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# CHAPTER ONE

## RESPONSIBLE PUBLIC SPENDING

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### **1. Policy Recommendation: Adopt improved budget transparency to inform the public about spending decisions**

The state's combined budgets (operating, capital and transportation) run to hundreds of pages and direct the spending of billions in taxpayer dollars. Despite the length and complexity of these documents, public hearings are usually held the same day the budget are introduced, and they are then amended and enacted without enough time for meaningful public input.

The opportunity for a detailed review by the public before hearings or votes on budget bills would increase public trust in government and would enhance lawmakers' accountability for the spending decisions they make.

At a minimum, the time provided before the legislature holds a public hearing or votes on the budget should be 24 hours after full details of the proposal are made public. Ideally, lawmakers should provide more time than that for public review.

#### **Make budget proposals public**

As for budget negotiations between the House and Senate, the budget proposals that are exchanged between members of the House and Senate should be made publicly available. Lawmakers may say you cannot negotiate the budget in public (despite the requirement for local governments to do so). There is no reason, however, that the proposals of each side cannot be publicly posted before secret budget meetings are held. Then everyone could see what is being proposed and what compromises are being included

in the final budget deal.

Not only would the public have a better idea of what is occurring with the state's most important legislation, but lawmakers would also know what positions legislative leadership recommended, so there would be no surprises when final roll call votes are taken.

### **Enact needed policy changes before budget vote**

Another budget reform would be to prohibit a vote on the operating budget until all the policies necessary to carry out a balanced budget have been passed first. Recently members of the House passed a budget proposal that assumed the legislature would later pass the tax increases needed to fund their proposed increases in spending, but House members had not actually voted on whether to increase taxes.<sup>1</sup>

By actually voting first on the policy changes, like tax increases, necessary to balance a proposed budget, the House and Senate would know exactly what is assumed in the other's budget proposal, and that each house actually has the votes necessary to implement the budget its members are proposing.

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<sup>1</sup> This action occurred during the 2016 legislative session.

## **2. Policy Recommendation: Place performance measures in the budget to hold public agencies accountable**

As holders of the state’s purse strings, lawmakers are in the best position to pose the “why” question to be answered by agencies before authorizing taxpayer dollars to be spent. One way to accomplish this is for the legislature to require agency managers to identify at least one expected performance outcome for each program they are seeking to fund.

This process would become the legislature’s version of budget instructions to agencies. This would re-focus state budget hearings on whether public programs should or should not continue to exist and whether they are achieving their intended purposes. Public programs often fail, and lawmakers should have an equitable measure of what works and what does not work, rather than blindly funding government programs simply because they already exist.

To help improve budget accountability, high-level performance measures should be written directly into the budget, so lawmakers and citizens can quickly see whether policy goals have been met, before agency requests for new spending are approved.

### **3. Policy Recommendation: Adopt budget reforms to end the threat of a government shutdown**

During recent budget cycles, Washington lawmakers have come dangerously close to forcing a government shutdown due to failures in the budget process. The 2015-17 state budget was signed just 18 minutes before a government shutdown would have occurred. The 2013-15 budget was finalized just a few hours before state agencies would have been forced to close.

In both cases, the tax revenue provided by citizens had increased substantially, meaning the threat of government shutdown was occurring at a time of rising revenues, not at a time of budget deficits. The government had plenty of money, lawmakers and the governor just could not decide how to spend it.

#### **Three ways to prevent a government shutdown**

There is no reason a government shutdown should occur, even in a deficit situation, let alone at a time of rising revenues. To end this threat, lawmakers should enact 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 structural reforms lawmakers could adopt:

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

Under an early-action base budget process, budget writers from the state 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.

This would ensure that current spending levels could 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.

### **Giving lawmakers time to consider the “real” budget**

After approval of a contingency base budget, the rest of the 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 state revenue forecast.

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 base-budget process used in Utah, but action happens at the end of session instead of at the beginning. States that use this budget fail-safe process include New Hampshire, North Carolina and South Carolina.

The early-action base budget and continuing resolution safeguards require the legislature to take positive action to avoid a government shutdown. 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.

Article 8, Section 4 of the Washington state constitution requires the legislature to appropriate all money spent, so adopting a policy

that automatically continues spending at current levels would likely require asking voters to enact a constitutional amendment.

