COMMENTARY

2013 Legislative Session Wrap-up

Public Affairs Research Council of Louisiana

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The 2013 legislative session started with a whimper and ended with a sigh of relief. On Day One, the governor "parked" his tax reform plan, failed to inspire a legislative effort to repeal the income tax and offered no further guidance or motivation to lawmakers. The state budget proved to be a bigger job than usual but a deal came together in a rare bi-partisan and bi-cameral compromise reached harmoniously on the last day and stamped with the governor's approval. Sincere congratulations are in order.

Now that lawmakers have had a chance to celebrate their success, let's look at the long-term impact of what happened, or failed to happen. Some problems were fixed, some were made worse, and some were left to fester. The net effect: Next year's budget overall is about the same size as this year's, but the state continues to obligate itself to greater fiscal costs and constraints in the future. This trend likely will lead to more revenue shortfalls, less budgeting flexibility, neglect of priority programs and increased pressure to raise taxes.

The process started with a spending forecast that showed a state general fund imbalance of $1.3 billion followed by the governor's budget proposal that closed the gap but contained a number of contingencies, unknown factors and even a bit of borrowed money to pay for operations. With the governor's tax reform agenda no longer a distraction, lawmakers focused mainly on a complex patchwork of compromise and improvisation that eventually became the state budget. A refreshing streak of independence and bi-partisan cooperation energized the House, particularly with respect to the leadership demonstrated by Rep. Joel Robideaux, R-Lafayette. The challenges included a massive federal funding reduction to health care, an urgently implemented but incomplete privatization of public hospitals, court rulings that shook up education financing, and escalating costs for retirement systems and tax exemptions.

Revenue protection

Some new measures will improve existing programs and increase state revenue in the long run. A new state debt recovery program could lead to better collection of bills and fines owed the government. This sizeable accomplishment was led by Rep. Chris Broadwater, R-Hammond, and Sen. Neil Riser, R-Columbia, who managed to incorporate input from a wide range of interested parties. In the next few years the state may need to refine this program and examine the amount of personnel dedicated to it, but the initiative is a good first step.

Another bill placed a 2018 sunset on the solar tax credits program, a hard-won deal that sponsor Rep. Erich Ponti, R-Baton Rouge, worked out with lawmakers, regulators and industry interests. The state needs more concentrated efforts like these to address other financial and exemption programs in a responsible manner.

The Legislature passed a measure that will trim the amount of fees, known as vendors' compensation, earned by retailers and others who collect and transmit state sales taxes. Also, the Enterprise Zone and the alternative fuels tax credit programs have been changed in ways that should make those incentives more efficient and less costly to the state while still serving their purposes.

New obligations

Several initiatives that passed this session create new obligations, costs or constraints for the state. Some of these initiatives contain worthwhile elements but their potential long-term impact should be recognized. Among these are the New Markets, investors and import-export tax credit programs, which the Legislative Fiscal Office says will decrease the state general fund. A $250 million program to construct buildings for community and technical colleges across Louisiana – outside the normal capital outlay and Division of Administration process – will result in new debt payment obligations for years to come.

On the last day, lawmakers and the governor also infused an extra $69 million into local schools and teacher pay, an increase they want to sustain in future years. Proposals to provide higher Medicaid reimbursements to hospitals and other health care institutions will go before voters statewide in 2014; one impact of these proposals would be to restrict the Legislature’s budgetary options and place more financial pressure on higher education.

Same old strains, same old neglect

Some of the state’s rising costs were not addressed. State employee retirement liabilities continue to strain the state budget. Some long-term cost relief might come from the cash-balance retirement plan for new employees, but implementation of that plan has been postponed. The film tax credit program – which has cost the state more than $1 billion and continues to grow – was not curtailed or refined to better leverage local movie-making, even after the Department of Economic Development and an economist’s study recommended changes.

Louisiana’s inventory tax credit is on track to increase the state’s cost for the program at an even faster rate than the growth of the inventory tax itself. The Transportation Trust Fund has been flat for a decade and its revenue source needs re-examination to ensure adequate highway and transportation work for the future.

Potential problems

And then there are the gray areas. Still unclear is whether the privatization of state charity hospitals will bring new costs or savings in the long term. Next year’s budget includes way more money for the hospital transition than the administration had estimated in March. The cost of the state’s Medicaid program has continued to rise, even though the state has introduced what we hope will be a more efficient system via Medicaid managed care. The state Supreme Court ruling removing private school vouchers and Course Choice funding from the Minimum Foundation Program will require budget reshuffling from other sources.

