



PUBLIC AFFAIRS RESEARCH COUNCIL OF LOUISIANA

PAR COMMENTARY: LEGISLATION IN THE TIME OF COVID-19

What's Inside

Duty. *The Legislature needs to fulfill its constitutional duty by convening this spring to deal with state budgeting and essential legislation. As representatives of the people, lawmakers are essential to a functioning government, society and economy.*

Focus. *If the right of the public to observe and participate must be reduced during a legislative session, then we owe it to the Constitution and the people to limit matters to those things that cannot wait.*

Priorities. *Legislative leaders should limit business to essential, high-level priorities, which may include budgeting, critical deadlines, school closure impacts and urgent measures to address the effects of the pandemic on citizens and businesses.*

Steps. *Legislators will need to take exceptional measures to mitigate the risk of exposure and limit the scope of the proceedings. All legislators and participating staff should be tested prior to reconvening a session to see if they have the virus or the antibody.*

Risks. *Although people of all ages are vulnerable, we note that 34 legislators are between the ages of 60 and 70 and 11 are 70 or older. Also, essential legislative staff and administration officials are integral to an informed and efficient session. Beyond that, representatives of local government and special interests would expect to provide input.*

Rebound. *An economic rebound is expected eventually, but until the evidence demonstrates otherwise, we should count on a slow recovery for state budgeting purposes.*

Assets. *The state has some financial advantages going into this, including the federal stimulus, the President's emergency declaration for the state of Louisiana, a special bump up in the federal Medicaid match rate, a large surplus from last year, a healthy Rainy Day Fund and some options for emergency money from some state dedicated funds.*

Relief. *Tax and regulatory relief for business should be on the agenda, focused on those things that affect the rebound and are immediate, actionable and cannot wait.*

Long-term. *The need has increased to revise the fiscal portions of the state Constitution to create better flexibility, to re-examine local governments' sales tax dependence, to address a costly weakness in the pension systems and to prepare our laws and Constitution for a declared emergency.*



3.28.20

Commentary

The Public Affairs Research Council of Louisiana

LEGISLATION IN THE TIME OF COVID-19

The Legislature faces unprecedented challenges but must convene and perform effectively and safely for the people and businesses of Louisiana

The challenge

When the Louisiana Legislature reenters its 2020 session, it will be faced with unprecedented challenges brought by the coronavirus crisis. Time will be short. Procedures will change for health reasons. Revenue streams have been drying up and timely data for the current fiscal year will be lacking. The forecast for next year's state revenue will be a grand guessing game with a dark downside. The governor's earlier proposed budget is by now outdated because of the demands for the state to respond to the pandemic. Businesses and local governments will be looking to the Capitol for programs and funding to help them endure these financially devastating times. All this, plus the 2020 Legislature will include an unusually large number of freshly elected rookie members and committee chairs who are new to their roles.

As representatives of the people, legislators are essential to a functioning government, society and economy.

Depending on your viewpoint, our future may lie somewhere between the conditions of another Great Depression and an economic recovery miracle of biblical proportions. What we know is that all the nation's strong employment gains since 2015 were just wiped out in about a week's time. Louisiana's massive workforce reduction, hitting hourly employees broadly, caused more than 70,000 claims for jobless benefits just last week, an undreamed of number 35 times bigger than normal. One Federal Reserve economist suggested that U.S. unemployment may reach a staggering 30 percent.

Going on experience, we know that recovery takes time. After the 2008 collapse that brought us the Great Recession, American jobs did not return to the same levels until 2014.

Meanwhile, an historically large package of federal support has been passed by Congress and is on the way in the form of cash and loans to individuals and businesses, assistance to state and local governments and higher subsidies for Louisiana's state health care programs. It remains to be determined how the money will affect this year's versus next year's state budget and to what extent the stimulus will take effect. Louisiana legislators are developing their own ideas about ways the state can add to the stimulus, including with money, aid programs, tax relief or regulatory easing for small business. In particular, Louisiana's local governments, which are over-dependent on sales taxes, could be in difficult straits.