### **Assuring the public**

Adoption of one of these three proven budget reforms — using a base-budget process, approval of a continuing resolution, or authorizing continued spending at current levels until a budget can be adopted — would end the threat of a government shutdown in our state.

Ideally, lawmakers should come to a budget agreement during the 105-day regular legislative session. But as history has continually demonstrated, the public cannot be assured of that happy outcome. That is why structural budget reforms are needed to prevent the doubt and uncertainty created by threatened state government shutdowns, and to assure the public that essential programs will continue.

## **4. Policy Recommendation: Restore legislative oversight of collective bargaining agreements**

In 2002 Governor Gary Locke signed HB 1268, which fundamentally altered the balance of power between the governor and legislature concerning state employee compensation in the budget. The bill's purpose was to reform Washington's civil service laws and for the first time in state history give state employee union executives the power to negotiate directly with the governor behind closed doors for salary and benefit increases.

Before 2002, collective bargaining for state employees was limited to non-economic issues such as work conditions, while salary and benefit levels were determined through the normal budget process in the legislature.

### **Negotiating with the governor in secret**

Since the collective bargaining law went into full effect in 2004, union executives no longer have their priorities weighed equally with other special interests during the legislative budget debate. Instead, they now negotiate directly with the governor in secret, while lawmakers only have the opportunity to say “yes” or “no” to the entire contract agreed to with the governor.

Not only are there serious transparency concerns with this arrangement, there are also potential constitutional flaws by unduly restricting the legislature's authority to write the state budget.

When announcing the first secretly-negotiated state employee contracts in 2004, Governor Gary Locke said:

“This year's contract negotiations mark the first time in state history that unions have been able to bargain with the state for wages and benefits. The new personnel reform law passed by the Legislature in 2002 expanded the state's collective bargaining activities to include wages and benefits. In the

past, the Legislature unilaterally set those terms.”<sup>2</sup>

Missing from his remarks, however, was the fact that this was also the first time in state history these spending decisions were not made in public. Governor Locke failed to note he had negotiated the contracts in secret, often with the same union executives who were his most important political supporters.

### **Secret talks on public spending violate the constitution**

The decision made in 2002 that limited the authority of lawmakers to set priorities within the budget on state employee compensation should be reversed. This is especially important considering the compelling arguments made in the University of Washington Law Review, noting the 2002 law is an unconstitutional infringement on the legislature’s authority to make budget decisions.<sup>3</sup>

Ultimately, state employee union contracts negotiated solely with the governor should be limited to non-economic issues, like working conditions. Anything requiring an appropriation (especially new spending that relies on a tax increase) should be part of the normal open and public budget process in the legislature. This safeguard is especially important when public-sector unions are also political allies of the sitting governor.

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2 “State, Unions Reach Tentative Agreement,” press release, Office of Governor Gary Locke, September 13, 2004 at <http://www.digitalarchives.wa.gov/governorlocke/press/press-view.asp?pressRelease=1689&newsType=1>.

3 “Stealing the Public Purse: Why Washington’s Collective Bargaining Law for State Employees Violates the State Constitution,” by Christopher D. Abbott, *Washington Law Review*, 2006-02, Volume 81, 2006, at <https://digital.law.washington.edu/dspace-law/handle/1773.1/263>.



## 5. Policy Recommendation: End secret negotiations for public employee pay and benefits

Since 2004, as noted, the governor has negotiated secretly with union executives to determine how much taxpayers will pay for compensation to government employees. Today, the secret talks involve more than \$300 million in public spending per biennium.<sup>4</sup>

Before 2004, those spending decisions were made in public as part of the normal legislative budget process, with the opportunity for comment at public hearings, before state officials made employee compensation promises.

### Keeping lawmakers in the dark

Not only are public union contract negotiations conducted in secret, none of the records are subject to public disclosure until after the contract is signed into law (when the budget is approved by the governor). Lawmakers responsible for approving these contracts and the taxpayers who are asked to pay for them should not be kept in the dark until the deal is done and it is too late to make changes.

Several states ensure that the public is not shut out of collective bargaining with government unions. Some states open the entire negotiation process to the public, while others include an exemption when government officials are strategizing among themselves. Once public officials meet with union negotiators, however, the public is allowed to monitor the process.

