines performance expectations and how they will spend the money.



PROPOSED CHANGE

The amendment would add appropriations to one legislatively approved special school, Thrive Academy, and two laboratory schools operated by colleges — the Louisiana State University Laboratory School and the Southern University Laboratory school. Each school would receive \$75,000 plus the average per pupil amount the Fund pays to other public schools. The Louisiana Educational Television Authority (LETA), which is not a school but is a state agency providing statewide educational programming through Louisiana Public Broadcasting, would receive \$75,000 annually as part of the proposed changes. The amendment also performs housekeeping by removing an outdated provision of the Constitution that is no longer in force.

ARGUMENT FOR

The Education Excellence Fund serves an important purpose and benefits the children at the schools it sponsors. The amendment adds three great schools that should have been a part of the original language. The lab schools' omission was simply an oversight and the Thrive Academy was not in existence when the fund was created. These schools are worthy public institutions that serve students just as the other public schools that are already eligible for EEF support. The Louisiana Educational Television Authority, through LPB, provides programs of unmatched quality and access to many children across the state, particularly underserved children under six years of age. LETA already is included in the state's special schools budget category under the Louisiana Department of Education.

ARGUMENT AGAINST

This amendment would add yet more needless detail to Louisiana's already cluttered Constitution. Many other special interests would like new revenue sources or financial protection by being included among the high-status beneficiaries of funds established in the Constitution. The lab schools have other sources of income, including substantial funding from the state Minimum Foundation Program and tuition, which is already aided by subsidies. The amendment is a good example of using the Constitution for minutia instead of for fundamental law. We are basically calling upon voters to perform the Legislature's role of making appropriations by constitutionally allocating a few hundred thousand dollars of state money in a new direction. The better way would be to propose a different constitutional amendment that would let the Legislature or the state board of education allocate the funds in a manner most likely to support excellence in education.

Legal Citation: Act 445 (House Bill 62 by Representative Steve Carter) of the 2019 Regular Session, amending Article VII, Section 10.8(C)(3)(b), (c), and (g) and repealing Article VII, Section 10.8(C)(3)(d)

Amendment 3 Board of Tax Appeals Jurisdiction

**YOU
DECIDE**



A VOTE FOR WOULD

Allow the Board of Tax Appeals to rule on constitutional questions.

A VOTE AGAINST WOULD

Continue to assign constitutional questions in tax disputes only to the courts.

CURRENT SITUATION

Individuals and businesses unhappy with a decision they believe is in error by the state Department of Revenue or local taxing authorities can appeal to the state Board of Tax Appeals. This Board is Louisiana’s version of a Tax Court. The Board is a three-person quasi-judicial executive branch body whose members must be attorneys with tax law experience and credentials. All are appointed by the governor and confirmed by the Senate. The Board hears cases on various tax and fee disputes but does not address property tax issues, which are the domain of the Louisiana Tax Commission. Board decisions can be appealed to state courts of appeal. One of the members hears cases for the Board’s Local Tax Division, which considers disputes with local tax collectors. Thirty-four states have tax tribunals, including 28 that are within the executive branch.

The Board does not have the authority to declare tax laws, ordinances or tax collector actions as unconstitutional. Taxpayers must have their Board case transferred to a district court if they believe a tax law, rule or action of a taxing authority is unconstitutional. Even if just a portion of a case involves a claim of unconstitutionality, the whole process is put on hold until the court system can resolve the constitutional issue. This system results in court cases that can take a year or longer to resolve.



PROPOSED CHANGE

The proposed amendment would enhance the scope and power of the Board of Tax Appeals and allow the body to rule on whether taxation and fee matters are constitutional under Louisiana or U.S. law. This level of authority is not generally allowed for executive branch agencies. However, the American Bar Association recommends that executive branch tax tribunals should possess at least some limited authority to consider constitutional issues on specific grievances that come before those bodies. Many state tribunals may do so. This amendment would let taxpayers have their entire tax dispute heard in one forum and could expedite resolution. The Board decisions could be appealed to state courts. Taxpayers still would have the option to take their case to the courts instead of the Board of Appeals. The Legislature would be able to pass laws affecting the Board's jurisdiction and other related matters with a 2/3 vote.

ARGUMENT FOR

Taxpayers should be able to seek timely redress for unconstitutional taxes. The Board of Tax Appeals specializes in tax law. Allowing the Board to hear cases involving the constitutionality of tax and fee collections only makes sense. Tax law is complex and experts should review the case first. If either side does not like the decision, they can still appeal to the court system. Following a modernization of the Louisiana tax appeals process in 2014, this change would be another important step toward improving the system to make it fairer and more efficient. It places Louisiana in the mainstream of states that have reformed their tax dispute process. The amendment would reduce delays and costs in deciding tax disputes which is why both business and local government support this change.