The tax amnesty program will bring greater revenue to the state in the short run by pulling from revenue that might have been collected further in the future. A tobacco settlement bond refinancing will infuse cash into the state budget; the state treasurer and the administration disagree on whether the refinancing is structured for the long-term benefit of the state.

The outlook

For the long run, the state seems to be depending on a couple of major expectations to address the chronic imbalance between state revenue and expenses. Smaller government with fewer government employees, which is a privatization and consolidation strategy used by the current administration, could be meaningful if in fact the state can provide necessary services at reduced cost as a result of the moves. The Legislature needs to play an ongoing role in evaluating this strategy, which should be made transparent to the public.

Another implicit expectation is that state revenue will increase as the nation's economy improves and Louisiana's industry profits and labor force expand. This outcome for Louisiana is less likely if the state cannot curtail long-term costs and obligations. Also, Louisiana's revenue was hurt but not staggered by the recession, unlike a number of states that were deeply affected by the downturn but have emerged from the hard times with large budget surpluses.

To come full circle in this discussion of the legislative session, a renewed tax reform effort might one day be taken up by the current or a future governor and Legislature. A PAR report released this spring, *Louisiana's Taxes: Problems, Solutions and the Controversy of Reform,* identifies a number of options. But tax changes, especially those that might reduce rates or eliminate a type of tax, will be far less likely so long as the state faces these regular annual fiscal crunches and allows the situation to grow worse by adding new expenses and obligations while neglecting rising costs.

Health care

Before the session, PAR made a detailed argument calling on the administration to update its analysis of potential costs and savings if the state were to expand Medicaid eligibility to low-income adults under the federal Affordable Care Act. The administration's prior analysis was several years old, lacked newly available information and did not take into account potential savings. Soon thereafter, the administration responded by releasing a new analysis taking these factors into consideration. The new analysis – and PAR's subsequent review of it – contained much useful information and contributed constructively to the Legislature's debate on expansion. Lawmakers rejected bills for a state Medicaid expansion.

Also on the Medicaid front, the Legislature approved two constitutional amendments that, if supported by the voters in 2014, would establish the Hospital Stabilization Fund and the Medical Assistance Trust Fund in the Constitution. The amendments would erect funding protections for providers who contribute to the two funds. In a commentary, PAR raised concerns about the budgetary limitations. Using provider assessments to raise reimbursement rates is a common practice in other states and may be a good move for Louisiana. In addition, the supporters of these measures can make valid arguments that their funds should be protected from unintended and unrelated appropriations. However, constitutional provisions limiting the budgetary options of policymakers – and for all practical purposes setting an escalating floor of provider rates – should be avoided.

Another area garnering legislative attention was the shift from the public charity hospital system to a public-private partnership system. Private hospital organizations will provide care for the safety net population through agreements and facility leases with the state. The initial justification for the sudden shift to this model was a congressional reduction (by way of a corrected calculation) in federal Medicaid matching funds for Louisiana. As noted above, the ultimate costs of these public-private partnerships, which are still being finalized, are unclear. As the state budget evolved during the recent session, additional appropriations were added to the administration's initial estimates.

Education

The Legislature this session had to revisit the financial underpinning of last year's K-12 education reform in Act 2 of the 2012 session. Act 2 created a statewide program to provide private school vouchers for children in low-performing public schools and started a Course Choice program for alternative instruction. The programs were financed through the Minimum Foundation Program (MFP), the state's financial support mechanism for local public school districts.

During the recent session the reformists lost a legal battle when the Louisiana Supreme Court ruled that the state could not use public school MFP funds to pay for non-public school voucher or Course Choice programs. The justices said the state Constitution restricts MFP spending. The justices also ruled that the Legislature's vote last year to approve the resolution establishing the MFP formula for 2012-2013 was invalid because the resolution was introduced after the required deadline and because it needed at least 53 House votes in favor rather than the 51 it received.

As a consequence, the Legislature this year scrambled to find different sources of money to pay for the Act 2 programs and rejected the MFP formula proposed for next school year by the Board of Elementary and Secondary Education. The state reverted to the 2011-2012 MFP funding formula, causing additional budgetary headaches during the session. Moral of the story: Sometimes the Constitution matters. And statutory laws, too.

On the higher-education front, at least eight measures were proposed seeking to give the state's colleges more control over their finances. By the session's end, one had passed—HB 671 by Rep. Franklin Foil. The bill will allow universities to levy a building use fee on students and charge tuition and fees for distance education programs. In addition, Louisiana State University will be permitted to increase fees for School of Dentistry and graduate digital media students.

Attempts to limit TOPS failed but a bill passed that grants TOPS scholarships to high school graduates who attend an International Baccalaureate program out of state or out of the country.

