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Caught Off-Balance: How Implementing Structural Changes to State Balanced Budget Requirements Can Foster Fiscal Responsibility and Promote Long-Term Economic Health

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CAUGHT OFF-BALANCE: HOW IMPLEMENTING STRUCTURAL CHANGES TO STATE BALANCED BUDGET REQUIREMENTS CAN FOSTER FISCAL RESPONSIBILITY AND PROMOTE LONG-TERM ECONOMIC HEALTH

Abstract: Although forty-nine states have balanced budget requirements, states still consistently face massive budgetary shortfalls. Many states face serious enforcement issues, leaving the states vulnerable to violations of their balanced budget requirements through budgetary manipulation and gimmicks. Although not easily resolved, these problems could be mitigated or settled entirely through the use of alternative balanced budget systems. This Note explores the problems and gimmicks that cripple the effectiveness of state balanced budget requirements. This Note then proposes alternative balanced budget requirement structures that could alleviate many of these problems. In particular, this Note argues that cyclical-based budgets, reality-based budgeting, and alternative enforcement mechanisms could lead states toward sustained economic success.

INTRODUCTION

In 1998, tobacco companies settled lawsuits with forty-six states, agreeing to pay annual payments expected to total $256 billion over the next twenty-five years.[1] The states agreed to use the entirety of these funds for the explicit purpose of attacking the health problems caused by tobacco, including medical research for tobacco related illnesses and tobacco-use prevention campaigns in schools.[2] The states, however, have failed to uphold this promise.[3] In 2013, the states only used 1.8% of their tobacco settlement money on tobacco related pro-

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[1] *See Broken Promises to Our Children: The 1998 State Tobacco Settlement 14 Years Later*, CAMPAIGN FOR TOBACCO-FREE KIDS, at i (Dec. 6, 2012) [hereinafter CAMPAIGN FOR TOBACCO-FREE KIDS], http://www.tobaccofreekids.org/content/what_we_do/state_local_issues/settlement/FY2013/1.%202012%20State%20Report%20-%20Full.pdf, *archived at* http://perma.cc/2EJA-4BN2.

[2] *See* NATIONAL ASSOCIATION OF ATTORNEYS GENERAL: TOBACCO MASTER SETTLEMENT 25 (1998), *available at* http://publichealthlawcenter.org/sites/default/files/resources/master-settlement-agreement.pdf, *archived at* http://perma.cc/LHU5-U9H4 (setting aside funds for a foundation to study and prevent tobacco related diseases and reduce youth tobacco usage); CAMPAIGN FOR TOBACCO-FREE KIDS, *supra* note 1, at i (stating that states had promised to use a significant portion of their settlement funds to attack health problems surrounding tobacco usage).

[3] *See* CAMPAIGN FOR TOBACCO-FREE KIDS, *supra* note 1, at i (stating that, despite their promises, only 1.8% of the tobacco settlement funds went to tobacco related programs in the fiscal year 2013).

grams—approximately two cents for every dollar received from the settlement.[4] In fact, 36% of tobacco programs were *cut* during the 2008–2012 period, notwithstanding continued receipt of the settlement money.[5]

Instead of using the money to address tobacco-related illnesses, state governments have used the money to help alleviate budget deficits.[6] States directed the money to sources that would help bridge their budgetary shortfalls, including placing the money in the general operating fund or into funds unrelated to tobacco.[7] For example, despite statutory requirements to the contrary, New Mexico has diverted upwards of an estimated $150 million from a permanent tobacco settlement fund to replace general revenue funds.[8] Another state, New York, has allocated all $800 million of its tobacco settlement funds into its general operating budget, to be used however the legislature determines.[9] These states exemplify a larger pattern of states consistently misusing funds to supplement their own budgetary shortcomings.[10]

Although forty-nine states have balanced budgetary requirements, these requirements generally have proved ineffective in actually producing balanced budgets.[11] Within the past few years, the economic downturn has created severe budgetary shortfalls for most states.[12] Between 2009 and 2012, the combined

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[4] *Id.*

[5] *Id.*

[6] Cory Eucalitto, *Tobacco Settlement Fund Gimmicks Alive and Well*, STATE BUDGET SOLUTIONS (Apr. 15, 2013), http://www.statebudgetsolutions.org/publications/detail/tobacco-settlement-fund-gimmicks-alive-and-well, *archived at* http://perma.cc/T67W-ZZMU.

[7] *Id.* (describing state misuse of tobacco settlement funds, including using them to replace general fund revenues).

[8] *Id.* (stating that, in 2000, New Mexico required that fifty percent of the Tobacco Settlement Funds be sent to a permanent fund, but that number has only been reached four out of eight years, costing the fund millions).

[9] *Id.* (stating that New York legislators have placed the funds in the general operating fund, making it more difficult to trace how they are used).

[10] *See generally* Corey Eucalitto, *Unbalanced: Why State Balanced Budget Requirements Are Not Enough*, STATE BUDGET SOLUTIONS (Apr. 4, 2013), http://www.statebudgetsolutions.org/doclib/20130403_UnbalancedPDF.pdf, *archived at* http://perma.cc/3EXL-KLST (concluding that states' budgetary problems have been a direct cause of misuse of funds and budgetary gimmicks to mask fiscal problems).

[11] David Gamage, *Preventing State Budget Crises: Managing the Fiscal Volatility Problem*, 98 CALIF. L. REV. 749, 749 (2010) (labeling recent years as a "fiscal rollercoaster" in describing the recent boom and bust of state budgets); Phil Oliff et al., *States Continue to Feel Recession's Impact*, CTR. ON BUDGET & POL'Y PRIORITIES 2–3 (June 27, 2012), *available at* http://www.cbpp.org/cms/index.cfm?fa=view&id=711, *archived at* http://perma.cc/SPE9-BJL7 (tracing state budget gaps through the last decade).

