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PAR Wraps Up the Special Session on Ethics

The special legislative session that adjourned on Tuesday yielded an impressive set of reforms to the state's ethics, campaign finance and other laws. Several long-resisted changes were enacted to disclose public officials' personal financial dealings, forbid state officials from personally profiting through state contracts, eliminate many of the freebies officials have traditionally enjoyed, require more reporting on lobbyist-official interaction, and make state budget information more accessible to the public. Unfortunately, both the Legislature and administration also both expressed a clear and unashamed commitment to maintain certain protections and exceptions that PAR has long held should be eliminated.

By focusing the agenda for the special session on ethics reform, the governor and the Legislature signaled that Louisiana's political culture is turning a corner on the path away from its notorious tolerance for corruption. This was the most ambitious agenda on ethics reform ever put forward by a Louisiana governor. However, the governor's own campaign finance violation and Hannah Montana concert free-ticket handout, coupled with the sarcastic, hypocritical and often hostile treatment many of the reforms received from vocal members of the Legislature, offers plenty of evidence that the political culture still has a long way to go.

A series of showdowns between the new governor's administration and the new Legislature during the two-and-a-half-week special session yielded victories for both sides, leaving the balance of power fairly even as the next round of battles is undertaken in the upcoming special session to spend last year's \$1 billion budget surplus. Both sides demonstrated a willingness to compromise with the other, but even the governor's hand-picked legislative leadership proved willing to challenge him.

Prior to passage of legislation this special session, a new level of transparency in government was implemented with two key self-imposed practices by the Legislature. The Senate is now making available on its Web site the video archives of all of its committee meetings. The House has been doing this for years. Another big change is that conference committee meetings were open to the public and broadcast on the Internet. Also, the full House and Senate were not asked to vote on conference committee reports until the day after they were written, giving members and the public time to make sense of the final changes to the bills. This marks a significant change in the lawmaking process that should reduce opportunities for backroom deals to go unnoticed and unchallenged.

PAR's picks for the good, the bad and the ugly of the 2008 special session on ethics are:

The Good

The cornerstones of the governor's ethics reform agenda were the bills to require personal financial disclosure for public officials, ban public officials from doing private business with the state, require more frequent and robust reporting of lobbyist expenditures, and cut back on many of the freebies public officials now enjoy like tickets and lavish meals.

Financial Disclosure

Legislators, statewide elected officials, local elected officials, members of many state boards and commissions and certain top staffers will be required to disclose details about their personal finances, including income, debts and assets. This bill (HB1) was a bitterly fought piece of legislation that expands on a weaker proposal killed in the final minutes of last year's regular legislative session. Requiring standardized, easy-to-access personal financial disclosure for high-level public officials is one of the most important steps the state can take to build citizen confidence in the integrity of government.

Judges were amended out of the bill at the request of the Louisiana Supreme Court. However, the judicial branch has assured the Legislature that it will develop and adopt its own requirements by June. It matters less how the disclosure is mandated, than that it is mandated.

There are huge administrative hurdles to clear in order for the Ethics Administration to collect and make available the financial disclosure reports that are due for most officials in 2009. Chief among the hurdles is getting the Legislature to appropriate the funding necessary to set up the electronic filing system. Only when the judiciary adopts its own requirements and the new requirements for everyone else are implemented can this be considered a complete win for the citizens.

Other bills also will make important financial information available to the public. Non-governmental entities that receive state funding (HR2) and "527" political groups (SB29) will have to file disclosure reports, and the commissioner of administration will be required to develop a Web site to report spending data for each state budget unit, including salary information for top officials (SB37). Additionally, political advertisements funded by third-party groups will have to list the groups' full name and contact information and state if a candidate authorized the ad (SB14).

Conflict of Interest Exposure and Prohibition

Top public officials, including legislators, the governor's executive staff and cabinet secretaries and the spouses of each, will be prohibited from entering into new contracts with the state. Those officials and spouses who had existing contracts with the state prior to this bill taking effect can complete obligations due under their contract. However, the contract must end no later than 2012 (SB1). Other immediate family members of the officials will only be allowed to engage in competitively bid or negotiated contracts with the state.

These prohibitions will go a long way toward cleaning up the state's image as a place where insider deals are protected, but only if the new laws are effectively monitored and enforced. In cases where a conflict of interest remains for elected officials, SB5 will require recusal from pertinent votes. Currently, only disclosure of the conflict has to be made, but the vote is allowed.