This is exactly what occurs in Florida. As that state's Attorney General explains:

“The Legislature has, therefore, divided Sunshine Law policy

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<sup>4</sup> “Governor’s 2015-17 Compensation Plan,” 2015-17 Near General Fund and 2015-17 Total Funds, Office of Financial Management budget overview, accessed May 24, 2016, at <http://www.ofm.wa.gov/budget15/compensation.pdf>.

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on collective bargaining for public employees into two parts: when the public employer is meeting with its own side, it is exempt from the Sunshine Law; when the public employer is meeting with the other side, it is required to comply with the Sunshine Law.”<sup>5</sup>

In Washington, these closed-door negotiations should be subject to the state’s Open Public Meetings Act (OPMA) or at a minimum utilize a process like the one used by the City of Costa Mesa in California to keep the public informed. That process is called COIN (Civic Openness in Negotiations).

Under this system, all of the proposals and documents that are to be discussed in secret negotiations are made publicly available before and after meetings between the negotiating parties, with fiscal analysis provided showing the costs.

### **Informing the public about promises and trade-offs**

While not full-fledged open meetings, providing access to all of the documents before meetings would inform the public about the promises and tradeoffs being proposed with their tax dollars, before an agreement is reached. This would also help make it clear whether one side or the other is being unreasonable, and would quickly reveal if anyone, whether union executive or state official, is acting in bad faith.

State and local employment contracts should not be negotiated in secret. The public provides the money for these agreements. Taxpayers should be allowed to follow the process and hold government officials accountable for the spending decisions that officials make on their behalf.

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5 “Overview of the Sunshine and Public Records Law,” Section D - What types of discussions are covered by the Sunshine Law?, Reporter’s Handbook, the Florida Bar, accessed May 24, 2016, at <https://www.floridabar.org/DIVCOM/PI/RHandbook01.nsf/f5b2cbf2a827c0198525624b00057d30/07c774c1b21fa055852568a40074b173!OpenDocument#D.WHATTYPESOFDISCUSSIONSARE>.

## 6. Policy Recommendation: Restore the people’s right of referendum by limiting use of the emergency clause

To provide a check on the legislature, the state constitution grants the people the power to veto unwanted legislation through the use of a referendum. According to the secretary of state, “The referendum allows citizens, through the petition process, to refer acts of the legislature to the ballot before they become law.”<sup>6</sup> This power applies to any bill adopted by the legislature except those that include an emergency clause.

An emergency clause states that a bill is exempt from repeal by referendum because the bill is, “...necessary for the immediate preservation of the public peace, health or safety, support of the state government and its existing public institutions.”<sup>7</sup> The use of the emergency clause allows bills to take effect immediately once signed by the governor.

### Responding to public emergencies

The emergency clause allows state government to respond quickly to true public emergencies, like civic unrest or a natural disaster, yet lawmakers routinely abuse the exemption by attaching emergency clauses to routine bills. The result is that lawmakers often label unpopular political decisions as “emergencies” to shield themselves from public accountability.

The most effective way to end the legislature’s abuse of the emergency clause is a constitutional amendment creating a supermajority vote requirement for its use. The legislature would then be prohibited from attaching an emergency clause unless the

6 “Referendum Quick Facts,” Elections and Voting, Washington Secretary of State, accessed May 24, 2016, at <http://www.sos.wa.gov/elections/ReferendumQuickFacts.aspx>.

7 “Constitution of the State of Washington,” Article 2, Section 1, Legislative Information Center, revised January 12, 2011, at <http://leg.wa.gov/lawsandagencyrules/documents/12-2010-wastateconstitution.pdf>.

bill was approved by a 60 percent vote. This is enough to prevent political majorities from abusing the rule, while allowing the legislature to respond quickly to true public emergencies.

Budget bills, however, could be made exempt from the supermajority vote requirement, allowing them to pass with a simple majority and not be subject to referendum.

### **Court labels a business deal a “public emergency”**

Constitutional reforms are needed due to the state supreme court’s granting of total deference to a legislative declaration of an emergency. The first opportunity the supreme court had to address the legislature’s questionable use of an emergency clause was in 1995 with the passage of SB 6049, to provide public funding for the Mariners baseball stadium in Seattle.

