

2016 LOUISIANA LEGISLATIVE REPORT

State Profile

Capitol: **Baton Rouge**
Governor: **John Bel Edwards (D)**
General Elections: **4 Years (House, Senate, Governor)**
Legislature Convenes: **Annually**
Even Year Sessions: **General Sessions (85 Days)**
Odd Year Sessions: **Fiscal Sessions (60 Days)**

Senate

Republicans: **25 (64%)**
Democrats: **14 (36%)**
Term: **4 Years**
Presiding Officer: **Senate President John Alario (R)**
Majority Leader: **Senator Danny Martiny (R)**
Minority Leader: **Senator Eric Lafleur (D)**
Major Utility Committee: **Commerce Committee**

House

Republicans: **61 (58%)**
Democrats: **42 (40%)**
Independents: **2 (2%)**
Term: **4 Years**
Presiding Officer: **Speaker Taylor Barras (R)**
Majority Leader: **Lance Harris (R)**
Minority Leader: **Gene Reynolds (D)**
Major Utility Committee: **Commerce Committee**

Regulatory Body

Regulatory Body: **Louisiana Public Service Commission**
Members: **5 Elected Commissioners**
Election Cycle: **6 Year Alternating Terms**

The Louisiana Constitution provides that the Legislature is a continuous body during the term for which its members are elected; however, a bill or resolution not passed during a session in which it is introduced cannot carry over to a subsequent session. During odd numbered years, the sessions are considered “fiscal in nature.” Fiscal sessions may not run longer than 45 legislative days during a continuous 60 day period. Fiscal sessions include matters pertaining to the enactment of a general appropriations bill; implementation of a capital budget; making an appropriation; levying or authorizing a new tax; increasing an existing tax; legislating with regard to tax exemptions, exclusions, deductions, reductions, repeals or credits. In addition, during a fiscal session, each legislator may file five (5) bills which are not fiscal in nature.

During even numbered years, the sessions are considered “general in nature.” The general sessions run for not more than 60 legislative days (a day when either or both houses are meeting) during a continuous 85 day period. The legislature is prohibited from considering any proposals that are fiscal in nature. However, legislators may pre-file an unlimited number of general bills and may file five (5) bills after the session opening.

The 2016 session was considered a general session. Therefore, no fiscal matters could be considered. Because the state was facing an anticipated 2015-2016 deficit and an anticipated 2016-2017 deficit, the Governor called two additional “special sessions” for the purpose of focusing on fiscal matters.

2016 First Special Session

The 2016 First Special Session began with the introduction of the Governor’s Executive Call. The call limited the special session to thirty-six specific items in order to address the \$950 million deficit for the FY15-16 budget and the \$2 billion projected deficit for the FY16-17 budget. To address both deficits, the administration proposed various revenue-raising measures, including a corporate franchise tax on select LLCs and an increase in the sales tax on business utilities. Further, the Administration proposed using rainy day funds and BP oil spill settlement dollars to fill the budget gap for the remainder of FY15-16.

The First Special Session’s legislative process closed all but roughly 3-5.5% of the \$950 million deficit in FY15-16. An estimated \$30-50 million deficit remained, but was addressed through administration cuts. An estimated deficit of \$600 million remained for FY16-17. The following bills of the first special session affected the utilities of the state.

Act 12/HB 19 (T. James) – The legislation imposed a Louisiana franchise tax (LFT) on any Louisiana LLC or partnership that is taxed as a corporation for federal purposes. In an attempt to overturn the effects of a recent taxpayer friendly Louisiana Supreme Court LFT decision (commonly referred to as Utelcom), the legislation also subjects certain members of Louisiana LLCs and certain partners in LA partnerships to LFT. Under certain circumstances, it provides partial relief to these LLC members and partners through a generic holding company deduction. The legislation also includes a public utility holding company deduction to provide partial LFT relief to qualifying utility holding companies. The legislation would have resulted in recurring detrimental (and non-recoverable) tax liability to multiple holding companies headquartered in Louisiana. An agreement was reached on amendment language to include a generic holding company deduction and a utility holding company deduction. *Passed as amended*