[12] *See* Oliff et al., *supra* note 11, at 1; *see also* Elizabeth McNichol, *Out of Balance: Cuts in Services Have Been States' Primary Response to Budget Gaps, Harming the Nation's Economy*, CTR. ON BUDGET & POL'Y PRIORITIES 3 (Apr. 18, 2012), *available at* http://www.cbpp.org/files/4-18-12sfp.pdf, *archived at* http://perma.cc/RP36-LRCP. Budgetary shortfalls occur when a state's expenditures and costs of providing services exceed its revenue. Oliff et al., *supra* note 11, at 1. During the 2005–2007 period, at least thirty-five states reported budgetary deficits running multiple years. INST. FOR TRUTH IN ACCOUNTING, *The Truth About Balanced Budgets: A Fifty State Study*, STATE DATA LAB 25

budgetary shortfalls for states totaled more than 540 billion dollars.[13] Despite recent economic growth, states still experience sharp budgetary shortfalls.[14]

Today, most states still face large shortfalls and numerous obstacles to recovery.[15] Thirty-one states faced shortfalls totaling $55 billion over the 2013 fiscal year.[16] Meanwhile, revenue growth has not recovered enough to offset these shortfalls.[17] Even states that initially survived the economic downturn, such as resource rich New Mexico, Alaska, and Montana, now face budgetary concerns as revenue dwindles.[18]

(Feb. 2009) [hereinafter ITA, *The Truth About Balanced Budgets*], http://www.statedatalab.org/library/doclib/50_State_Final_2008.pdf, *archived at* http://perma.cc/UT9A-AU7J.

[13] McNichol, *supra* note 12, at 3 (estimating the combined shortfall from the 2008–2012 period at around $595.3 billion); Oliff et al., *supra* note 11, at 2.

[14] Oliff et al., *supra* note 11, at 2. State revenue growths remain sluggish, as they were still more than 5% below their pre-recession levels, as of 2012. *Id.* Meanwhile expenditures continue to swell as high-priced services such as health care and education continue to grow. *See, e.g.*, NAT'L CTR. FOR EDUC. STATISTICS, THE CONDITION OF EDUCATION 2012 (May 2012), *available at* http://nces.ed.gov/pubs2012/2012045.pdf, *archived at* http://perma.cc/6KH7-ZN24 (tables showing that states expect to educate 540,000 more K-12 students and 2.5 million more college-level students than in 2007–2008); Oliff et al., *supra* note 11, at 2 (explaining that 4.8 million more people are projected to be eligible for Medicaid in 2012 than in 2008, due to employers cancelling plans and employees losing jobs and wages); *Total Number of Medicare Beneficiaries*, HENRY J. KAISER FAMILY FOUND., http://kff.org/medicare/state-indicator/total-medicare-beneficiaries/, *archived at* http://perma.cc/P22X-6GNV (last visited Jan. 16, 2015) (showing that the total number of Medicare beneficiaries has increased in every state between 2008 and 2012).

[15] Oliff et al., *supra* note 11, at 4; *State Budget Shortfalls, SFY2013*, HENRY J. KAISER FAMILY FOUND., http://kff.org/other/state-indicator/state-budget-shortfalls-sfy13/, *archived at* http://perma.cc/XF8P-M8KH (last accessed Jan. 16, 2015).

[16] Oliff et al., *supra* note 11, at 4 (noting that although this number may not be as large as those in the past few years, these shortfalls remain extraordinarily high historically, especially since four years have passed since the recession ended); *State Budget Shortfalls*, *supra* note 15.

[17] *See* McNichol, *supra* note 12, at 10. Even if revenues maintained their 2011 growth levels, most states would not expect their revenues to recover fully from the recession until 2019. *Id.* Yet, revenue growth has not even been able to maintain that ambitious target, as reports have shown that growth slowed in 2012 and 2013. *Id.*; *see also The Fiscal Survey of States: An Update of State Fiscal Conditions*, NAT'L GOVERNORS ASS'N & NAT'L ASS'N OF STATE BUDGET OFFICERS (Fall 2011), *available at* http://www.nasbo.org/sites/default/files/2011%20Fall%20Fiscal%20Survey%20of%20States.pdf, *archived at* http://perma.cc/R4MA-ZRXB (demonstrating states' projected growth of less than 2% for the full year on average); Lucy Dadayan, *Data Alert: States Post Another Strong Quarter in Tax Collections*, NELSON A. ROCKEFELLER INST. OF GOV'T (Dec. 8, 2011), *available at* http://www.rockinst.org/newsroom/data_alerts/2011/12-08.aspx, *archived at* http://perma.cc/4APL-FLNS (showing revenue growth of only 2.7% in the second financial quarter of 2012).

[18] Oliff et al., *supra* note 11, at 4 (explaining that the decline in oil prices has led to a drop in revenue in these states); *see* Taylor Riggs, *Oil Price Drop Deals Blow to Some State Budgets*, BLOOMBERG, Dec. 5, 2014, http://briefs.blpprofessional.com/viz/Oil-Price-Drop-Deals-a-Blow-to-Some-State-Budgets/index.html?hootPostID=7cb8c6e78a6e696ac3ae9d1f4c22dad2, *archived at* http://perma.cc/3DZ3-TMDG (providing graphical representations of falling oil prices and their effect on the state budgets on oil-producing states).

The size and prevalence of these deficits have galvanized a national discourse concerning governmental fiscal responsibility.[19] This Note assesses many of the problems experienced by current state balanced budget requirements and proposes structural changes that can be used to ameliorate many of the most pervasive issues.[20] Part I explains balanced budget requirements and how they commonly operate across the country.[21]This Part further identifies some of the alternative elements that could be used to solve many problems facing state budgets.[22] Part II highlights many of the problems afflicting the states balanced budget attempts, including the numerous gimmicks relied upon by lawmakers.[23] Finally, Part III argues that the implementation of transparency measures, stricter enforcement mechanisms, and more flexible timelines can be instrumental in solving many of these serious budgetary problems.[24]