In a 6-3 ruling upholding the denial of a people’s referendum, the court said:

“Ultimately, the emergency that faced the Legislature was that the Seattle Mariners would be put up for sale on Oct. 30 (1995) unless, prior to that date, the Legislature enacted legislation that would assure the development of a new publicly owned baseball stadium for King County.”

For the first time, the court declared that a business deal involving a professional sports team fell under the definition of “public emergency.” The supreme court had an opportunity to revisit this ruling in 2005, when a case raised the question of whether the legislature’s suspension of a voter-approved limit on tax increases was a “public emergency” that required denying the people’s right to a referendum.

### **Emergency clause as a blank check**

Again in a 6-3 ruling, the court upheld the legislature’s

declaration of an emergency. The ruling gave the legislature a blank check to use emergency clauses any time it wants. This has the effect of lawmakers routinely stripping the people of their right of referendum. The dissenting judges, however, wrote blistering objections to the majority's decision.

For example, Justice Richard Sanders warned that the ruling allows the legislature to avoid the people's right of referendum:

“Where the Legislature uses an emergency clause simply to avoid a referendum rather than respond in good faith to a true ‘emergency’...and where the court essentially delegates its independent role as a constitutional guardian to the legislative branch of government in its power struggle against the popular branch of government; I find little left of the people’s right of referendum.”<sup>8</sup>

### **Political convenience and the people’s rights**

If a true public emergency occurs that warrants blocking the people's right to a referendum, a 60 percent vote requirement in the legislature should not be difficult to achieve. In the case of a real crisis, the public would most likely welcome the use of the emergency clause by the legislature. People would recognize the power is intended to be used at just such a critical time. Political convenience, however, should no longer serve as a reason to deny the people their right of referendum.

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<sup>8</sup> “Washington State Farm Bureau Federation v. Reed,” Washington State Supreme Court, July 14, 2005 at <http://caselaw.findlaw.com/wa-supreme-court/1428354.html>.

## **7. Policy Recommendation: Provide voters more information about the fiscal impact of ballot measures**

Based on the recent passage of several budget-busting initiatives, there is a growing sense in the legislature that voters need more information about the fiscal impact of ballot measures before the election.

Just as when lawmakers consider a bill, voters should also take into consideration the financial effects of what they are being asked to approve. This is why the Office of Financial Management issues a fiscal note for each qualified ballot measure and includes that information in the voters' guide.<sup>9</sup> Many voters, however, do not review this fiscal note carefully before casting their votes.

### **Providing greater transparency**

One way to provide greater transparency on the financial effect of ballot measures is to put the estimated fiscal impact in the actual ballot language summary. The following is an example of how that language could look:

“OFM has determined this proposal would increase state spending by [dollar amount] without providing a revenue source. This means other state spending may be reduced or taxes increased to implement the proposal. Should this measure be enacted into law?”

This would complement the existing fiscal note the Office of Financial Management provides on ballot measures, while putting the financial implications of the measure in the ballot title, so it is directly before voters.

After being informed about how much a ballot measure will

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<sup>9</sup> “Revised Code of Washington 29A.72.025 - Fiscal impact statements,” effective date July 1, 2004, Washington State Legislature <http://apps.leg.wa.gov/RCW/default.aspx?cite=29A.72.025>.

cost, and if voters still decide to push spending beyond what existing revenue will sustain, lawmakers could still balance the budget with a two-thirds vote to change, repeal or temporarily suspend the voter-approved limit on tax increases.

### **Additional Resources**

“Budget reforms are needed to end the threat of state government shut-downs,” Policy Notes, Washington Policy Center, September 2015

“Secretly negotiated state employee contracts major focus of 2015-17 state budget debate,” Legislative Memo, Washington Policy Center, April 2015

“Changing the budget status quo,” Policy Notes, Washington Policy Center, December 2008

“HJR 4200: Protecting the people’s right to referendum,” blog post, Washington Policy Center, January 2011

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# THE POLICY EXPERTS

## ABOUT THE EDITOR AND AUTHORS

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### PAUL GUPPY | Vice President for Research

Paul Guppy is a graduate of Seattle University and holds graduate degrees from Claremont Graduate University and the London School of Economics. He worked for 12 years in the U.S. Congress as a Chief of Staff and Legislative Director. He writes extensively on tax policy, public finance and other issues. He is a frequent commentator on radio and TV news programs, and in newspapers across the state.