Act 26/HB 62 (K. Jackson) – Imposed a new 1% state sales and use tax from April 1, 2016, to June 30, 2018. The bill limited more than 125 exclusions and exemptions to the existing 4% tax, including business utilities (which will be subject to the new tax) and MM&E (which will be subject to the new tax,

but only from April 1, 2016 to 30 June 2016). Key members of the House of Representatives did not allow the report associated with this bill to be released until minutes before the close of session; thus, forcing the Senate to sign and pass the legislation without further negotiation or face an estimated negative impact to the state of 100.7M in 2016, 413.9M in 2017 and 413.9M in 2018. *Passed*

Act 25/HB 61 (J. Morris) – The legislation removes more than 150 exclusions and exemptions from 4% state sales tax from April 1 to July 1, 2016 (including 4% on business utilities). It then steps down to remove more than 150 exclusions and exemptions from 2% state sales tax from July 2, 2016 to July 1, 2018 (but 3% on business utilities and 1% on MM&E). It subsequently removes 1% of the business utilities exemption from July 2, 2018 to April 1, 2019. Finally, it repeals \$25 per cash register reprogramming credit. Similar to the legislation above, the conference committee report associated with this bill was withheld from the Louisiana Senate until minutes before the close of session; thus, forcing the Senate to sign and pass the legislation without further negotiation or face an estimated negative impact to the state of 59.9M in 2016, 238.5M in 2017 and 238.5M in 2018. *Passed*

2016 Second Special Session

The Second Extraordinary Session of 2016 began June 6, 2016, at 6:30pm (30 minutes after the conclusion of the 90 day session) and ran 17 days, ending at midnight on June 23, 2016. The Legislature approved approximately \$263 million of revenue raisers to fill the remaining \$600 million deficit for the FY16-17 state budget. However, a preliminary report from the Department of Revenue indicates that the estimated revenue shortfall from corporate collections for FY16 may leave the state short an additional \$200 million dollars. The legislature raised approximately \$1.4 billion through new taxes or spending cuts in the two special sessions.

Act 4/SB 10 (R. Ward) – This bill provides that manufacturers taking advantage of the industrial property tax exemption cannot also claim inventory ad valorem tax credits. This bill will not impact Entergy because of the little inventory tax we pay in Orleans Parish on stored natural gas (\$10,000). The business community, along with the Chemical Association, originally lobbied against the bill, but a compromise was reached in the final days of the session concerning a carry forward for the Inventory credits. The original fiscal note on the bill was \$139,000,000 but after House, Conference Committee amendments and an adjusted fiscal note, the bill passed raising nearly \$68 million. *Passed*

Act 4/SB 6 (J.P. Morrell) – This legislation provides for the carry forward, rather than the refund, of a certain portion of the tax credit for ad valorem taxes paid on inventory. This bill will not impact Entergy because of how little inventory tax we pay in inventory tax related to stored natural gas (\$10,000). The bill generates approximately \$17 million for the state. *Passed*

Act 2/HB 47 (C. Broadwater) – This legislation restores a grandfather clause for NOL deductions taken on corporate tax returns filed prior to July 1, 2015. During the 2015 fiscal session, allowable NOL deductions were reduced from 100% to 72% as part of an overall reduction in corporate income tax deductions. However, the 2015 legislation specified that it would not apply to original *or amended returns* filed before July 1, 2015. Subsequently, during the 2016 first special session, Representative Broadwater passed a bill that attempted to fix some errors contained in the 2015 NOL legislation. However, in so doing, he amended out the words “or amended returns,” as it pertained to excluding the 100% use of NOLs on amended returns filed before July 1, 2015. At the request of Entergy, HB 47 was filed by Broadwater, and supported by the Governor’s office, to restore the NOL provision originally in

place. Thus, all returns filed before July 1, 2015, are now able to take advantage the full (100%) NOL deduction. *Passed*

HB 34 (K. Jackson) – The bill attempted to reduce the amount of certain corporate income tax exclusions and deductions. Most significantly, the bill reduces NOL and dividend deductions from the current 72% to 50%. During the 2015 session, these deductions were reduced from 100% to 72% as part of an overall reduction in corporate income tax deductions. Entergy led multiple industry partners to lobby the Ways and Means Committee to kill the bill. Through three days of committee hearings, the bill remained tabled as a result of these efforts. *Defeated*

HB 46 (F. Foil) and HB 54 (M. Thibaut) – The bills sought to transfer the remaining funds under the solar leasing tax credit cap to taxpayers awaiting the solar purchasing tax credit. During the 2015 legislative session, Entergy was responsible for initiating and assisting with the passage of legislation that capped solar purchasing and solar leasing tax credits at \$25 million (each) for years 2015 through 2018. The bills were withdrawn once the Department of Revenue informed the authors that the solar leasing credit cap had been reached yielding no funds to transfer. *Declined to advance*

2016 Regular Session

The 2016 Regular, non-fiscal, Session began March 14, five days after the first special session concluded. It ended June 6, 2016. As discussed in the introductory summary, no revenue generating bills were considered.