ARGUMENT AGAINST

Historically, courts have been the only bodies that can decide whether an action or rule complies with the Louisiana or U.S. Constitution. This amendment and its companion act would change that precedent. Unlike judges in the court system, none of the members of the Board of Tax Appeals is elected and they might have less expertise in Louisiana or U.S. constitutional law. Board members might be influenced by the governors who appoint them or the Senators who confirm them. There is no evidence that the current system fails to resolve issues correctly. Constitutional decisions by the Board would be highly likely to be appealed to the courts.

Legal Citation: Act 446 (House Bill 428 by Rep. Dwight) of the 2019 Regular Session adding Article V, Section 35. Companion legislation Act 365 amends R.S. 47:337.45(A)(3), 337.63(C), 337.97, 1407(3), 1418(4)(b), 1435(A), (C), and (D), 1561(A)(3), and 1576(D), enacts R.S. 47:1407(6) and 1431(D), and repeals R.S. 47:1432(B).

Amendment 4 New Orleans Tax Exemption for Affordable Housing

**YOU
DECIDE**



A VOTE FOR WOULD

Give New Orleans the ability to create a residential property tax exemption for affordable housing developments.

A VOTE AGAINST WOULD

Keep the current property tax structure in New Orleans.

CURRENT SITUATION

Property tax exemptions are listed in the state Constitution. Additional exemptions cannot be added by state law or local ordinance. Property taxes are a major source of revenue for local governments. Usually local governments have no control over what is exempted from property tax, because those rules are in the Constitution and new exemptions are initiated by the state Legislature. A shortage of affordable housing is a problem in many urban areas, particularly New Orleans.



PROPOSED CHANGE

The amendment would grant the City of New Orleans the ability to establish property tax exemptions for residential properties that provide affordable housing. Developments over 15 units and short-term rental properties, such as for Airbnb lodging, would be ineligible. The tax assessments could be fully or partially exempted. Properties could be upgraded without being taxed for the added value. Depending on how the city structures the program, the target could be owner-occupied homes, with the exemption applying directly to the homeowner, or rental homes or apartments with the tax break going to the landlord or developer in exchange for affordable rents. New Orleans would create the rules and process for the program, which could vary greatly depending on how it is constructed. The precise definition of “affordable” housing would be left to the city to decide.

Companion legislation requires proposed rules to be published 30 days before becoming effective with at least one public hearing during that period. The exemption would apply to all property taxes collected including resources that otherwise would flow to the sheriff, parks, libraries and schools. To take effect, the proposed amendment would have to be approved by a majority of the voters in Orleans Parish as well as statewide. New Orleans would be required to absorb any decreases in specific ad valorem tax collections as a result of this new authority.

ARGUMENT FOR

Giving local government another tool to handle local issues such as affordable housing only makes sense. There is a genuine need for more affordable housing in New Orleans. The proposal is an attempt to help longtime residents remain in the city, to attract new residents and also to reduce blight. Because property taxes finance local government, the decision on what to exempt should be made at the local level. This amendment avoids the problem of past attempted changes to the Constitution that would have added narrowly defined programs. This proposal gives New Orleans flexibility to make future adjustments without the need for further constitutional amendments to refine the program. If properly implemented with clear criteria and accountability mechanisms, this New Orleans program could become a model for other local governments. The real net cost to the city's coffers should be marginal, assuming the incentive is effective. New Orleans may draw on the experience of other cities around the country that have similar programs.

ARGUMENT AGAINST

This amendment could diminish a critical and evolving revenue base for New Orleans at a time when a disproportionate amount of city property is exempted already. Low-priced owner-occupied homes already benefit from the \$75,000 homestead exemption. Several state and federal programs exist to address urban housing problems. The definition of "affordable" could be made so broad that the program could give a tax break to developers more so than to actual home dwellers. And the projects might happen anyway without this incentive. Citizens in the program would be less invested in their communities and insensitive to the impact of higher tax millage proposals burdening other property owners in the future. New Orleans already swells with tax exempt government buildings as well as properties owned by non-profits and religious institutions, which sometimes operate commercial-style facilities. The pressure to raise taxes would increase with this program. All in all, this amendment could turn into a costly proposition with high risk for abuse and favoritism. Creating this new authority only for New Orleans would require further need for constitutional amendments should other parishes or municipalities wish to have the same authority.

Legal Citation: Act 448 (Senate Bill 79 by Sen. Carter) of the 2019 Regular Session adding Article VII, Section 21 (O). Companion legislation Act 407 (Senate Bill 80 by Sen. Carter) enacting R.S. 47:1716.