So, when legislators return from a long recess in mid-April, they will be torn between, on the one hand, a desire to stretch their work to address their constituents' urgent cries for assistance and, on the other hand, their wish to keep legislative proceedings as safe and brief as possible to avoid health risks to members, legislative staff, stakeholders and the public. Plus, they will want to keep the legislative process as open to public viewing and participation as possible, which may require some awkward, untried procedures. It's one hell of a predicament.

In this commentary, PAR looks at the basic facts of the situation, encourages best practices going forward, identifies some budget options and offers a long-term outlook.

The basics

The Legislature needs to fulfill its constitutional duty by convening again this spring to pass a state budget reconciling the current year's and next year's state finances. As representatives of the people, they are essential to a functioning government, society and economy. Lawmakers should not be criticized for trying to return to that vital work.



The current regular session must end no later than June 1. As a non-fiscal session, certain tax and financial matters are off the table. The annual budget process can proceed as usual. Special sessions could be designed to cover any other scope of work desired. Legislators will have ample opportunity for special sessions, just as they did after Hurricane Katrina. Either the governor can call in the Legislature with a specific list of objectives or the Legislature can call itself into special sessions with a simple majority vote by mail.

The current expectation is that lawmakers will call a special session in June beginning soon after the regular session. They could call a session later in the summer or early fall, depending on the need and when the timing is propitious given the spread of the disease, COVID-19. They could adjourn sine die in April and immediately begin a special session lasting prospectively through the end of June.

The essentials

There are some things that have to get done. Among these are the adjustment of the state budget for the current year and passing a budget for the next fiscal year that begins on July 1. The budget process normally entails about half a dozen bills, including the general appropriations, capital outlay, the legislative and judicial budgets, and certain other bills covering bonds and ancillary and supplemental appropriations. But unfortunately, that's not all. There are education considerations for school accountability measures and student matriculation affected by the long shutdown of classes.

Also, the Legislature each year considers a resolution to adopt the recommendations of the state school board for the Minimum Foundation Program, which distributes state funds to local school districts; if the MFP resolution for the 2021 fiscal year is skipped or does not pass, the funding will revert to the MFP used for 2020. While that outcome is not preferable, it is also not the end of the world and has indeed happened before.

Also, state agencies sometimes are scheduled for so-called sunset hearings to allow them to continue in existence. There may be various revenue renewals or other deadlines to consider. One way of dealing with certain deadline requirements or temporary problems is for the Legislature to suspend laws, which it can do for approximately one year by concurrent resolution or longer if enacted by law.

The most difficult but perhaps most critical issue in a truncated legislative session would be the state's need to address the coronavirus threat. This decision-making could be controversial and therefore time-consuming. Whether implementing medical emergency measures, relief programs or financial support for individuals, businesses or local governments, the Legislature might find itself with some new and complicated issues that will not be quick to resolve.

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On some spending and implementation matters, the Legislature will wonder how their decisions might play out in a strangely uncertain future. Therefore, there will be pressure to turn over certain post-session decision-making or spending authority to the executive branch or to legislative committees or commissions. In some limited cases it could be wise for the Legislature to set up a process to help follow through with decisions after the session ends, provided it can be done constitutionally and transparently. For example, the Joint Budget committee, which meets throughout the year, has considerable authority already and conducts its affairs in public meetings.

The health risks of the session

Because the threat from the COVID-19 is likely to continue for months, legislators will need to take exceptional measures to mitigate the risk of exposure and limit the scope of the proceedings. The Legislature already is exploring ways of meeting while maintaining personal distancing. As extraordinary measures are taken that change the usual process for public debate and input, lawmakers should agree upon a set of temporary rules or procedures to follow, perhaps in the form of a resolution.

All legislators and participating staff should be tested prior to reconvening a session to see if they have the virus or the antibody. This testing should not be seen as a special privilege; it would be necessary to stem the spread. As of March 25 in the U.S. Congress, 31 members were in self-quarantine and three others had tested positive.

34 legislators are between the ages of 60 and 70 and 11 are 70 or older.