Tax

HB 506 (W. Leger) – The bill proposed a constitutional amendment to make two major changes to the existing industrial property ad valorem tax abatement program (ITEP). The bill would: 1) allow local governing bodies to have approval authority over contracts for new or expansion project and 2) reduce the renewal period in the second five years. Utilities perceived that such authority might impede approval of the program usage for plant expansions or upgrades. After multiple conversations were had with the author and industry, he agreed not to advance the bill. *Author declined advancement*

Expropriation

Act 331/SB 82 (B. Morrish) – Provides for the formation and consolidation of ports in Cameron Parish. Entergy amended the bill to remove potential quick-take provisions, limit language that originally provided the ports with authority outside of their territorial boundaries and prohibit the ports from operating as, or granting, utility franchises. *Passed as amended*

Act 325/SB 31 (F. Mills) – The bill attempted to establish the Krotz Springs Port Authority and make its authority contiguous with territorial boundaries of St. Landry Parish. Entergy amended the bill to remove potential quick-take provisions and prohibit the port from operating as, or granting, utility franchises. Entergy also amended the bill to limit authority of the port/port commission to the territorial boundaries of the port, rather than the territorial boundaries of St. Landry Parish. *Passed as amended*

Act 108/HB 313 (R. Garafalo) – The Louisiana Law Institute requested this bill to require expropriating authorities to provide notices informing landowners of legal rights prior to making an offer of servitude acquisition. There was opposition to the bill because it was overly burdensome on the expropriating authority and would insert the potential for unnecessary litigation into the expropriation process. Many

right-of-way acquisitions are concluded without transmission of a final offer letter because either: 1) the expropriating authority ultimately decides against the route or 2) the owner is agreeable to the proposed right-of-way path and compensation offered. Entergy worked with the railroads and the Law Institute to amend the bill to allow for the letters of information and notices to be sent within 30 days before the final offer letter. *Passed as amended*

Regulatory

Act 139/HB 431 (T. Carmody) – The bill increased the fees on utilities and motor carriers from 7% to 8% of gross receipts. Entergy assisted the LPSC to pass the bill through the House and Senate chambers. The additional fees will allow the LPSC to fill the 14 open positions that currently do not have funding; thus, potentially reducing the amount of third party consulting and legal charges currently incurred by the Entergy when the LPSC outsources. *Passed*

Act 135/HB 310 (P. Connick) – The bill requires the LPSC to “exercise its control and rate fixing authority to modify fuel adjustment charges of an electric utility as assessed by an electric utility to rate-paying consumers through operation of the utility’s fuel adjustment clause no less frequently than every other year.” Entergy Louisiana initially worked with the author and the LPSC to reach a consensus on bill language. However, immediately prior to final passage in the Louisiana Senate, the author attempted to add an amendment that would set a judicial interest rate on refunds to customers. Entergy and the other utilities opposed the amendment, which failed. *Passed*

HR 7 (P. Connick) – The resolution urged and requested the Legislative auditor to audit the fuel adjustments charges of Entergy Louisiana. Entergy opposed the bill, arguing that it was unconstitutionally giving authority to the legislative auditor and that the authority would ultimately overburden the auditor’s office. *Defeated*¹

Environmental

HB 469 (P. Connick) – The proposed legislation required fence line air monitoring systems be installed and continuously operated at any Louisiana facility cited for three permit violations within a 24-month period. The systems were to be installed at both the facility property boundary (closest to the nearest residential community) and the facility’s downwind property boundary. This bill was of great concern to industry, including Entergy. All Louisiana Entergy fossil facilities are classified as “major sources.” The bill was filed in response to an ongoing suit against the Vertex Refining Marrero Facility. The facility recycles 60,000,000 million gallons of used motor oil annually. After heavy lobby of House membership, the debate on the bill on the House floor was postponed on multiple occasions before failing to pass 24-65. *Defeated*