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[19] *Balanced Budget Amendment: Pros and Cons*, PETER G. PETERSON FOUND. 1 (June 21, 2012), http://pgpf.org/sites/default/files/sitecore/media%20library/PGPF/Articles/PDF/062112-Balanced-Budget-Explainer.pdf, *archived at* http://perma.cc/42WR-PFFX (discussing the debate surrounding the introduction of a federal balanced budget amendment); *see* Alan Greenblatt, *After 15 Years, GOP Revives Balanced Budget Idea*, NPR, Aug. 2, 2011, http://www.npr.org/2011/08/02/138900281/after-15-years-gop-revives-balanced-budget-idea, *archived at* http://perma.cc/AXC5-2Z4Z (concluding that polls indicate a majority of the American population support stronger fiscal controls on government spending). The frequency of massive governmental deficits has even sparked a national debate about amending the U.S. Constitution to include a federal balanced budget amendment. *See* Shane Nichols, Comment, *A Balanced Budget Amendment Fit for the Constitution: The Elimination of Partisanship and Substantive Provisions*, 46 J. MARSHALL L. REV. 583, 584 (2013) (predicting that public sentiment will inevitably demand and lead to the introduction of a federal balanced budget amendment). Although the federal government does not currently have any balanced budget mandate, there have frequently been calls to put one in place on a federal level. *See* Theodore P. Seto, *Drafting a Federal Balanced Budget Amendment That Does What It Is Supposed to Do (and No More)*, 106 YALE L.J. 1449, 1451 (1997) (addressing the numerous attempts in recent history to propose a federal balanced budget constitutional amendment); *see also* Daniel N. Shaviro, *Reckless Disregard: The Bush Administration's Policy of Cutting Taxes in the Face of an Enormous Fiscal Gap*, 45 B.C. L. REV. 1285, 1287 (2004) (explaining the strength of the balanced budget amendment movement and noting that in 1995 a balanced budget amendment proposal passed the House and fell one vote shy in the Senate). Led by a strong conservative movement, the argument is that only with a constitutional mandate can government spending be reined in and fiscal responsibility take priority. Nichols, *supra* at 584. Although many supporters for the federal amendment point to the states as examples of the feasibility of an amendment, they ignore the multi-billion dollar deficits most states have accrued despite their balanced budget requirements. *Compare* Orrin Hatch, *Balanced Budget Amendment Would Have Prevented Current Mess*, U.S. NEWS & WORLD REP., Nov. 23, 2011, http://www.usnews.com/debate-club/does-the-united-states-need-a-balanced-budget-amendment/balanced-budget-amendment-would-have-prevented-current-mess, *archived at* http://perma.cc/2Y6W-9F6D (reasoning that because states were able to use balanced budget amendments, it should likewise work on a federal level), *with* Oliff et al., *supra* note 11, at 4 (reporting that thirty-five states in 2013 have a budget shortfall, totaling over $55 billion).

[20] *See infra* notes 140–284 and accompanying text.

[21] *See infra* notes 25–90 and accompanying text.

[22] *See infra* notes 91–139 and accompanying text.

[23] *See infra* notes 140–194 and accompanying text.

[24] *See infra* notes 195–284 and accompanying text.

I. THE BALANCING ACT: UNDERSTANDING STATE BALANCED BUDGET REQUIREMENTS

Although each state's balanced budget system is unique, understanding the schemes in terms of their common foundational principles is key to identifying their underlying problems.[25] Typically, state balanced budget amendments are conceived as sets of rules constricting the budget process at several key junctions.[26] State balanced budget requirements are generally best understood as a scheme involving numerous pieces throughout the state political and administrative structure.[27] These provisions guide every stage of budget implementation.[28]

This Part explains how states generally understand their balanced budget requirements and how they have chosen to structure them.[29] Section A presents an explanation of how states understand a "balanced budget" in terms of their own balanced budget requirements.[30] Section B describes the general processes shared by state balanced budget systems.[31] Section C then outlines several alternative budgetary tactics that are not widely used.[32]

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[25] *See* Eucalitto, *supra* note 10; Yilin Hou & Daniel L. Smith, *A Framework for Understanding State Balanced Budget Requirement Systems: Reexamining Distinctive Features and an Operational Definition*, 26 PUB. BUDGETING & FIN. 22, 43–44 (Aug. 2006).

[26] Eucalitto, *supra* note 10.

[27] *Id.* Various roles between the governor, the different legislative houses, local governments, and administrative bodies necessitate these complex schemes. *See, e.g.*, Bob Lang & Sandy Swain, *State Budget Process*, WIS. LEGISLATIVE FISCAL BUREAU 2 (Jan. 2013), *available at* http://legis.wisconsin.gov/lfb/publications/informational-papers/documents/2013/74_state%20budget%20process.pdf, *archived at* http://perma.cc/Q8AB-AC63 (describing the budgetary cycle and the numerous parties involved); *The State Budget Process*, STATE OF N.J. DEP'T OF THE TREASURY, http://www.state.nj.us/treasury/omb/ReadersGuide/budgetprocess.shtml, (last visited Jan. 16, 2015), *archived at* http://perma.cc/2PN7-NVLC (describing the various interactions amongst several government bodies through the budgetary process of New Jersey); *Summary of the Steps in the Budgetary Process*, MASS. OFFICE FOR ADMIN. & FIN., http://www.mass.gov/anf/budget-taxes-and-procurement/state-budget/budget-process/summary-of-the-steps-in-the-budget-process.html, *archived at* http://perma.cc/3STU-R8BE (last visited Jan. 16, 2015) (describing the budgetary process of Massachusetts as involving steps engaging multiple levels of government); *see also How States Budget for Capital*, U.S. NAT'L ARCHIVES & RECORDS ADMIN. (Oct. 22, 1998), http://clinton4.nara.gov/pcscb/staf_states.html, *archived at* http://perma.cc/XL89-NJEL (describing numerous actors involved in the budgetary system that has led to differences amongst the states' various budgetary structures).

[28] Eucalitto, *supra* note 10. This complicated structure is necessary because of the numerous stages of the budgetary process, including the preparation, approval, and implementation of the budgetary cycle. Yilin Hou & Daniel L. Smith, *Do State Balanced Budget Requirements Matter? Testing Two Explanatory Frameworks*, 145 PUB. CHOICE 57, 57 (2010).

[29] *See infra* notes 33–139 and accompanying text.

[30] *See infra* notes 33–44 and accompanying text.

[31] *See infra* notes 45–90 and accompanying text.

[32] *See infra* notes 91–139 and accompanying text.

A. Back to Basics: Defining Balanced Budget

Balancing budgets is a basic, but important, government function.[33] Generally, a balanced budget is one where the government's revenue meets its expenditures.[34] The process of balancing a budget requires estimating the revenues for the upcoming year and adjusting projected expenditures to ensure that government spending does not exceed its revenues.[35] The budget process is imperative to any government because it represents the goals and objectives of government officials, and provides a source of public accountability.[36]

When states balance their budgets, the process generally refers only to the states' operating budgets.[37] Most state governments have separate operating and capital budgets.[38] State budgeting processes do not seek to balance the entire

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[33] *See* ITA, *The Truth About Balanced Budgets*, *supra* note 12, at 1 (discussing the importance of budget-balancing procedures to government operation and the government-public relationship).

[34] *See id.* (explaining that balanced budgets involve the relationship of government resources to the expected expenditures).

[35] *Id.* (discussing the importance of accurate estimates of projected revenues and expenditures in creating a balanced budget).