The Legislature has 144 members, who depend on legislative staff to conduct the process. The public, also, has a constitutional right to observe and participate. Although people of all ages are vulnerable, we should note that 34 legislators are between the ages of 60 and 70 and 11 are 70 or older.

Also, essential legislative staff and administration officials are integral to an informed and efficient session. Beyond that, representatives of local government and special interests would expect to provide input.

Meetings of this size will be a challenge. Careful planning will be needed to create a process combining the use of live video, personal distancing, extended periods for voting and the possible suspension of some rules of procedure, all while conducting affairs in view of the public and with the ability to take input from the public. The Legislature by its very nature is a social institution. But this spring it will need to learn to be less personal. The House and Senate websites already offer live passive viewing of all committee meetings and floor action. Interactive video testimony is not a standard practice but will need to become an option this session. Interactive telephone testimony such as at Bond Commission meetings has been conducted previously.

How long will these adjustments last? The coronavirus health crisis developed rapidly. Many people are hoping it will de-escalate just as fast or that therapeutic treatments will reduce the sweeping scale of the danger. Even under an optimistic scenario, in which many businesses can get back to work in a few weeks, the Legislature will need to prepare for the likely situation that large gatherings will continue to present a public health and perception problem.

Best approach

The most responsible legislative strategy is to plan for brevity and essential business. The legislative leadership should establish priority levels of legislative matters that should be addressed. Level One priorities should include essential budgetary legislation for the current year and next year, dealing with deadlines for things that must be renewed and keeping our educational systems in operation and our students progressing forward.

The high priorities must also include immediate key steps to help the state and its citizens deal with the crisis and recovery, but legislative leadership will need to keep a firm grip on the most actionable and impactful legislative means to do this while putting aside anything that can wait. If events unfold even more unfavorably with the virus in the near term, the Legislature needs to be prepared to get in and out of the regular session expeditiously, and it needs to have a Level One priority plan to do so.

This point is especially important if the virus security measures impede or significantly alter the public's ability to participate in the process, which is a constitutional guarantee. If the legislative process is conducted in an extraordinary manner that might compromise an otherwise transparent and fully participatory session, then the substance absolutely should be limited to essential items. Save the rest for later when you can have proper public engagement and constitutional support.



The bottom line: make sure preparations upon reconvening include the possibility of a single short session devoted to indispensable matters, knowing that special sessions can follow later. As the situation with the coronavirus develops, legislative leaders can consider whether second-tier priorities are advisable or even feasible considering the health risks and time frame.

Local government bodies

This principle is the right approach also for local government bodies, which are conducting emergency meetings and taking extraordinary measures to perform urgent work. All this is being done while trying to keep the public meetings safe and prevent the spread of the virus. In cooperation with government accountability stakeholders, Louisiana's Municipal Association, Police Jury Association and School Boards Association are making good faith efforts to communicate with and provide guidance for local government bodies trying to cope under the circumstances, and local panels should turn to them with questions.

Even in a condition of a public health emergency, state and local government bodies *must* have a quorum to conduct business and somehow allow for public comments. Although the law does provide for relaxed notice requirements during an emergency, government bodies should be able to provide the public and the media with ample physical and online notice of meetings in the great majority of circumstances. Government bodies should continue if at all possible to post notices as they normally would and not abuse this circumstantial necessity.



Public bodies can go into executive session and exclude the public only under certain circumstances, and one of those circumstances is extraordinary emergencies. Still, a vote to hold an executive session must be taken in a public meeting and no final or binding action may be taken until the members of the body come out of executive session and invite public comment. The permission to go into executive session should not be abused or considered as something routine. In most cases, an emergency should heighten the need for transparency, not cloud it.

On the bright side

The state goes into this financial crisis with a few strengths:

Federal stimulus. A record \$2.2 trillion package is on the way to assist individuals, businesses, health care providers and local and state governments. By the time the legislative session begins, we hope to have a clearer picture of when the various programs in the package will infuse money into our pockets and the economy, and how this year's and next year's state budgets will be affected.