HCR 143 and 186 (P. Connick) – After the defeat of HB 469 (fence line air monitoring), the author filed these resolutions to urge and request the LDEQ to study the feasibility of certain facilities sharing real-time ambient air quality monitoring data with first responders. The Louisiana Chemical Association and industry representatives did not oppose the resolutions because their facilities already have safety procedures in place for first responders that exceed the subject matter of the resolutions. *Defeated*

¹ This resolution was actually introduced during the second special session. It is discussed in this area of the report for context purposes. As discussed in the summary of HB 310, the utilities attempted to work with the author in legislation that mandated the LPSC to audit the fuel adjustment clauses on a biannual basis. The bill was signed by the Governor and became law. It is speculated that the author filed HR 7 because the utilities successfully defeated his last minute amendment to set a judicial interest penalty in HB310.

HB 553 (D. Marcelle) – The bill attempted to regulate groundwater resources in East Baton Rouge Parish, West Baton Rouge Parish, West Feliciana, East Feliciana and Pointe Coupee. It also attempted to restructure and restrict the authority of the Capital Area Groundwater Conservation Commission (CAGWCC). This bill would have critically impacted industrial water wells in the 2000 foot sand (using more than 1 million gallons per day in many wells). Tony Duplechin, director of the CAGWCC, testified in defense of the commission and its advancements in modeling of groundwater use (and related saltwater encroachment in the Baton Rouge area). He further testified that the entire management process is based on science with the goal of maintaining long-term sustainability of the aquifer system for all. Entergy and Louisiana Chemical Association educated the House Natural Resource Committee regarding the negative implications of losing the knowledge base of industry geologists, engineers and hydrologists from the CAGWCC. *Defeated*

Utility Operations

Act 539/HB 19 (S. Dwight) – The bill added schools and prisons to the list of restricted areas/facilities for drone flight. With the author's permission, Entergy amended the bill to ensure that the survey activities of utility drones over distribution and transmission assets are exempted from the legislation's restrictions. *Passed as amended*

SB 472 and SB 141 (D. Claitor) – The bills attempted to add the crime of unlawful use of drones to the definitions of entering and remaining in or upon property. Any future intended utility drone-related activity was protected in SB 141, and Entergy was prepared to amend SB 472. However, the bills failed to pass the senate. *Defeated*

Act 643/HB 766 (C. Broadwater) – The bill repeals enabling legislation that provided for the formation of sustainable energy financing districts in the state. The Louisiana Banker's Association primarily utilized the argument that property assessed clean energy (PACE) loans were tied to the property, rather than the individual taking out the loan. Thus, when a PACE loan is utilized as a means of financing energy efficiency upgrades or renewable energy installations for an immovable, that immovable could be perpetually tied up with debt that interferes with primary mortgage holder rights because of the PACE lien having the same ranking as an ad valorem tax lien. Utilities worked with the Realtors Association and Bankers Association to initiate HB 766 after working with the groups to defeat a bond issuance related to the formation of a sustainable energy financing district in Jefferson Parish. *Passed*

Act 85/HB 249 (T. Carmody) – Allows for 811 notification call centers to have geographic boundaries. The intent of the legislation is to limit competition among call centers outside of a competitive bidding process to be chosen as the service provider for Louisiana's 811 number. Utilities worked to ensure the ability for IOUs to form and operate their own notification centers. *Passed*

Act 245/HB 250 (T. Carmody) – The bill revises the definition of "excavate" and "excavation." The revised language provides that "excavate" and "excavation" would include activity that would reasonably result in the damage of underground utilities or facilities. This issue was thoroughly vetted through the Dig Law committee, and all contractors, excavators, owner/operators of underground facilities and utilities were in agreement with the proposed change. The bill is filed in response to a US Fifth Circuit Court of Appeals ruling involving a dredging barge that dropped its 600 ton cutter head into the bottom of Barataria Bay, rupturing a Plains Oil pipeline serving BP's Alliance Refinery. Although the cutter head dug a trench 12 feet deep and 125 feet long, the Court found that the dredge operator did not have a specific intent to excavate, so they had no obligation to call. *Passed*