



COMMENTARY

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Modest gains but important trends mark the 2011 session

The 2011 regular legislative session ended harmoniously with a \$25 billion budget compromise despite the pressures of a steep revenue shortfall, sharp disagreements between the governor and lawmakers, sore feelings left over from the redistricting session and looming elections this fall.

Although the achievements aside from the budget were modest, the session exposed a number of important themes about the future direction of Louisiana's government operations and fiscal condition. Lessons should be drawn from the budgetary practices, rules and trends that were on display and attention should be focused on the lack of progress on key problems.

The 2011 legislative session might be best remembered for those things that did not happen. There was no collapse of government services, no elimination of tax breaks or exemptions, no repeal of the personal income tax and no veto overrides, which pleased the governor. There was no new payroll tax on government workers, no sale of prisons and no university mergers or fundamental consolidation of college management structures, which did not please the governor. There were tuition increases and a potential tax renewal, but otherwise no new taxes.

There was no ugly meltdown of relations between the House and Senate, as happened in last year's session, and no ostensible schedule of lawmakers' pet projects in the appropriations bills, which hasn't happened as far back as anyone can remember. Members' pork amendments did find their way into the state construction budget in the final days.

Among the commendable accomplishments in the name of efficiency, the Legislature backed the governor and House Speaker's plan to replace the state housing agency with a new authority that consolidates various housing services under one roof. The Legislature also supported the governor's so-called LA Grad 2.0 bill, which gives new operating autonomies to qualified colleges with the aim of cutting red tape and saving money.

A legislative panel allowed state colleges to raise tuition according to a preset scale, thereby helping plug a hole in the higher-education budget. Although lawmakers rejected two of the governor's tuition and fee enhancement bills, they passed his more-prized legislation to adopt uniform tuition and fees at the community and technical colleges.

The Legislature also approved the governor's plan to free general fund money by diverting more tobacco settlement dollars directly into the TOPS tuition assistance program, which is otherwise supported largely by general fund revenue. After failing to override the governor's veto of a 4-cent cigarette tax renewal, the House tacked the renewal onto the TOPS bill, which as a constitutional amendment will bypass the governor's desk and go straight to voters. Those initiatives are combined in a proposed constitutional amendment referendum that will be on the statewide ballot Oct. 22, unless possible court challenges succeed.

The health care budget was under tremendous pressure because the state's share of federal stimulus money was depleted and Louisiana fell victim to a reduction of federal health-care matching rates (Federal Medical Assistance Percentages, or FMAP). The Legislature supported the governor's plan to increase the state general fund allocation

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for medical vendor payments by more than 100 percent, thereby resisting reductions in Medicaid reimbursement. While this was a significant accomplishment, it should not hide the fact that other health care services – including public hospitals -- are being cut.

Significant themes that emerged during the session deserve further attention, particularly as the economic effects of Katrina, the national recession and federal stimulus assistance wane. State general fund revenue growth is estimated to increase by a few percentage points annually for the next few years. Perhaps no time in Louisiana's past or future can be labeled as normal, but a period of relatively better fiscal stability and predictability could be on the horizon, allowing more focused planning on spending and improvements to state programs. That is, of course, unless the Legislature or the governor introduces new unpredictable elements into the outlook.

Here are some themes and trends to note from the session:

Smaller state government

By several measures, Louisiana state government is getting smaller. This trend appears to be a consequence of both necessity and strategy. The overall spending budget for the 2011-12 fiscal year is about \$1.5 billion less than this year. The number of authorized state employee positions will be reduced by 3,450. Of these, more than half are vacant positions and still others are government job losses due to the privatization of services. Most state agencies, particularly the larger ones, are slated for personnel reductions.

For example, the nearly 900 positions eliminated in higher education and the 307 positions cut from the Department of Children and Family Services are not currently filled. The Department of Health and Hospitals is slated for nearly 1,000 position cuts, of which 349 are vacant and 276 are the result of privatized operations, which might rehire some of the workers. The Department of Corrections, originally slated for about 900 fewer positions before the governor's prison sale scheme was defeated in the Legislature, will get 477 reductions, including an unreported number of "bodies," as real layoffs are often called. House Appropriations Chairman Jim Fannin said 1,600 "actual people" would lose their government jobs as a result of fiscal year 2012 budget reductions.

Reductions in the state's workforce due to privatization should not be counted automatically as a net reduction in the size of state government, as broadly defined. Privatizations of government operations usually involve a continuing state financial obligation. Initiatives to privatize government responsibilities should be evaluated on a case-by-case basis, both before and after they are implemented.