Thumbs up ….

-The fiscal hawks' budget process reforms were passed in statutes, offering an opportunity for the Legislature, the administration and the public to see whether these changes in budgeting procedure will add greater transparency and accountability. Congratulations to the hawks for holding down the use of one-time money for ongoing operations and for making a positive difference, and especially to lead hawk Rep. Brett Geymann, R-Lake Charles.

-Three cheers for the Legislature's technology: Namely, for the revised web site with easily accessible information on bills, the new public wi-fi connection at the Capitol and the prompt (same day) posting of video archives during the session. Compared to many other states, Louisiana's Legislature is ahead of the game on these public transparency services.

-In its original form, Senate Bill 148 by Sen. Eric LaFleur, D-Ville Platte, would have exempted an entire category of profession – Certified Public Accountants – from the ethics code with regard to public contracts. In an effort to seek a more limited solution, PAR asked representatives of the CPAs, the Legislative Auditor and the ethics administration to meet and discuss the issue. This meeting produced a simple word change in the bill that made a real improvement to the legislation. The amended bill addresses some of the difficult regulatory issues faced by the CPAs and no longer provides a total exclusion from ethics laws. Thanks to Sen. LaFleur.

-Sen. Jody Amedee, R-Gonzales, sponsored a resolution requesting the governmental affairs committees to make recommendations with respect to the appropriate use of campaign funds and to the administration and enforcement of laws within the jurisdiction of the Board of Ethics and to submit a report to the Legislature by February 2014. Depending on the recommendations, this process could lead to better clarity and administration of these laws.

-Sen. Rick Gallot, D-Ruston, and Rep. Chris Broadwater, R-Hammond, sponsored resolutions calling for state agencies to more clearly identify their official custodians of documents for the purpose of handling public records requests. Thank you. We once asked an agency for the name of its documents custodian and we were routed to the building janitor. For a list of state agency custodians, see PAR's Sunshine Headquarters at www.parlouisiana.org.

-The Legislative Fiscal Office performed admirably as a critical and objective analyst of money bills. The importance of maintaining integrity and independence in this crucial office cannot be overstated.

-The third time appears to be the charm for an initiative by the Legislature to seek more data and accountability for the state's Medicaid managed care program, Bayou Health. For the third year in a row, the Legislature overwhelmingly passed a bill mandating reporting requirements for Bayou Health. The two prior bills were vetoed by Gov. Jindal. The administration has not raised objections this year to the bill, which added reporting for the Behavioral Health Partnership and Coordinated System of Care programs. These programs are required to provide annual reports to the Senate and House committees on Health and Welfare. As PAR has expressed in the past, this close oversight by the Legislature is needed given the substantial shifts in health care policy.

…And thumbs down

-Despite all the crowing about the tight budget and lack of money for higher education, legislators still had an appetite for pork and parties that should be able to do without a state appropriation. One example is $200,000 for Bayou Country Superfest, a successful annual spring music event at Tiger Stadium run by one of the nation's top promoters. It draws more than 75,000 people. The government subsidies that began a few years ago to jump-start the event should not become an addiction. Attendees, not taxpayers, should cover the costs.

-Although state tax exemptions and credits have been the subject of a nearly year-long education process at the Legislature, a number of members still do not fully appreciate how these exemptions work. As PAR pointed out during the session, a proposal by a House coalition would have reduced a long list of exemptions by 15 percent but would not have produced the revenue savings that the coalition predicted and would not have been contractually sound. The proposal was withdrawn. Fixing or reducing tax exemptions and credits requires long-term planning.

-As the tax reform agenda melted down, so did the initiative to create a more streamlined and centralized sales tax collection system. Compared to other states, Louisiana remains an inefficient, anti-business outlier because of its antiquated system that still allows the multitudinous parish collection points.

-Throughout the session, a consistent complaint by legislators was the lack of detailed information about the evolving charity hospital deals for public-private partnerships, especially financial information. Legislators on multiple occasions were told that detailed data would be forthcoming soon, including in Senate Finance and during the Department of Health and Hospitals secretary's confirmation hearing. The Civil Service Commission echoed a similar complaint in the second to last day of the session, and voted down the layoff plans related to the public-private partnerships. This information has not yet been provided to the level expected. The lack of detailed financial information on these agreements is troubling.

-The state should fix parts of the governor's public records law and prevent state agencies from misusing the deliberative process privilege to deny public access to government records. Efforts to do so fell short during the session.

Proposed constitutional amendments

Eight constitutional amendments were approved by legislators and will be presented to voters in 2014. An initial overview of the proposed constitutional amendments can be found here.