

POLICY NOTE

Budget reforms are needed to end the threat of state government shut-downs

by Jason Mercier, Director, Center for Government Reform September 2015

Key Findings

- 1. Although working people and business owners in Washington have provided substantial increases in tax revenue in the last two budgets cycles, legislators have still brought the state dangerously close to a government shut-down.*
- 2. For 10 days after the 2015-17 state budget was signed it had a \$2 billion hole in it, violating the state's renowned four-year balanced budget requirement.*
- 3. New rules are needed to strengthen the state's balanced budget requirement and to improve budget transparency. These and other reforms should be enacted to end the recurring threat of a government shut-down.*
- 4. Reforms could include adoption of a base-budget process, use of continuing resolutions and constitutional changes to allow state government to operate at current levels until a new budget is adopted.*

Introduction

During the last two budget cycles Washington state officials have come dangerously close to forcing a government shut-down due to failures in the budget process. The current 2015-17 budget was signed just 18 minutes before a shut-down would have occurred (Governor Inslee signed at 11:42 p.m. on June 30).¹ The 2013-15 budget was finalized just a few hours before state agencies would have been forced to shut-down (that budget was signed at 4:20 p.m. on June 30, 2013).²

In both cases, the tax revenue provided by Washington citizens was increasing substantially, meaning these threats of government shut-downs were occurring at a time of rising revenues, not at a time of deficits.

Even after taking Washington to the brink of a government shut-down, the 2015-17 budget adopted by lawmakers did not initially comply with the state's renowned four-year balanced budget requirement. For 10 days after the budget was signed, it had a \$2 billion hole in it, until the Senate was able to secure the votes needed to suspend the unfunded class-size reduction initiative (Initiative 1351).

The budget lawmakers sent to the governor was based on the understanding that Initiative 1351, and its \$2 billion cost for 2015-17, would not be funded. The combination of the threat of a government shut-down and the failure of the Legislature initially to follow its own four-year balanced budget requirement demonstrates that additional budget reforms are needed.

This study presents recommendations for state officials to enact reforms that would strengthen the budget process and avoid a repetition of the near-crisis in government operations that has occurred in the last two budget cycles.

1 "Senate Bill 6052: Operating budget," July 1, 2015, Washington State Legislature at <http://leap.leg.wa.gov/leap/budget/lbns/1517Omni6052-S.SL.pdf>.

2 "Senate Bill 5034: Operating budget," July 1, 2013, Washington State Legislature at <http://leap.leg.wa.gov/leap/budget/lbns/1315Omni5034-S.SL.pdf>.

1. Four-year balanced budget law needs strengthening

In 2012, lawmakers enacted one of the strongest statutory balanced budget requirements in the country. State law, in RCW 43.88.055, says, “The legislature must adopt a four-year balanced budget . . .”³

This law means that the state budget adopted by the lawmakers must not only balance for the following two-year period, but the cost of continuing the programs at approved funding levels must balance over four years. This important reform was adopted to avoid the practice of enacting budgets that immediately fell into a shortfall at the end of the first two-year period, to encourage passage of responsible, sustainable budgets.

The assumptions in the balance sheet for the 2015-17 budget showed that lawmakers had complied with this four-year requirement. But the budget they initially sent to the governor included an estimated \$2 billion in savings from an understanding that Initiative 1351 would be suspended, which the Senate failed to do until after the new budget cycle had started.

Although the House managed to pass a complete balanced budget, the Senate did not, with most Senate Democrats initially refusing to vote for the required suspension of Initiative 1351, as assumed by the four-year outlook that was part of the budget deal. Ten days after the 2015-17 budget was signed into law, and more than a week after the new biennium had started, lawmakers managed to suspend Initiative 1351, thus eliminating the \$2 billion funding problem.⁴

2. Require adoption of a truly balanced budget

Lawmakers should adopt rules to make sure the budget they enact is truly balanced before they send it to the governor to be signed. The first change would be for lawmakers to be more transparent with budget negotiations. The second would be to adopt a rule that would prohibit members of the House or Senate from voting on their respective version of the operating budget until all the revenue and policy changes necessary to comply with the four-year outlook have been approved first.

Here are ways to improve the transparency of the budget negotiations. The current problem, as described by *The Spokesman-Review*, is as follows:⁵

“The two budget committees [House and Senate] hold hearings on their initial proposals, which give lobbyists of all stripes a chance to sit in front of a panel and plead their case for a minute or two. But real negotiations are conducted in secret. It is the way budgets are done..”

3 “Legislative balanced budget requirement,” Revised Code of Washington 43.88.055, Washington State Legislature at <http://apps.leg.wa.gov/rcw/default.aspx?cite=43.88.055>.