[36] *Id.* State balanced budget requirements emerged out of the recession sparked by the Panic of 1837 and were largely created as limits on a state's ability to issue debt. RUDOLPH G. PENNER & MICHAEL WEISNER, DO STATE BUDGET RULES AFFECT WELFARE SPENDING? 3–4 (Urban Inst. 2001), http://www.urban.org/UploadedPDF/occa43.pdf, *archived at* http://perma.cc/2LZE-3DVN; Eucalitto, *supra* note 10. Rhode Island passed the first balanced budget amendment in 1843; by 1900, thirty-seven states had followed suit. Penner & Weisner, *supra* at 4.

[37] *NCSL Fiscal Brief: State Balanced Budget Provisions*, NAT'L CONFERENCE OF STATE LEGISLATURES 6 (Oct. 2010) [hereinafter NCSL Fiscal Brief] http://www.ncsl.org/documents/fiscal/StateBalancedBudgetProvisions2010.pdf, *archived at* http://perma.cc/DD2M-3VYX. An operating budget is one that covers current regular expenses, such as salaries, as opposed to capital expenditures, which are unusual expenditures, such as long-term construction projects. Brendan Koerner, *How Are State Balanced Budget Laws Enforced?*, SLATE.COM (June 27, 2003, 5:54 PM), http://www.slate.com/articles/news_and_politics/explainer/2003/06/how_are_state_balanced_budget_laws_enforced.html, *archived at* http://perma.cc/8EJX-EHDF. States define their operating budget as all other expenditures other than capital expenditures, whereas the capital budget is expenditures devoted to the acquisition or addition to fixed assets. *See Glossary*, MICH. STATE BUDGET OFFICE (last visited Jan. 16, 2015), http://www.michigan.gov/budget/0,4538,7-157-11460_11541---,00.html, *archived at* http://perma.cc/93AJ-QJB6. Thus, the operating budget generally includes expenditures like salaries and wages, aid to local governments, health and welfare benefits, and other annual outlays, while excluding such expenditures as construction and land purchases. *State Balanced Budget Requirements: Executive Summary*, NAT'L CONFERENCE OF STATE LEGISLATURES (Apr. 12, 1996) [hereinafter NCSL Executive Summary], http://www.ncsl.org/research/fiscal-policy/state-balanced-budget-requirements.aspx, *archived at* http://perma.cc/BP7L-8Y46. Either those provisions specify how to pay for capital expenditures through general obligation debt or judicial decisions have validated other methods of issuing debt to cover those expenditures. *See, e.g.*, ALA. CODE § 41-10-268.1 (2013 & Supp. 2014) (allowing the issuance of bonds for capital expenditures, provided they do not rise above $10 million); TENN. CODE ANN. § 5-12-214 (2011) (allowing long-term debt to finance capital expenditures); *In re* Okla. Capitol Improvement Auth., 80 P.3d 109, 115 (Okla. 2003) (invalidating the issuance of bonds because they failed to enumerate that they were for capital expenditure).

[38] NCSL Fiscal Brief, *supra* note 37, at 7. This is a different system than the federal government, which combines operating and capital budgets. *Id.*

state budget.[39] Operating budgets are generally funded through tax revenues and make up the majority of legislative appropriations.[40] By contrast, capital expenditures are unusual payments, such as long-term construction projects.[41]

As most legislative appropriations are made from the general fund, the operating budget often receives great public and political attention.[42] This attention renders the operating budget the subject of the greatest scrutiny.[43] The operating budget garners additional attention because it has fewer limitations than other types of funds.[44]

B. The Operation of State Balanced Budget Requirements

States share many common characteristics in how their budget process is built and operates.[45] This Section outlines how state balanced budget requirements generally operate.[46] Subsection 1 highlights the common stages of the budgetary process.[47] Subsection 2 describes several key foundational characteristics common amongst the state balanced budget systems.[48]

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[39] *Id.* at 6. Operating budgets, however, are not entirely funded through tax revenues, as states can draw from other sources, such as placing the funds from the Tobacco Settlement into general operating funds. *See* Eucalitto, *supra* note 6.

[40] U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-93-58, BALANCED BUDGET REQUIREMENTS: STATE EXPENDITURES AND IMPLICATIONS FOR THE FEDERAL GOVERNMENT 3 (Mar. 1993), *available at* http://archive.gao.gov/d44t15/148877.pdf, *archived at* http://perma.cc/T6YG-QAKB; NCSL Fiscal Brief, *supra* note 37, at 1. Appropriations are a sum of money or assets taken out for a specified purpose. *Appropriation*, DICTIONARY.COM, http://dictionary.reference.com/browse/appropriation, *archived at* http://perma.cc/KDH4-APU4 (last visited Jan. 18, 2015). The state general fund also includes revenue from general tax receipts, fee collections, discretionary appropriations, and other miscellaneous revenue. NCSL Fiscal Brief, *supra* note 37, at 6.

[41] NCSL Fiscal Brief, *supra* note 37, at 6.

[42] *Id.*

[43] *Id.* at 7.

[44] *Id.* at 6. Other funds are subject to few political decisions because they are so restricted as to what they can be used for. *Id.* For example, federal funds are generally designated for a specific purpose from which a state cannot deviate. *Id.* Not only do few decisions arise outside of the general fund, but state legislators generally have very little discretion over the decisions that do with these funds. *Id.* For example, some tax collections can be directly distributed without going through the appropriations process, and some state agencies and universities are allowed to collect their own funds without going through the appropriations process. *Id.* Since these expenditures are controlled almost entirely with available funds, it is highly unlikely for them to be "out of balance," which shifts the focus away from them in terms of balancing the budget. *See id.*

[45] Hou & Smith, *supra* note 25, at 23. States share many political and technical rules used to craft their budgets as well as common structural characteristics, such as timelines and budgetary techniques. *Id.*

[46] *See infra* notes 49–90 and accompanying text.

[47] *See infra* notes 49–73 and accompanying text.

[48] *See infra* notes 74–90 and accompanying text.

1. The General Operation of State Balanced Budget Requirements

Although no state budgetary system is exactly alike, most share common characteristics of how the budget is produced and approved.[49] These characteristics emanate from the rules governing the executive preparation, legislative review, and implementation of the budgetary process.[50] Looking at the common elements among the state systems in this way creates a framework to understand the way these provisions work.[51]

The general framework of state balanced budget amendments is a series of rules working together at alternating stages of the process.[52] The initial requirement mandates that the governor submit a balanced budget proposal.[53] The typical version of this requirement has the governor approve a general appropria-

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[49] Hou & Smith, *supra* note 25, at 23.