The President's emergency declaration for Louisiana. Welcomed by state officials and our congressional delegation, this move by President Trump means that 75% of the state's qualified

spending to respond to the pandemic will be covered by the federal government. It could be increased to 100%. As of March 25 the state was reporting expenses of \$113 million. Governor Edwards said the federal support for Louisiana would be \$1.8 billion to respond to COVID-19. Also, the National Guard service for Louisiana will be better covered with federal support.

Federal Medicaid match increase. This move could be a big deal because it relieves state expenses for health care, the largest budget item for Louisiana government. President Trump signed into law the Families First Coronavirus Response Act on March 18. It provides, retroactive to January 1, an increase by 6.2 percentage points in the Medicaid Federal Medical Assistance Percentage, known as FMAP. There are strings attached, of course, and it does not apply to all Medicaid programs such as the Medicaid expansion to low-income adults. But it could be a recipe for significant state savings in the near term.



A cautionary note here: when the higher federal match falls back to its old level, which is scheduled to happen as soon as the crisis is over, the state will face an increase in health care costs as it returns to its normal match rate with likely significantly increased enrollment in the program. The increase in enrollment will be driven by both the economic downturn and a new federal requirement that dis-enrollment from the program be suspended for the duration of the crisis.

Meanwhile, PAR notes that the federal Medicaid agency is granting potentially life and cost-saving waivers to many states to tweak their health programs, including Louisiana. One waiver provision, already in place, will allow Louisiana to quickly establish temporary hospital and nursing home beds (in non-traditional settings) without going through the standard licensure process. This will very likely soon make additional inpatient beds available to help respond to the crisis. We will monitor this development.

2019 budget surplus. Louisiana has a surplus from its 2019 fiscal year of \$534 million. Of that, 25% (\$133.5 million) must go into the Budget Stabilization (Rainy Day) Fund and 10% (\$53.4 million) must go to pension debt. That leaves about \$347 million to be spent on constitutionally allowed appropriations for this type of non-recurring money, which cannot be spent directly on general operating expenses. However, as noted in the backgrounder at the end of this commentary, the state in the past has found ways to use one-time dollars to substitute for general fund expenditures, thereby freeing operating cash.

2020 was ahead, until. Before the coronavirus crisis, state economists estimated a roughly \$200 million revenue surplus for the current fiscal year. This proposed forecast was not adopted by the Revenue Estimating Conference, the panel that sets the official forecasts for state revenue and thereby

limits state general fund spending. The economists' expectation of extra money will be wiped out quickly by the sudden decrease in state revenue. But the state is in a better position going into the crisis than if the outlook had been a shortfall. New forecasts for the current year and next year will be difficult to make. Economists will need fresh data, which may be delayed.

The Rainy Day Fund. Known officially as the Budget Stabilization Fund, this pot contained \$405.3 million on July 1, 2019. That's the date that state law pinpoints for deciding how much can be withdrawn from the fund during this fiscal year. If the Revenue Estimating Conference forecasts declining revenue for the current year, up to one-third of the fund can be tapped for general operating expenses, or about \$135.1 million. Lawmakers cannot tap more than the amount of the estimated decline in revenue; they can fill the gap but no more. About \$133.5 million eventually will be added to the Rainy Day Fund from the 2019 surplus, as required by law. With that and other additions, the current fund value is actually about \$543.2 million, one-third of which would be \$181 million. If the Legislature were able to tweak or suspend state law on the timing of the official calculation for a withdrawal, then the larger amount could be realized for this year. If the right triggers line up, a big question for the Legislature will be how the Rainy Day Fund might be used for the current fiscal year versus next year.

Dedicated funds. It is not a happy thing that we would have to consider tapping dedicated funds to make ends meet. A PAR backgrounder at the end of this commentary highlights the ways the state could pull revenue from the appropriations of dedicated funds. Even some constitutional funds, under deficit circumstances, can be tapped.

So now what?

Here are some short-term considerations, looking ahead to the regular session or a subsequent special session:

Focus the work. If the Legislature changes its public participation procedures in an altered process to accommodate the health risks, it should limit business to essential, high-level priorities, which may include urgent measures to address the effects of the pandemic on citizens and businesses.