4 “House Bill 2266: Deferring implementation of class size reduction and school employee staffing formula changes,” July 9, 2015, Washington State Legislature at <http://apps.leg.wa.gov/billinfo/summary.aspx?bill=2266&year=2015>.

5 “Spin Control: The way budgets are done could be this budget’s undoing,” by Jim Camden, *The Spokesman-Review*, July 5, 2015 at <http://www.spokesman.com/stories/2015/jul/05/spin-control-the-way-budgets-are-done-could-be/>.

“Had those negotiations been open, and had the strings attached to the deal been public, no question and probably no sunrise debate. And no need to come back this week to fix things.”

Under the current legislative rules, when there is disagreement between the House and Senate, a conference committee can be called. As noted by the joint rules (Section 17 part 2):⁶

“Conference committee deliberations shall be conducted in a manner consistent with the provisions of Senate Rule 45(3) and House Rule 24(D)(8) applicable to deliberations of standing committees.”

This means the work of a conference committee is supposed to be in a public setting. So why didn't this happen for the 2015-17 budget? A conference committee was never called for the budget negotiations.

Some lawmakers say you cannot negotiate the budget in public (despite the requirement for local governments to do so), but there is no reason why the proposals of each side should not be publicly posted before the secret budget meetings occur, so that everyone can see what is being proposed and what is being assumed in a budget deal. This is the Civic Openness in Negotiations (COIN) process commonly used in some labor negotiations.⁷

Not only would the public have a better idea of what was occurring with the state's most important legislation, lawmakers would also know what their leadership is recommending. Then there would be no surprises later, as apparently happened when some Senate Democrats refused to suspend Initiative 1351 as assumed by the budget that was adopted.

A second rule change lawmakers should adopt is one to prohibit a vote on the operating budget until all the policies necessary to bring the budget in compliance with the four-year outlook and RCW 43.88.055 have been passed first.

By doing this, members of the House and Senate would know exactly what policy changes are included in the other's budget proposals, and that members of the opposite house had actually voted to implement the balanced budget they were proposing.

If this rule had been in place this year, members of the House and Senate would have already voted on whether to suspend Initiative 1351 and remove its \$2 billion cost from the budget, eliminating any mystery and later controversy.

Further, this rule would have eliminated one of the most contentious debates of the year, which centered on whether a majority of House members would vote for the tax increases needed to fund the proposed House version of the budget.

6 “House Concurrent Resolution 4402: Joint Rules,” January 12, 2015, Washington State Legislature at http://leg.wa.gov/Senate/Administration/Documents/HCR_4402-2015JointRules.pdf.

7 “City of Costa Mesa: COIN Process (Labor Negotiations),” Costa Mesa City Hall at <http://www.costamesaca.gov/index.aspx?page=1570>.

3. Budget reforms to end the threat of government shut-downs

Beyond strengthening the state's balanced budget requirement, additional reforms should be enacted to remove the possibility of a government shut-down. There is no reason why a government shut-down should occur, even in a deficit situation. To end this threat, lawmakers should consider reforms to the budget process to assure people who rely on vital government services that a political impasse will not close agency doors.

Here are three procedural changes lawmakers could adopt. Each is explained in the following sections.

- Early-action base budget at beginning of session (Utah example);
- Continuing resolution enactment in last week of a regular session if no budget is passed (New Hampshire, North Carolina and South Carolina examples), or;
- Constitutional amendment authorizing continuing appropriations at current spending levels if no budget by the end of the session (Rhode Island and Wisconsin examples).

Early-action base budget

The first change lawmakers could adopt is an early action base budget, as lawmakers in Utah do. Here is how the process works:

- The base budget process is set by Utah's legislative rules.⁸
- An Executive Appropriations Committee (made up of members from the House and Senate) meets in December to approve a base budget framework (the full legislative session starts in January).
- The base budget spending level is set at the current fiscal year's spending level, if the revenue forecast is same or greater than the current year. If revenue is projected at less than the current year, base budget spending is reduced by a corresponding percentage, so the state budget will remain in balance.
- On the first day of session lawmakers are provided with copy of the base budget for debate.
- All lawmakers serve on budget committees.
- No earlier than the 3rd day of session, but not later than the 16th day, the legislature must approve or reject the base budget.
- The rest of session is spent debating the "big bills" that add to or take away spending compared to the approved base budget (also called the "real" budget).

⁸ "Title HR1. Rules Governing Organization and Management of the Utah House of Representatives - Executive Appropriations Committee and Appropriation Process," pages 74-75, Utah Legislature at http://le.utah.gov/xcode/R_1800010118000101.pdf.

Steven Allred, Deputy Director of Utah's Office of the Legislative Fiscal Analyst, explains how this process (in effect since 2005) ends the threat of a government shut-down.⁹

"This process assures that a base budget will be in place so state government can continue to operate in the next fiscal year in the event that budget negotiations fail and the general session ends without an agreement on additional spending. While such a stalemate has never occurred in recent memory, the base budget process adds greater certainty to the budget process."