Anticipating the job position cuts, state agencies already have largely refrained from hiring this year. For those agencies, the challenge for the foreseeable future will be a lack of hiring, not acts of firing.

Some observers will see value in the reversal of the Louisiana's long trend of an expanding state workforce, which after a temporary drop following Hurricane Katrina regained momentum and peaked about two and a half years ago. Overall, that growth trend did not appear to have been sustainable without revenue increases. On the other hand, if the trend continues toward making state government smaller, care should be taken where smaller does not necessarily prove to be better. Most state departments, including some that perform mandatory regulatory or public service functions, will receive budget cuts next year in addition to cuts this year and last year. State officials and lawmakers should monitor the effects of these budget cuts to determine if and when they might have a damaging effect on public service, internal controls and agency performance.

During the legislative session when the House chopped a couple of hundred million dollars off the executive budget, Gov. Bobby Jindal and his commissioner of administration claimed the cuts would result in the shutdown of prisons, massive law enforcement cutbacks and the loss of important programs. Whether this tactic was intended as a public relations ploy or a real forecast, the administration had signaled that the state had reached its maximum point of budget cuts without sacrificing key government services. Any further and "the sky is falling," as the commissioner warned. The Senate found ways to restore the House budget cuts. But the administration's loud protest of further budget reductions has left the impression that the state might have reached its tipping point with spending cuts.

Shifting state support for local areas

Louisiana's level of state support for local school districts is relatively high compared with most other states. Under this administration, the annual Minimum Foundation Program allocation of state dollars to the districts has held steady on a per pupil basis for three years, leaving the school systems to absorb escalating costs, which are

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particularly acute for employee benefits. The state also has stopped financing bonuses for teachers with national certifications and has downsized the Department of Education.

These and other moves during difficult financial times have indicated what appears to be an underlying policy shift to relieve state government of some of its traditional burden in assisting local governments and to place more responsibility on the parishes and school systems. If this trend continues, it could have significant impacts on the nature and role of state government in Louisiana. With fewer resources forthcoming from the state level, local governments will be pressured to streamline, live with less or increase local sources of revenue. The new reality could result in more local governments asking voters to approve tax increases. Whether seen as a positive or negative development, this theme is an important one to watch.

The same higher education debates will be back

Although higher education survived the session without adding to the cuts already endured over the past two years, what remains are the fundamental driving forces behind the old debates over rising costs and potential consolidations among institutions. Universities may continue to seek tuition and fee increases, which would escalate the state's cost of supporting TOPS.

Community colleges are in great demand from students and the labor market. They will face a challenge fulfilling their core role of career training while taking on a larger role in remedial education resulting from the increasing basic entry standards at the state's four-year colleges.

Although Southern University of New Orleans will not be merged with the neighboring University of New Orleans, as the governor proposed, UNO will be moved from the Louisiana State University System to the University of Louisiana System. It would not be surprising if merger proponents eventually try to push SUNO also into the UL System, which would be a step toward a UNO-SUNO consolidation. In the nearer term, SUNO's more important relationship will be with Delgado Community College, with which it already has agreements for student transfer programs. These programs are likely to be expanded as SUNO's entry requirements are raised. SUNO leaders should welcome efforts for collaborations with other schools and should follow through on their own suggestions for shared services and cost savings.

Whatever management direction is taken ultimately, state officials primarily should focus on the potential for improvements at SUNO to fulfill its role as a low-cost alternative for a bachelor's or master's degree and to accommodate students who need more than the average time to graduate due to their working hours or other challenges. University leaders are trying to bring more African American males into the school and put them on a successful track to graduation. State officials and the Legislature should assist them in this goal. State and federal authorities should put previously allocated federal recovery dollars to work and aggressively address the neglect of SUNO's campus infrastructure left damaged by Hurricane Katrina.

More tax breaks

Before the session, a discussion arose about the possibility of raising state revenue by suspending or canceling some of the approximately \$7 billion in annual state exemptions, rebates, credits and deductions that Louisiana offers in the form of cash payments or breaks on income, sales and various business taxes. Lawmakers took no such action. In fact, the Legislature did the opposite by creating a new slate of tax breaks and renewing some others. By the last week of the session the new tax breaks and credits had reached an annual value of more than \$80 million and more bills for tax incentives were still being considered. Lawmakers also passed a bill to increase the state income tax deduction for private school tuition; the bill was authored by one of the Legislature's leading critics of tax breaks.