Budget tricks. In a crisis, it is permissible to be resourceful in locating various sources of recurring and non-recurring revenue to address severe immediate problems. A number of near-term budget options are highlighted in the backgrounder at the end of this commentary. In doing so, the Legislature should try to match uses of one-time money with one-time expenses. Also, do not underestimate the long-term impact of utilizing one-time resources that might not be available in the future. In years past, the state dug itself into a deep fiscal hole by stringing together a lot of short-term solutions and disregarding the long-term impacts.

Accept our situation. Keep a close and sober eye on expectations for next year's general fund revenue. The economic conditions currently are pointing to a massive reduction in employment and profits, leading to a significant decrease in state budgeting. A rebound in economic activity is expected eventually, but until the evidence demonstrates otherwise we should count on a slow recovery for state

budgeting purposes. We hope for a strong and fast recovery, but we should recognize that past recoveries from economic collapses have been slow and sure. Also, because of the fall in the stock markets and low interest rates, state pension expenses could increase the financial burden on state agencies and local school districts in the long term.

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Begin sooner than later. As a result, the Legislature must begin looking for state budget cuts, and perhaps large ones, for next year. The time to begin preparing for the long haul is now.

Small business. With input from small business, identify state and local regulatory issues that, if tweaked or suspended, could expedite small businesses getting back up and running. This might include licensure extensions, fee waivers and expedited or extended permits.

Tax relief. A special session would allow a wider variety of fiscal issues to be addressed than in the current regular session. Among the worthwhile topics is tax and fee relief, especially if framed around measures to help business rebound in this devastated economy. Tax relief could spell lower revenue for government. But if approached right, the state could strike balance in which businesses could use the

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tax relief as a means for increased employment and transactions, which would boost the economy and state coffers. We appreciate the argument that sometimes tax incentives do not necessarily produce greater economic benefits for the community or state. In the case of the coronavirus epidemic, we know that many companies were operating successfully until, at no fault of their own, they were stymied and forced

to shut down or reduce operations. It is not a great risk to assume that there are plenty of businesses out there ready to be successful again. A state investment in tax relief, properly executed, would be better than a speculative bet in the coronavirus recovery period.

Long-term lessons

No doubt many long-term lessons will arise as this pandemic plays out. For starters, here are three significant ones:

The State Constitution. We have seen from this crisis how the Louisiana Constitution contains rigidities that do not serve us well in a time of national crisis and economic collapse. Layered with 200 amendments and nearly 30 new dedicated funds over the years, the Constitution no longer offers the promise of a foundational document that allows state government to operate efficiently and rethink its fiscal priorities over time. PAR recommends the state rewrite the fiscal portions of the Constitution and create a new structure for constitutionally protected funds that balances protections with greater flexibility. The Constitution could also use some provisions to better assist state and local operations in the time of a presidentially declared emergency.

Local sales tax dependence. Local governments in Louisiana have one of the highest local sales tax rates in the nation and also an unusually broad collection of generous exemptions on property taxes. This is not to say that property taxes in Louisiana are by any means inconsequential, but they are

less emphasized in local government budgets than in most states. Property taxes offer a steadier source of revenue for local governments than the volatile sales tax, which is now victimizing municipalities and parishes around the state as the economy falters. Whether we are talking about the oil industry crunch a few years ago, the current crisis or the next catastrophe down the road, local governments would be better off shifting more toward a property tax base, which is also a more progressive form of taxation than a high-rate sales tax.

Pension weakness. We will have to wait and see what happens to the investment markets and their effect on the state pension portfolios. The retirement systems have long relied on an overly optimistic estimate of the expected long-term return on their investments. Occasional down markets are already assumed in the pension systems' outlooks, but unless we see a miraculous near-term recovery, the recent performance on Wall Street may be more than they bargained for. Louisiana's state pension portfolios perform comparably to other states, but they act on assumptions about the future that are more optimistic than most states. Poorer-than-expected portfolio performances mean that state agencies and school districts over the longer term will face higher charges to keep up with the unfunded liabilities of the retirement systems. The state retirement systems are long overdue to reset their expectations lower, which would create modestly higher near-term costs but would reduce long-term costs and the vicious cycle of expensive indebtedness.