If lawmakers in Washington used a similar process, budget writers from the House and Senate would meet on a day between the November revenue forecast and the beginning of the legislative session in January to agree on a base budget framework.

The purpose of this meeting would be to ensure that current spending levels can be maintained under projected revenue. Then lawmakers would review and approve the "base budget" during the first weeks of the legislative session, so state government operations would continue at current spending levels in case a budget impasse occurs late in the session.

After approval of a contingency base budget, the rest of session would be devoted to debating whether lawmakers should increase or decrease the "real" budget compared to the base budget levels, to reflect the updated revenue numbers provided by the February forecast.

Continuing budget resolution

Another option lawmakers should consider is to enact a continuing resolution during the last week of session when no formal budget agreement has been reached. This is similar to the Utah base budget process, but action happens at the end of session instead of at the beginning. States that use this budget failsafe process include New Hampshire, North Carolina and South Carolina.¹⁰

For example, Senator Andy Hill, chair of the Senate Ways and Means Committee, introduced PSSB 6051, "Continuity of State Government," on June 25th in an effort to avoid a possible state government shut-down at the end of the month.¹¹ The measure was not ultimately needed but its introduction represented an attempt by a key legislative leader to create a continuing budget resolution process in Washington state.

9 E-mail to the author from Steven Allred, Deputy Director of Utah's Office of the Legislative Fiscal Analyst, August 7, 2015 (copy available on request).

10 "3 states without budget using continuing resolution to avoid government shut-down," by Jason Mercier, Washington Policy Center, June 24, 2015 at <https://www.washingtonpolicy.org/blog/post/3-states-without-budget-using-continuing-resolution-avoid-government-shut-down>.

11 "Proposed Substitute To SB 6051 - Continuity Of State Government," June 25, 2015, Washington State Legislature at http://leap.leg.wa.gov/leap/Budget/Detail/2015/soBillPSSB6051_0625.pdf.

The early-action base budget and continuing resolution safeguards require the legislature to take positive action to avoid a government shut-down. Though the hope is that lawmakers would do so, there is no guarantee they would act in time. This is why the automatic continuation of spending at current levels, a policy used by Rhode Island and Wisconsin, should be considered.

Here is how the Rhode Island Budget Office describes the process (in effect since 1935):¹²

“The general laws of the state provide that if the General Assembly fails to pass the annual appropriation bill, amounts equal to those appropriated in the prior fiscal year shall be automatically available for expenditure, subject to monthly or quarterly allotments as determined by the Budget Officer. Expenditures for general obligation bond indebtedness of the state shall be made as required regardless of the passage of the annual budget or the amount provided for in the prior fiscal year.”

Here are the details from the Wisconsin Budget Office (in effect since 1953):¹³

“To meet the state’s budgetary cycle, the budget should be signed and effective by July 1 of the odd-numbered year. If there is a delay, state agencies operate at their appropriation authority from the prior budget until the new budget is in effect.”

Article 8, Section 4 of the Washington constitution requires the legislature to appropriate all money spent, so adopting a policy that automatically continues spending at current levels would likely require enacting a constitutional amendment.¹⁴

Conclusion

Adoption of one of these three proven budget reforms, using a base budget process, approval of a continuing resolution or constitutional changes to authorize continued spending at current levels until a budget can be adopted, would end the threat of a government shut-down in Washington state.

Ideally, lawmakers should come to a budget agreement during the 105-day regular session, but as history has continually demonstrated, the public cannot be assured of that outcome. Structural budget reforms to prevent a state government shut-down from ever occurring are worth considering.

Also, a \$38 billion public state operating budget should not be negotiated in complete secrecy, and it is clear the state’s four-year balanced budget requirement

12 “Budget Primer – Appropriation Process,” State of Rhode Island Budget Office at <http://www.budget.ri.gov/primer/>

13 “About the Biennial Budget,” Wisconsin State Budget Office at <http://www.doa.state.wi.us/divisions/budget-and-finance/biennial-budget>

14 “Article 8, Section 4: Money disbursed only by appropriations - Washington State Constitution,” Washington State Legislature at <http://leg.wa.gov/LawsAndAgencyRules/Pages/constitution.aspx>.



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needs strengthening. Deficits do happen, but a budget should be balanced on at least the first day of a new biennium, and not start out immediately with a \$2 billion hole.

Enacting rule changes to require action first on the policy proposals needed to balance the budget under the four-year budget outlook would prevent surprises later in the process. This reform would ensure that lawmakers comply with the state's balanced budget requirement and, more importantly, assure the people of Washington that their public money is being managed wisely and responsibly.

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