The ethics code generally prohibits public officials from accepting gifts from certain sources, but several exceptions to this law are widely seen as enabling special interests to gain special privilege and essentially buy time with lawmakers. The exceptions that allowed public officials to receive food, drinks and tickets were tightened. Some free tickets will still be allowed (SB3) - for example those to fund-raiser events to which the public is invited - but tickets to major sporting events and private golf and hunting outings have been prohibited. Similarly, the exception that allowed lavish wining and dining of officials has been scaled back to \$50 per meal (SB8). PAR has long recommended that the exception be eliminated entirely so that not even a free cup of coffee could be given.

To enable the public to better track the influence special interests have over public officials, reporting requirements for lobbyists have been strengthened (SB11). Lobbyist expenditure reports will require the disclosure of information regarding their compensation, the subject matter being lobbied, and business relationships with public officials and their spouses. The reports will have to be made monthly and filed electronically.

Monitoring and Enforcement of Laws

Many of the new reporting provisions include tough penalties for willful violation. Special care was taken to ensure that the laws allow honest errors to be corrected without criminal penalty.

One proposal that would prohibit third parties from paying fines for campaign finance violations was finally passed as part of the "527" group legislation (SB29). It was initially opposed by the administration in a stand-alone bill, but then tacked on to several unrelated bills in effort to ensure its passage. This drama was one of the key public faceoffs between legislative leadership and the administration.

That power struggle was also evident in the debate regarding how best to strengthen the Office of Inspector General (IG). Disagreement over how an IG can be removed from office led to an eventual compromise that will require approval by a majority vote of each house of the Legislature. The office will now have statutory authority to investigate the executive branch and have subpoena, oath-administration and testimony-taking powers. A similar measure (HB80) grants certain municipalities the ability to establish their own office of inspector general, and empowers those municipalities to grant such entities subpoena, oath-administration and testimony-taking powers.

Finally, one bill's defeat this session can be deemed a big win for ethics reform. A move to shield ethics board advisory opinions from public view was withdrawn. Advisory opinions rendered by the board are pre-emptive in nature and can only serve the public if they are accessible (HB36).

Bad

One key piece of legislation that posed as good-government reform stripped power from the ethics board and may undermine many of the gains made this session. The administration-sponsored bill (HB 41) strips the board of its adjudicatory authority and incorporates administrative law judges (ALJs) into the process of deciding guilt or

innocence on ethics charges. This is widely seen as a compromise to satisfy legislators who fear having unfair rulings made against them by the board. Argued as a fix to a due process flaw in the current process, the ALJ approach is a hurried solution to a potential problem that has yet to manifest itself as biased rulings by the board. This change created new opportunities for political influence over ethics rulings. The process will have to be carefully monitored with renewed diligence to prevent that from happening.

Other proposed changes as alternatives to the ALJ approach - to the board's enforcement procedures and powers were given short shrift in the debate. Generally, throughout the session, non-administration proposals were given limited time for debate and consideration. However, some key administration-sponsored bills were also pushed aside. One such unfortunate failure was a bill (SB4) to require a two-thirds vote to add new exceptions to the ethics code. This proposal would have slowed the proliferation of narrow exceptions to the code.

Ugly

Resisting the opportunity to make public records in the governor's office, whining about having to eat meals valued at less than \$50 and insisting that the cost of tickets to various events is out of reach for legislators are examples of the ugly reminders that changing Louisiana's political culture is an incremental process throughout which embarrassing defenses will have to be endured.

A bill to remove the general exception to public records laws that the governor's office now enjoys was withdrawn. The bill (HB27) would have replaced the general exception with a more narrowly tailored exception that would have protected certain records of the governor and his top staff, but would have opened for public view much of what is shielded now. Only weak justification has ever been given for the general exception, and this resistance seems particularly inappropriate considering the new governor's promotion of more transparency in government.

The prolonged debate surrounding the issue of how much lobbyists should be allowed to spend treating legislators (and others) to food and drinks was absurd and would have been humorous were it not so shocking to hear the shamelessness in elected officials' protests at the thought of eating meals that cost less than \$50. One mention of this limit forcing meetings into Taco Bell dining rooms was particularly offensive. The commonly accepted "gold standard" on this matter is the no-cup-of-coffee rule. There should be no cap, because the wining and dining simply should not be allowed. The freshman legislator who proposed that standard, however, was ruthlessly ridiculed on the floor of the House.

Conclusion

The phrase "good government" was tossed around liberally this session - often facetiously and filled with spite because of its power to force officials to accept new limits on their perks of office and rights to personal privacy. That venerable description is meant to describe a set of public sector values that includes transparency, accountability, efficiency, effectiveness and accessibility. This past special session certainly made Louisiana government better, but the good government seal of approval is reserved until the new laws are implemented, enforced and strengthened where needed. The concentrated dose of ethics reform enacted this session should be treated as a start on the path from better to great.