Summary

These are tough times for everyone. In an environment incompatible with public meetings, the representatives of the people must get done with their most fundamental work and address the crisis as safely and efficiently as they can. The best scenario is a legislative session that addresses essential matters in a cooperative spirit among chambers, parties and with the governor. Although information about the future will be unreliable, the Legislature should assume a slow recovery in terms of state budgetary planning. A successful session is one that will accomplish critical goals in an atmosphere of respect for each other and for the prevailing economic and health conditions. That would go a long way toward revitalizing the spirit and commerce of Louisiana.

*For more information please contact Robert Travis Scott, President
robertscott@parlouisiana.org | 225.926.8414 | www.parlouisiana.org*



State financial options in a crisis

Where can we find revenue sources?

During the legislative session, lawmakers will be looking for ways to plug holes in the budgets due to estimated revenue shortfalls but also because of unexpected increased spending for the current year's budget. The state has an expenditure limit, which is not anticipated to be triggered for the current fiscal year but should be monitored. The Legislature can vote to override the state expenditure limit.

Also, as noted below, the state might tap statutory or constitutional funds to fix its immediate needs. But any deficits in any funds at the end of a fiscal year must be eliminated no later than the end of the next fiscal year. So, a fund tap that saves you one year will likely burden you the following year.

Under normal circumstances, padding a current-year budget with one-time funds would not be prudent. Some of the worst budget practices of the past have landed the state in a condition of perpetual shortfalls and mid-year budget deficits that have prompted tax increases and agency cuts. In the current circumstances, the most severe phase of the revenue crunch is hoped and believed to be temporary, with the economy improving into the future. There is also the possibility that the pandemic health threat could last many months or return later.

The decision to use one-time monies should be based on future revenue expectations and not just on the emergency needs. We might see long-term effects in corporate income tax receipts due to carry-overs of net operating losses. If the investment markets are slow to recover, our pension systems could face deeper unfunded liabilities, which would spell higher expenses to maintain the state retirement plans. In an upcoming session, the best practice would be to match the use of any extraordinary funding with extraordinary expenses to the extent possible.

Let's look at some options for finding money for the state budget:

Federal support. The stimulus and rescue bills from Congress will help states cope with the impact of the pandemic, both directly and indirectly through boosting individual and business incomes. Local governments as well as state governments may be in need. Federal support also is flowing to particular targets for assistance, such as emergency health care.

The Revenue Stabilization Fund. This recently created fund, a companion to the Budget Stabilization Fund, has \$30.5 million from a revenue spillover in 2019. A two-thirds vote of the Legislature can appropriate the funds for any use.

BP settlement money. A category of BP Deepwater Horizon settlement payments – to be distributed annually through 2034 -- may be spent on virtually any state priority. Under Act 443 of the 2019 session, that money was slated for a certain set of infrastructure projects around the state. Meanwhile, the budget surplus from 2019 has to be spent on certain one-time priorities, including infrastructure. A portion of the surplus could be used to replace the money expected to be spent under Act 443 for infrastructure projects. The purpose would be to free up operating money for the short-term while

maintaining the funding for Act 443. This action would of course require legislation. A more radical approach would be to scrap or postpone Act 443 entirely and appropriate the annual settlement money to recovery efforts.

Bond Security and Redemption Fund. The state captures general fund money flowing through this fund to secure debt payments on bonds. This system does not capture fee-based money in the same way. Special fees support some agencies, such as the Department of Wildlife and Fisheries and the Department of Natural Resources. If the state decided that the Bond Security and Redemption Fund would capture fee-based funds for these departments, then the state debt load on the general fund would decrease and allow greater general fund spending. This idea was advanced by the previous House Speaker to encourage the state Treasurer to adopt this method of managing the money, but the Speaker's resolution did not pass.