This trend is very significant. The past two administrations supported strategically targeted tax breaks for individuals, businesses and film producers but frequently fought back efforts in the Legislature to create or expand special breaks that posed further drains on state revenue. The current administration has supported renewals of a number of tax breaks and let fly some new ones. The governor's role in policing new initiatives will be an important trend to watch if he is re-elected.

Tax break proponents often pitch their initiatives as incentives to businesses and entrepreneurs to create jobs and economic activity. Lawmakers should insist on evidence that such programs will provide a return on the state's investment. State officials should have a conversation about the overall costs of tax breaks and consider guidelines or limits, just as we have state debt limits.

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For new tax breaks that will take effect in the next fiscal year, the Legislature is not required to adjust the state budget during the session to accommodate the estimated decline in revenue. The state revenue forecasting panel eventually will incorporate those tax breaks into its revenue estimates, and only after that decision would any

necessary budget adjustments be made. This means that lawmakers can pursue tax breaks for special interests without having to justify the consequences in the annual budget they draft during the session. The new tax breaks could contribute to the need for mid-year budget cuts.

Clearer understanding of tax breaks needed

The overall \$7 billion worth of exemptions might at first glance seem ripe for plucking as a way to increase the state's revenue. A more focused look at each program reveals some tax breaks represent carefully conceived and well-supported tax policies, such as a sales tax exemption on prescription drugs, which is not likely to be repealed. To dig deeper for a nuts and bolts examination of most of the exemptions, the public faces an information obstacle. About half of the tax breaks are attributable to myriad sales tax exemptions that the Louisiana Department of Revenue is unable to break down on a program by program basis because of the way state sales tax forms are constructed. This data blockade will hinder legislative bodies or anyone else in trying to identify tax exemptions that have a positive impact and those that might best be canceled.

PAR strongly applauds the revenue department's current efforts to fix this problem. Revenue Secretary Cynthia Bridges is modifying state sales tax reports for more detailed reporting. The department also is moving toward a better in-house data system to tabulate the new information and is pressing for more electronic filing of sales tax reports by businesses. The improved data collection should lead to more complete and accurate assessments of state tax exemptions starting sometime in 2012, creating a more transparent body of information for the public and decision-makers to evaluate state tax policies. Funding of information technology improvements at the department should be a priority of the Legislature.

Use of contingency revenue to balance the budget

The governor's proposed executive budget went out of balance when the Legislature refused to go along with some key revenue enhancement schemes. Lawmakers rejected the governor's proposed sale of state prisons and an increased payroll tax on state employees under the LASERS pension system.

Placing contingencies in the executive budget that rely on new legislation puts lawmakers in the position of having to adopt the governor's initiatives or else figure out how to balance the budget without the contingency dollars. The executive branch is entitled to propose whatever initiatives it likes and can even make a good argument that contingencies are fair game in the budgeting process. But that doesn't mean the practice of executive budget contingencies is the most sound and recommended way to propose a spending and revenue plan.

The budget discussion was clouded by disagreements over the definition of contingency and what types of contingencies should not be allowed in a constitutionally balanced budget. Unfortunately the argument leaned in the direction of concluding that because everything is a contingency, nothing is a contingency. In the end, the House and Senate made the appropriate decision not to assume available dollars in the general fund based on the prospective passage of the TOPS constitutional amendment this fall. Anticipated revenue based on a vote of the people must be considered a contingency that cannot be used to balance an appropriations bill.

The precise amount of fully funded TOPS awards cannot be figured until the final student enrollments are known. Items such as TOPS funding often are budgeted with ballpark numbers in the appropriations bill with the provision that "more or less" the actual amount ultimately needed will be provided. The "more or less" provision should be used for just that – ballpark estimates – and not as a device that grossly underestimates the real financial need for the sake of temporarily balancing the budget.

One-time money won't be a one-time debate

Every year state officials find millions of windfall dollars to patch holes in the state operating budget. The months-long anguish over prospective budget cuts is soothed overnight by the sudden discovery of hidden treasures. The usual pattern is for the Senate late in the session to reveal a trove of revenue sources that seemingly no one else knew about, maybe even the administration. This happened once again this session, giving the public good reason for a healthy skepticism about the annual dire predictions of a major budget crisis.

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By the way, someone needs to rethink the artificial reef fund, an ample stash of cash which for the second year in a row has been tapped royally (and probably legally) like a miniature general fund. And also by the way, although the mega-projects fund was raided to balance the budget, the dollars in various pots available next year for economic development infrastructure and incentives are potentially greater overall under the current budgeting scheme.

