

Proposed Amendment No. 1

[Act 428 of the 2017 Regular Session of the Louisiana Legislature](#) proposing to add Article VII, Section 21(N) to the Louisiana Constitution.

“Do you support an amendment to exempt from property taxes materials and other property delivered to a construction site to be made part of a building or other construction?”

Description

Public Affairs Research Council of Louisiana, or PAR, paraphrases this amendment as **“Establish a property tax exemption for construction work in progress.”**

A **vote for** the proposed amendment would establish a property tax exemption for construction work in progress.

A **vote against** the proposed amendment would continue to leave no exemption in the Constitution for tax assessments of construction work.

During the building phase for new or expanded buildings, the improvements are called “construction work in progress,” or CWIP. Neither the Louisiana Constitution nor the Louisiana Tax Commission rules specifically address CWIP. At present, most parishes in Louisiana do not customarily collect taxes on building materials and partially-constructed buildings, but are not prohibited from doing so should they desire to tax CWIP, for example, to fund services provided by the parish during construction. If this amendment is approved, local assessors would lose the right to assess such materials and buildings if such a need arose.

This amendment would prohibit property taxes levied against construction work until a project is completed, defined as when it “can be used or occupied for its intended purpose.” Any part of a project that is complete and up and running would be subject to taxation even if other parts of the project were still under construction.

Argument for the proposed amendment

This amendment offers clarity about how CWIP should be treated by removing existing legal gray areas. Without this exemption, capital-intensive projects could be taxed by assessors in some parishes—potentially stifling future economic development—and not in others. The exemption would result in uniform assessments across the state.

Forcing businesses to pay taxes on construction in progress, before the buildings or facilities produce a revenue stream that could pay the taxes, imposes a financial burden on developers. The unpredictability of such tax assessment could discourage backers from investing in the state. Even individual homebuilders could be harmed, with impacts felt throughout the real estate industry.

Argument against the proposed amendment

The combination of this and other special homestead exemptions has a large impact on the local revenue base. With this amendment the State would impose further restrictions on the ability of local governments to collect property taxes. Local governments might need to tax construction work to pay for providing roads, mosquito control, and law enforcement and fire protection during construction, as well as for the increased services that will be needed once the new facility is completed. This amendment takes away the ability of assessors, who are elected locally, to handle situations posed by different construction projects.

In addition, the amendment provides no protection from companies who game the system without providing any benefits to Louisiana citizens. For example, a plant could locate to a Louisiana parish and spend 2 years constructing the plant. If this amendment is approved, the building and materials will be exempt from taxes, including local sales taxes if the building materials, instead of being shipped from a local business, are shipped from out of state. Then the plant receives 10 years of property tax exemptions through the existing Industrial Tax Exemption Program. When the tax exemptions expire, the building, which has depreciated in value, is ready to be taxed. At that point, after parishes have provided free services to these businesses for 12 years, the companies often pull out and move to other states.

In 2015, in an effort to curb excesses in Industrial Exemption contracts that resulted in foregone property tax revenue for local governmental entities that directly provide law enforcement, water and sewage, infrastructure, and educational opportunities to Louisiana citizens¹, Governor Edwards signed [Executive Order JBE 2016 - 26](#). Among the excesses targeted was the use of the exemption for capital upgrades and machinery replacements that resulted in facilities receiving the tax exemption for even longer than 10 years. Accordingly, the Order directed that “Applications for miscellaneous capital additions and applications for tax exemptions for maintenance capital, required environmental capital upgrades, and new replacements for existing machinery will not be approved or issued contracts by the Governor.” This amendment would circumvent that provision of the Order.

Approval of this proposed amendment would compound two existing problems of Louisiana legislative practice: too many constitutional amendments and too many state-imposed tax exemptions that restrict the ability of local communities to fund their governments. With this proposed amendment, the Legislature is using the Louisiana Constitution to regulate taxes, thereby creating restrictions on the budgets of local government that are more difficult to reverse in the future.

¹ An analysis by parish of the total costs of the Industrial Tax Exemption program is available at http://togetherla.com/wp-content/uploads/2016/06/2_Appendix-A_Cost-to-every-parish-and-jurisdiction.pdf.