Statutory fund sweeps. This tapping of funds that are not protected by the state Constitution was once a common legislative action in the budget process. It is one way of coming up with some emergency funding. Even under the House of Representatives' so-called Geymann rule, which limits expenditures of one-time funds, certain one-time expenditures can be counted against one-time revenues to meet the rule. Also, the rule can be suspended by a House vote.

Early debt payments. The state may be able to pay some debts earlier than expected, with one-time money such as the 2019 surplus, and free up some state general fund money for operating expenses. Defeasance is a tactic used frequently in the past.

Emergency funds. In the past the state has utilized statutory emergency funds to steer money into the operating budget.

Capital Outlay swap. Usually the state uses little or no general fund money to support the state's Capital Outlay, or infrastructure, budget. Whatever capital outlay dollars are drawn from the general fund, if any, could be supplanted by money from the 2019 surplus, which can be spent on infrastructure.

Tax exemptions hiatus. Some might suggest eliminating or reducing tax exemptions to raise state revenue quickly. Raising taxes in this way would be controversial and probably inadvisable because of the economic struggles so many businesses and individuals face. Because the 2020 regular session is not a fiscal session, the Legislature would be limited in how it can handle tax exemptions. It could handle them freely in a special session. The Legislature can suspend laws for approximately a year, and this may be another avenue.

So-called non-recurring funds, which includes an end-of-year surplus like we had in 2019, can be spent only on:

- Retiring debt
- Payments toward the UAL of the state pension systems
- Capital outlay projects (infrastructure)
- Deposits into the Rainy Day Fund
- Deposits into the Coastal Fund

Constitutional fund taps

While statutory funds can be tapped by the Legislature even under normal circumstances, albeit with certain limits, constitutional funds have much greater protection. Still, there are circumstances in which revenue can be peeled off some constitutional funds. Let's review how that might work.

If the Revenue Estimating Conference adopts a new forecast showing a decrease in revenue versus the former forecast for the current year, that will trigger the ability of the governor and the Joint Budget Committee, or the full Legislature if in session, to take 5% of the appropriations from certain constitutionally protected funds. Keep in mind that this is a tapping of the appropriations from the funds, not the actual corpus of the funds. For example, the corpus of the sub-funds in the Millennium Trust Fund are not available to tap, but the amounts of money from earnings investments that are constitutionally appropriated from those funds are subject to the 5% tap. Also, the funds cannot be tapped for an amount that is greater than the estimated shortfall.

There are several constitutionally protected funds whose appropriations can be tapped by 5% under the REC forecast reduction scenario:

- **The Coastal Protection and Restoration Fund.** When tapped in the past, the state counted the appropriations of all federal and state money from the fund to calculate the 5%, as opposed to only counting the state money appropriated from the fund. This had the effect of boosting the amount that could be tapped, which was then drawn only from the state portion of the appropriation.
- **The Transportation Trust Fund.** The 5% represents about \$30 million.
- **The subfunds of the Conservation Fund.** The Department of Wildlife and the Department of Natural Resources pay their operating expenses out of these funds; a 5% tap late in the fiscal year could loom large for the agencies.
- **The Louisiana Education Quality Trust Fund.** Also known as the 8(g) fund, it includes the BESE and Regents Support Funds. The appropriations are from the investment earnings, not from the fund corpus. The 5% would amount to only a few million dollars, and the spending for these funds may already have occurred.
- **The subfunds of the Millennium Trust.** These include the Health Excellence Fund, the Education Excellence Fund and the TOPS Fund. The 5% amounts from the education and health funds would be a few million dollars. Tapping the TOPS Fund would be mostly meaningless because this money supplants general fund financing for the college TOPS program providing tuition assistance to students.
- **Other funds.** The Louisiana Fund and the Artificial Reef Development Fund are available for tapping. Even under the REC reduction scenario, tapping the Hospital Stabilization Fund and the Louisiana Medical Assistance Trust Fund would probably not be beneficial because that would take away from general fund spending and federal matching dollars. The Lottery Proceeds Fund already goes toward offsetting the MFP, which is general fund supported anyway. A number of other funds in the Constitution have no money or have been inactive.