### LIV FINNE | Director, Center for Education

Liv Finne is a graduate of Wellesley College and Boston University Law School. She is retired from civil litigation practice and is a partner in the small business she owns with her husband. She is the author of *An Option for Learning: An Assessment of Student Achievement in Charter Public Schools*; and *An Education Reform Plan: Eight Practical Ways to Improve Public Schools*. She is the founder and primary author of Washington Policy Center's widely-read education blog.





## CHRIS CARGILL | Eastern Washington Director

Chris Cargill graduated from Gonzaga University with a degree in broadcast communications and political science. He worked as a TV news producer for 10 years and is an ex-officio member of the Spokane Valley Chamber of Commerce and the Tri-City Regional Chamber of Commerce. He has served on the Spokane Regional Transportation Commission Advisory Committee and currently serves on the Spokane Mayor's Advisory Council on Small Business. He is the author of numerous policy studies on Eastern Washington issues and is a frequent guest host and commentator on news radio stations.



## JASON MERCIER | Director, Center for Government Reform

Jason Mercier is a graduate of Washington State University and serves on the board of the Washington Coalition for Open Government and Candidate Verification. He is also an ex-officio member of the Tri-City Regional Chamber of Commerce. He worked with lawmakers to create the state's renowned budget transparency website [www.fiscal.wa.gov](http://www.fiscal.wa.gov). In 2010, Governor Gregoire appointed him to the state Fiscal Responsibility and Reform Panel. He has testified numerous times before legislative committees on government reform issues, and his commentary and op-eds appear regularly on T.V., radio and in newspapers around the state.



TODD MYERS | Director, Center for the Environment

Todd Myers holds a Master's degree from the University of Washington, and he served as Director of Public Relations for the Seattle SuperSonics and the Seattle Mariners. He served on the executive team at the Washington State Department of Natural Resources and is currently a member of the Puget Sound Salmon Recovery Council. Todd is one of the nation's leading experts on free-market environmental policy. He is the author of *Eco-Fads: How the Rise of Trendy Environmentalism Is Harming the Environment*, and is a commentator for energy and environmental policy for *The Wall Street Journal*.



BOB PISHUE | Former Director, Coles Center for Transportation

Bob Pishue graduated from Central Washington University with a degree in economics. He worked at the Washington Research Council where he produced policy briefs on initiatives and referenda. He worked for eight years as Information Technology Manager and Human Resources Manager for a Bellevue-based retailer. For three years he was Director of the Coles Center for Transportation at WPC and was a major contributor to this Policy Guide. He now works at INRIX company.



**ERIN SHANNON | Director, Center for Small Business and Labor Reform**

Erin Shannon holds a degree in political science from the University of Washington. She served as Public Relations Director of the state's largest small business trade association, and was the spokesperson for several pro-small business initiative campaigns. Erin has testified numerous times before legislative committees on small business issues. Her op-eds appear regularly in newspapers around the state, including *The Seattle Times* and *The Puget Sound Business Journal*, and she has appeared on several national radio and T.V. programs including Fox News, CNN Money, and "Stossel with John Stossel" on the Fox Business Channel. She is the director of WPC's Olympia office.



**DR. ROGER STARK | Director, Center for Health Care Reform**

Dr. Roger Stark is a retired physician and a graduate of the University of Nebraska's College of Medicine. He is a co-founder of the open heart surgery program at Overlake Hospital and he has served on the hospital's governing board and as Board Chair for the Overlake Hospital Foundation. He is the author of two books, including *The Patient-Centered Solution: Our Health Care Crisis, How It Happened, and How We Can Fix It*. Dr. Stark has testified before Congress on the Affordable Care Act and he speaks frequently on health care issues to civic groups across the state. He currently serves on the Board of the Washington Liability Reform Coalition and is an active member of the Woodinville Rotary.



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The 5th edition of the Policy Guide for Washington State provides updated information and insight about a range of important issues, including budget and taxes, environment, agriculture, health care, education, small business and transportation.

Typical users of the Policy Guide are state lawmakers, public agency managers, city and county officials, reporters for print, broadcast and online media, and the general public. News organizations commonly use Washington Policy Center research when covering public issues.

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