[50] *Id.* It is important to look at both the political and technical rules governing balanced budget provisions, because both are of a different nature and govern different aspects of the process. *Id.* Political rules are more concerned with the budgetary procedure and are generally more ambiguous and subject to manipulation or circumvention. *Id.* Meanwhile, technical rules are concerned with the substantive aspect with regard to budgetary balance, use of debt, controls on supplementary appropriations, and deficits in order to achieve balance. *Id.* These technical rules are generally more straightforward, rigid, and difficult to circumvent than the political rules. *Id.*

[51] *Id.* The development of this kind of framework was born in response to the traditional understanding of state balanced budget requirements. *Compare Budget Processes in the States*, NAT'L ASS'N OF BUDGET OFFICERS 40 (Summer 2008) [hereinafter 2008 NASBO Report], https://www.nasbo.org/sites/default/files/BP_2008.pdf, *archived at* https://perma.cc/48LR-3ADB (presenting the traditional understanding of balanced budget requirements), *with* Hou & Smith, *supra* note 25, at 33–34 (describing the new categorization of state balanced budget requirements). The traditional understanding focused only on the political rules and relied on state self-reporting for characterization. 2008 NASBO Report, *supra* at 40. This system faced mounting criticism that ignoring the technical rules led to a less-then-complete picture of the actual status of balanced budget requirements and that relying on state self-reporting led to inaccurate data. Hou & Smith, *supra* note 25, at 24 (blaming previous studies' reliance on states' self-reporting for the discrepancies between results); Eucalitto, *supra* note 10 (describing the criticisms leveled against this traditional system, such as its over-simplicity, overreliance on political requirements and consequently ignoring technical requirements, and the irrelevance of some factors to the final budget outcome). The new framework was developed in hopes of creating a more comprehensive and accurate picture by taking qualitative and empirical data from every stage of the budgetary process. Hou & Smith, *supra* note 25, at 27.

[52] *See* Hou & Smith, *supra* note 25, at 30, 35 (outlining the nine different political and technical rules that make up the framework of balanced budget requirements).

[53] *See id.* at 34–35 (listing eleven states as having a constitutional provision and thirty-three states as having a statutory provision); 2008 NASBO Report, *supra* note 51, at 40 (listing forty-four states as having this provision). Although most states have, in practice, required the governor to sign the budget after it has been prepared, the frequency with which that requirement is actually present in the laws is controversial. *Compare* Hou & Smith, *supra* note 25, at 34–35 (claiming that only two states have such requirements), *with* 2008 NASBO Report, *supra* note 51, at 40 (claiming that thirty-seven states reported that the governor is required to sign).

tions bill.[54] Some states, without explicit requirements, have expected the governor to submit a balanced budget.[55]

Next, in the submitted budget, revenue must meet expected expenditures.[56] In addition to a balanced budget being submitted, the legislature must also pass a balanced budget.[57] Most states allow the use of "other resources," such as debt, to defray the cost of expenditures.[58] Many states offset this flexibility, however, by capping the amount of debt that can be assumed for the purposes of deficit reduction during a given year.[59] Finally, before the budget is enacted, many states expect that the governor sign the resulting budget.[60]

After a budget is enacted, there are still several rules in place that govern its operation.[61] One of the most important in determining the flexibility of the balanced budget requirement is whether or not the state allows a deficit to be carried over to the next fiscal year.[62] Although many states report an understanding of such a requirement, many states do not demand it.[63] Alternatively, some

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[54] *See, e.g.*, MASS. GEN. LAWS ch. 29, § 6E (2013 & Supp. 2014) (requiring the governor to submit a general appropriation bill); R.I. GEN. LAWS § 35-3-7 (2011 & Supp. 2013) (same).

[55] *Compare* ALA. CODE § 41-19-4 (2013 & Supp. 2014) (failing to require the governor to submit a budget proposal), *with id.* § 41-4-88 (stipulating guidelines to the governor with the assumption that he or she will submit a budget proposal); *compare* S.C. CONST. art. X, § 7 (requiring that the General Assembly provide a balanced budget proposal), *with* 2008 NASBO Report, *supra* note 51, at 40 (interpreting the South Carolina Constitution as requiring the governor to submit the budget proposal).

[56] *See, e.g.*, HAW. CONST. art. 7, § 5; S.D. CONST. art. 11, § 1; GA. CODE ANN. § 45-12-75 (2002 & Supp. 2014). Twelve states have either a statutory or constitutional provision of this nature. Hou & Smith, *supra* note 25, at 35. To that end, most states mandate that the revenue and debt must combine to meet expected expenditures in the planned budget. *See, e.g.*, ALASKA CONST. art. 9, § 10; N.Y. CONST. art. 7, § 9; OR. REV. STAT. § 291.216(2) (2013). Thirty-nine states have either a statutory or constitutional provision of this nature. Hou & Smith, *supra* note 25, at 35.

[57] *See* Hou & Smith, *supra* note 25, 34–35 (identifying twenty-seven states as having a constitutional provision and eighteen states as having a statutory provision); 2008 NASBO Report, *supra* note 51, at 40 (listing forty-one states as having this provision).

[58] *See, e.g.*, COLO. CONST. art. X, § 2 ("The general assembly shall provide . . . an annual tax sufficient, with other resources, to defray the estimated expenses . . . ."); KY. CONST. § 171 (allowing other resources combined with taxes to be used to balance the budget against expenditures).

[59] *See, e.g.*, ARIZ. CONST. art. 9, § 5 (capping the amount of debt that can be assumed for purposes of deficit reduction at $350,000); ILL. CONST. art. 9, § 9 (capping the amount of debt usable for deficit reduction at no more than fifteen percent of the State's appropriations for a given year); NEV. CONST. art. 9, § 3 (keeping the debt limit for deficits proportional to the value of property in the state). Twenty-two states have either a constitutional or statutory provision of this nature. Hou & Smith, *supra* note 25, at 35.

[60] *See, e.g.*, CAL. CONST. art. 4, § 12; MASS. GEN. LAWS ch. 29, § 6E. Although only two states explicitly have this provision written in, many more states self-report behaving as though such a provision existed. Hou & Smith, *supra* note 25, at 35, 40.

[61] Hou & Smith, *supra* note 25, at 35.

[62] *See id.* at 34–35 (noting that two states have a constitutional provision and nine states have a statutory provision preventing a deficit carryover); 2008 NASBO Report, *supra* note 51, at 40 (listing seven states as having this provision). Its unpopularity amongst the states has been linked to the little room it leaves for budgetary circumvention. Hou & Smith, *supra* note 25, at 42.