Many of these revenue sources pop up as a one-time event. Should they be spent on one-time projects, such as road construction, or used to retire debt or pension liabilities? Or should they be used to balance an operating budget? They are clearly out of fashion when most politicians talk philosophically about the most preferred practices in balancing the state budget, and they are clearly back in fashion when politicians are desperately trying to make ends meet during the heat of state budget negotiations. Fiscal conservatives and moderates seem to have formed a consensus that the state should limit the use of one-time money to balance the operating budget. This session, Rep. Brett Geymann championed a new House rule that allows one-time money up to a certain threshold but requires a two-thirds vote of the House to allow additional one-time money to balance the operating budget. The Senate does not have such a rule.

Regulating one-time money under the Geymann rule is a policy that needs some more work. The rule appoints the Legislative Fiscal Office as the initial decider of what is one-time money when the House is passing out the budget bills. A critical element of the rule is that the House Speaker is the ultimate decider about what is defined as one-time money when those bills come back from the Senate. This is an enormous potential power for the Speaker, especially in dealing with the Senate, which is so good at finding one-time revenue sources.

Moreover, the Senate was able to toy with the Geymann rule by designating a class of one-time expenditures among items in the appropriations bills. Much of the so-called one-time revenues ceased to be counted under the Geymann rule because they were simply canceled out by applying them to one-time expenditures. And all of this was defined according to whatever legislative leaders thought best. Under this approach, the Geymann rule might not have as much meaning as it appears.

The House and Senate should revisit Geymann's concept and should consider whether a joint rule, rather than just a House rule, would provide a more balanced discussion and better outcomes.

Ongoing scrutiny of Medicaid privatization plans

Legislation by Sen. Willie Mount brings appropriate oversight to a massive policy shift of privatizing Medicaid managed care. Although in 2010 the Legislature initially rejected the language creating the program, it was approved later in that session with an authorization put into the massive budget amendments in the waning days. This, combined with an attempt to implement the program via emergency rules, raised the ire of legislators, who supported Mount's bill this session to terminate the program in December 2014 if it does not show evidence of success. This oversight bill is a good measure that passed unanimously in both houses. The governor should let it become law. His veto could only be taken as a lack of confidence in the ultimate success of the program.

Transparency remains an important public concern

The Senate once again failed to pass a bill that would open more of the records of the governor's office to the public. Sen. Robert Adley's proposal attempted a very broad disclosure requirement that was unacceptable to the majority of senators. Unfortunately, a more modest bill by Sen. Eric LaFleur never got a hearing, perhaps in deference to the far-reaching Adley initiative. LaFleur's bill would have removed a provision in law that allows the governor and his agencies to withhold records related to state financial matters for six months. This restriction, particularly the extension to all agencies headed by an unclassified appointee of the governor, was put into law two years ago and should be repealed.

A bill like LaFleur's would have improved transparency and might have had a better chance of passage than Adley's, particularly in light of recent events and the governor's refusal to release records and information related to high profile agency programs and consolidations. For example, a Senate committee made aggressive use of its confirmation powers to force the release of information from DHH about a major pending contract. The committee also issued a subpoena to obtain an independent consultant's report analyzing the potential privatization of the state's group benefits agency. The administration was pushing hard to sell or outsource that business but for competitive bidding reasons was unwilling to share the report with the Legislature, until the subpoena.

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This situation raised concerns that this and future administrations will seek to conceal evidence contrary to their objectives. A better transparency law for governor's records would help address these concerns and provide the public with more balanced perspectives on important policy matters.

Conclusion

Plenty of events occurred in the session that cannot be covered fully here. The Legislature grew more independent from the governor's office, an overall healthy trend. Lawmakers tinkered with the state retirement systems and made modest reforms in parole and sentencing laws to alleviate the prison populations. The Legislature passed bills proposing constitutional amendments that will be decided by voters in the fall; forthcoming PAR reports will examine those proposals.

The 2011 session should be viewed in the context of long-term evolving trends affecting state government operations, fiscal management and transparency. Measured according to individual achievements representing major reforms in how Louisiana delivers education, health care and other services, the session surely came up short.

That's not the whole picture. Some of the governor's initiatives were shot down by the Legislature but in many other areas outside the session limelight, the administration is moving forward to privatize health care and education services, consolidate agencies and automate functions. All of this is taking place against a backdrop of uncertainty about how the administration and the Legislature will come to terms with the emerging themes on fiscal management and tax policy. In the long run, responsible government policies and practices will be the key driver of positive reforms.

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