[63] Hou & Smith, *supra* note 25, at 42.

states do not allow deficits to be carried over into the next fiscal year.[64] These statutes can vary greatly depending on local needs and the state's goals.[65] A related rule is whether the state can re-budget during the fiscal year to accommodate supplementary appropriations.[66] This rule can be a powerful counterbalance to the political machinations of the executive or legislative branch.[67]

Massachusetts represents a near-ideal state for studying how this framework operates.[68] The state constitution, in conjunction with several statutes, requires that the governor pass a balanced budget.[69] First, the governor must submit a proposed budget, in which he sets forth all expenditures, revenues, and other means of defraying the expenditures.[70] The legislature then must pass the proposed budget in the form of a general appropriations bill, which includes a balanced budget.[71] Any deficiencies in revenue require the governor to reduce spending or propose additional sources of revenue.[72] The major state funds controlled under these provisions are the State General Fund, Highway Fund, Lotteries Fund, and School Building Authority.[73]

2. Additional, More Obscure Characteristics of State Balanced Budget Requirements

Although this framework, exemplified by Massachusetts in the above example, provides insight into the common methods by which states produce a budget and the limits they place on those budgets, there are several other noteworthy characteristics of state balanced budget requirements that are outside the

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[64] *See id.* at 34–35 (identifying six states as having constitutional requirements and twenty-nine states having statutory requirements of this nature).

[65] *Compare* FLA. STAT. ANN. § 216.195 (West 2010 & Supp. 2012) (demanding that the state government generally avoid unnecessary appropriations), *with* N.J. STAT. ANN. § 52:27B-31 (West 2010 & Supp. 2014) (granting the governor discretion to prohibit or grant expenditures that may increase the deficit throughout the fiscal year).

[66] *See* ALA. CONST. art. XI, § 213; *see also* Hou & Smith, *supra* note 25, at 34–35 (listing seven states as having such a constitutional provision and fourteen states having a statutory one).

[67] *See* MASS. GEN. LAWS ch. 29, § 6E (2013 & Supp. 2014) (prohibiting the governor from approving any supplementary appropriations bill that would disrupt the balance). These rules can also be more flexible to allow for more discretion. *See* KY. REV. STAT. ANN. § 48.630 (2007 & Supp. 2014) (allowing the governor, with approval of the Finance and Administration Cabinet, to approve supplementary appropriations bills in certain situations).

[68] *See* Hou & Smith, *supra* note 25, at 35 (showing Massachusetts as having the most characteristics of the new framework).

[69] MASS. CONST. art. 63 § 2 (requiring the governor to submit a budget plan); MASS. GEN. LAWS ch. 29, § 6E ("No supplementary appropriation bill shall be approved by the governor which would cause the state budget for any fiscal year not to be balanced."); *id.*, ch. 29, § 9C (requiring the governor to reduce spending or propose ways to generate additional revenue when there is a deficiency).

[70] Hou & Smith, *supra* note 25, at 35–36.

[71] MASS. GEN. LAWS ch. 29, § 6E.

[72] *Id.*, ch. 29 § 9C. However, Massachusetts does not forbid the carrying over of deficits from one fiscal year to the next. ITA, *The Truth About Balanced Budgets*, *supra* note 12, at 74.

[73] ITA, *The Truth About Balanced Budgets*, *supra* note 12, at 74.

scope of the general framework.[74] Although not included in this general budget production framework, state budget enforcement mechanisms, conventional budgeting techniques, and year-based structures are still three important aspects of state budget systems.[75] These three elements can be used to study the effectiveness of the requirements, the technique behind budgetary crafting, and the time structure behind the budgetary process.[76]

One characteristic of state balanced budget processes that operates outside of the process framework is the use of conventional budgeting to determine what money should go where.[77] State legislatures and governors rely on the technique known as conventional budgeting to determine the allocations of budgetary funds.[78] By this method, budget-makers look at what existing programs need to continue functioning over the next year.[79] Each program that received funding in the previous year receives similar time and focus, regardless of size and scope.[80] The baseline budget for that program results from this analysis.[81] It is a numbers-focused process, where effectiveness and demand for existing programs are rarely considered by the budget-makers.[82] The overall budget is then produced from the combination of these programs.[83]

Although another mechanism of balanced budget procedures—enforcement—is critical to fulfilling the promise of any law, the states have not reached

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[74] *See* Hou & Smith, *supra* note 25, at 35.

[75] *See* Donald B. Tobin, *The Balanced Budget Amendment: Will Judges Become Accountants? A Look at State Experiences*, 12 J.L. & POL. 153, 155 (1996) (explaining the importance of enforcing provisions by highlighting the ineffectiveness and failure of enforcement); Bob Williams, *Reality-Based Budgeting: How to Permanently Resolve State Budget Gaps*, STATE BUDGET SOLUTIONS (2013), http://www.statebudgetsolutions.org/publications/detail/reality-based-budgeting-how-to-permanently-resolve-state-budget-gaps, *archived at* http://perma.cc/5YQG-S8LB (describing the importance of budgetary techniques in the budgetary process).

[76] *See* Tobin, *supra* note 75, at 155; Eucalitto, *supra* note 10 (describing the calendar games played by state officials taking advantage of the annual budgeting structure); Williams, *supra* note 75 (explaining the importance of reality-based versus conventional budgeting).

[77] *See* Williams, *supra* note 75.

[78] *Id.*

[79] Penn R. Pfiffner et al., *Priority-Based Budgeting*, FISCAL POLICY CTR. 27 (2010), http://tax.i2i.org/files/2010/11/CB_PriorityBudgeting.pdf, *archived at* http://perma.cc/EQ2E-LT8U. The amount of money needed to sustain current programs and expenses is called the "inputs." Williams, *supra* note 75.

[80] Pfiffner et al., *supra* note 79, at 27. They consider the past allocation for that program, adjust for inflation, add caseload increases, and factor in new initiatives and policy changes. Williams, *supra* note 75.

[81] Pfiffner et al., *supra* note 79, at 27; Williams, *supra* note 75.

[82] Williams, *supra* note 75; *see also* Pfiffner et al., *supra* note 79, at 27. This program is sometimes known as a "cost-plus" or "iceberg" model because only the baseline costs are considered and debated, whereas decades worth of spending and effectiveness remain hidden beneath the surface. Williams, *supra* note 75.

[83] *See* Williams, *supra* note 75.

a consensus on how to effectively enforce balanced budget provisions.[84] Enforcement is an essential characteristic of any budgetary system and it exists outside the budgetary process framework.[85] States have experimented with various enforcement mechanisms including having none at all, expanding executive power, debt issuance restrictions, and finally, looking to the courts for budgetary adjudication.[86]

A third important characteristic of state budgetary procedures is that the budgetary system is annual, with yearly markers dictating budgetary deadlines.[87] State legislatures and governors use the budgetary procedure to allocate funds only for the next fiscal year, as the following year will have its own budgetary procedure.[88] The state budgetary process is not designed to forecast needs beyond the immediate year.[89] Additionally, each state periodically produces reports showing what revenues were received and how they were spent.[90]

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[84] *See* GAO, *supra* note 40, at 20; NCSL Fiscal Brief, *supra* note 37, at 9; Koerner, *supra* note 37. State budgetary enforcement mechanisms and the criticisms surrounding them are explored in greater detail in Part II, Section A of this note. *See infra* notes 146–158 and accompanying text.

[85] *See* Tobin, *supra* note 75, at 155.

[86] *See e.g.*, NEB. CONST. art. XIII, § 1 (restricting the issuance of debt); Judy v. Schaefer, 627 A.2d 1039, 1054 (Md. 1993) (holding that the state's balanced budget amendment had expanded the governor's power to withhold public benefits in order to meet balanced budget demands); NCSL Fiscal Brief, *supra* note 37, at 9 (reporting that twenty-two states believe that the mere existence of the requirements are sufficient enforcement).

[87] Hou & Smith, *supra* note 25, at 27. A fiscal year is different from a calendar year because it covers a twelve-month period that ends at last day of any month except December. Hunkar Ozyasar, *What Is the Difference Between Fiscal Year & Calendar Year for a Business?*, AZCENTRAL, http://yourbusiness.azcentral.com/difference-between-fiscal-year-calendar-year-business-2883.html, *archived at* http://perma.cc/H2RA-BXQ2 (last visited Jan. 18, 2015). Most state fiscal calendars begin on July 1 and end on June 31. *Quick Reference Fiscal Table*, NAT'L CONFERENCE OF STATE LEGISLATURES, http://www.ncsl.org/research/fiscal-policy/basic-information-about-which-states-have-major-ta.aspx, *archived at* http://perma.cc/7DJ8-UQ6X (last updated July 13, 2012).

[88] ITA, *The Truth About Balanced Budgets*, *supra* note 12, at 9. Annual decisions about the general operating budget are an important part of the budgetary process, as it requires the most year-to-year changes. NCSL, *Fiscal Brief*, *supra* note 37, at 6.

[89] *See* ITA, *The Truth About Balanced Budgets*, *supra* note 12, at 9. Proponents of annual budgeting claim that it allows for more accurate forecasting because economic information is likely to be more current and more precise, and provides leaders with more flexibility to adapt to changes in state economies. Ilene Grossman, *Iowa, Michigan Consider Bucking Long-Time Trend That Has Seen States Move Away from Use of Biennial Fiscal Cycles in Favor of Annual Budgets*, COUNCIL OF STATE GOV'TS MIDWEST, (Apr. 2011), http://www.csgmidwest.org/policyresearch/april2011budgetcycle.aspx, *archived at* http://perma.cc/UFN6-R7RP.

[90] ITA, *The Truth About Balanced Budgets*, *supra* note 12, at 9. A report showing how revenues were spent is known as a "Comprehensive Annual Financial Report," or "CAFR." *Id.* at 13. Though these reports are important means of conveying this critical financial information, many states have chronic difficulties producing them on time. *Id.* at 32.

C. Alternatives to Current Balanced Budget Structures

In addition to these common features, there are a number of budget-balancing tools that are less widespread.[91] These alternatives are found in other contexts, including different countries, a small number of states, and in scholarly works.[92] Subsection 1 explains cyclical-based budgetary structures.[93] Subsection 2 examines reality-based budgeting and how it differs from traditional budgeting.[94] Finally, Subsection 3 explores infrequently used alternative enforcement mechanisms.[95]

1. Cyclical-Based Budgetary Structures

Cyclical-based budgetary systems are systems that call for budgets to be balanced at the end of a given fiscal cycle, as opposed to on an annual basis.[96] The theory behind cyclical-based budgetary systems is that they are equipped to both promote long-term sustainability for the budget in question as well as more accurately represent the economic health of the budget.[97] This is different from most state budgets that tend to need to be balanced annually.[98] Rather than adhere to these annual checkpoints, cyclical-based budgeting strives to account for the inevitable booms and busts that states will experience over time.[99] By loos-

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[91] *See* Hou & Smith, *supra* note 25, at 43–44 (detailing the common attributes of state balanced budget requirements); Tobin, *supra* note 75, at 170 (explaining that state courts have been unwilling to enforce balanced budget provisions); Eucalitto, *supra* note 10 (highlighting the lack of transparency in state balanced budget applications as a leading cause of budget problems).

[92] *See, e.g.*, ALA. CONST. art. XI, § 213 (declaring an enforcement mechanism of holding authorities personally responsible for a failure to balance budgets); BUNDESVERFASSUNG [BV] [CONSTITUTION] Dec. 2, 2001, SR 101, art. 126 (Switz.), *translated in* FED. CONST. OF THE SWISS CONFEDERATION art. 12 (May 18, 2014) [hereinafter SWISS CONST.], http://www.admin.ch/ch/e/rs/1/101.en.pdf, *archived at* http://perma.cc/6H9G-4PPW (applying a cyclical model for the Swiss balanced budget system).

[93] *See infra* notes 96–108 and accompanying text.

[94] *See infra* notes 109–125 and accompanying text.

[95] *See infra* notes 126–139 and accompanying text.

[96] SWISS CONST. art. 126 (setting up a cyclical model for the Swiss budgetary system).

[97] *See* Martin Larch & Alessandro Turrini, *The Cyclically-adjusted Budget Balance in EU Fiscal Policy Making: A Love at First Sight Turned into a Mature Relationship*, ECON. PAPERS 4–5, (Mar. 2009), *available at* http://ec.europa.eu/economy_finance/publications/publication14644_en.pdf, *archived at* http://perma.cc/3C6T-97DF (arguing that cyclical based budgeting better accounts for temporary economic fluctuations with a view towards long-term economic expansion); *see also* YILIN HOU, STATE GOVERNMENT BUDGET STABILIZATION: POLICY, TOOLS, AND IMPACTS 189 (2013) (arguing that multiyear budgeting, such as cyclical budgeting, can, with appropriate structures, improve financial planning, ward off recessions, and be better set up for long-term financial stability).

[98] Hou & Smith, *supra* note 25, at 34–35. Most states utilize this latter category, with the majority having requirements on a yearly basis. *Id.*

[99] Gamage, *supra* note 11, at 766. This is starkly juxtaposed to a counter-cyclical system, where there are immediate reactions to the current economic climate. *See generally* Martin Feldstein, *The Role for Discretionary Fiscal Policy in a Low Interest Rate Environment* (Nat'l Bureau of Econ. Research, Working Paper No. 9203, 2002), *available at* http://www.nber.org/papers/w9203.pdf, *archived*

ening the time restrictions behind balancing requirements, budget-makers are theoretically in a better position to respond to these ebbs and flows because they can acquire debt during recessions, unafraid of violating balanced budget rules, and save extra revenue during booms.[100] The hope behind this model is that it could successfully disentangle the permanent and temporary economic factors, and thus reveal the actual underlying budget position at the end of a given cycle.[101]

Switzerland's debt-brake system illustrates a cyclical-based budgetary system in practice.[102] The purpose of the debt brake is to stipulate a structurally balanced budget, which means that current expenditures have to be covered by current revenue without incurring any additional debt.[103] It accomplishes this goal by placing a cap on annual government expenditures.[104] Unlike most balanced budget requirements, however, the Swiss debt-brake mechanism does not require the budget to be balanced annually.[105] Instead, it is based on a multiyear period, calculated by the Swiss Federal Department of Finance.[106] This allows

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at http://perma.cc/8XUB-MPA3 (describing counter-cyclical policies and arguing for specific economic situations where they can be constructive).

[100] *See* Larch & Turrini, *supra* note 97, at 4–5.

[101] *Id.* at 5.

[102] *See* Alain Geier, *The Debt Brake—The Swiss Fiscal Rule at the Federal Level* 7 (Fed. Fin. Admin., Working Paper No. 15, 2011), *available at* http://www.efv.admin.ch/e/downloads/publikationen/arbeiten_oekonomenteam/workingpapers/Working_Paper_15_e.pdf, *archived at* http://perma.cc/7ZRT-VSYX (summarizing how the cycle-based function of the Swiss debt brake acts in application).

[103] *Debt Brake*, THE GOVERNANCE REPORT 2013 (Oxford Univ. Press 2013), *available at* http://www.governancereport.org/home/governance-innovations/featured-innovations-2013/debt-brake/, *archived at* http://perma.cc/LB9S-LG2R. The Swiss government had several stated objectives for the debt brake: simplicity, transparency, comprehensive scope of application, tracking the application, flexibility in case of extraordinary circumstances, and enforcement. Geier, *supra* note 102, at 12.

[104] *See* SWISS CONST. art. 26; Geier, *supra* note 102, at 12. Swiss lawmakers use a simple and effective formula for calculating the cap on expenditures for a given cycle period. Geier *supra* note 102, at 13. The formula provides that in any calculation period, the maximum allowed expenditures must be equivalent to revenues multiplied by the "the business cycle adjustment factor." Tobias Beljean & Alain Geier, *The Swiss Debt Brake: Has It Been a Success?* 3, 4 (Fed. Fin. Admin., Working Paper, Oct. 2012), *available at* http://wwz.unibas.ch/fileadmin/wwz/redaktion/makrooekonomie/intermediate_macro/current_issues/papers/4_swiss_issues/02_Impact_of_the_Swiss_debt_break_01.pdf, *archived at* http://perma.cc/XS5Z-LVS8 (displaying the formula, written mathematically, as G=R*(y/z), where G is the cap of expenditure, R is the revenue, y is the potential output, and z is the actual output, over a given period of time). A deficit is allowed whenever the business cycle adjustment factor is above one and a surplus is demanded if the business cycle adjustment factor is below one. Beljean & Geier, *supra* at 4 (summarizing the application of the formula).

[105] *See* Daniel J. Mitchell, *Switzerland's "Debt Brake" Is a Role Model for Spending Control and Fiscal Restraint*, FORBES, Apr. 26, 2012, http://www.forbes.com/sites/danielmitchell/2012/04/26/switzerlands-debt-brake-is-a-role-model-for-spending-control-and-fiscal-restraint/, *archived at* http://perma.cc/G7FP-ZH4P.

[106] *Id.* For example, a recent cycle period used by the Swiss was three years. Federal Finance Administration, *The New Accounting Model of the Swiss Confederation*, 2008 OECD J. ON BUDGETING 1,

the government to borrow more during a recession, but gives it an obligation to offset the deficit with surplus revenue during an economic upswing.[107] The idea is to use the economic surpluses to cancel out the deficits within a given cycle to achieve budgetary balance.[108]

2. Reality-Based Budgeting

Reality-based budgeting, an alternative to the state's common use of conventional budgeting, is a way to allocate funds in crafting a budget.[109] The goal is to create a "shopping list" from which the government must decide what services and goals to "purchase" for the next budgetary term and which to "shelve."[110] Under this model, all new budgetary proposals are evaluated, not based on the level at which an agency has historically been funded, but rather on whether funding is going to work towards one of the state's primary responsibilities.[111] The model evaluates allocation requests based on the priority of the activity, the efficiency with which it is performed, and the effectiveness it delivers.[112] As a result, only the most vital and efficient agencies receive funding.[113]

Reality-based budgeting focuses on four main questions.[114] First, the state must explain the funds available to it for allocating.[115] Second, the budget-makers must consider what services are absolutely necessary for citizens.[116] The hope is that only core state-funded programs receive necessary funds and that

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97, *available at* http://www.oecd.org/governance/budgeting/41823725.pdf, *archived at* http://perma.cc/3XJK-SXMH.

[107] Geier, *supra* note 102, at 14 (displaying the formulaic operation of the debt brake graphically).

[108] Mitchell, *supra* note 105.

[109] Williams, *supra* note 75. Reality-based budgeting is also sometimes referred to as "priority-based budgeting." Pfiffner et al., *supra* note 79, at 27.

[110] Pfiffner et al., *supra* note 79, at 29 (arguing that this "buy list" mindset shifts the focus from which cuts to make and places it on the government actively spending the money). In essence, the government acts like any shopper, starting without any goods, choosing what it needs and putting away what it cannot afford and is not necessary. *See id.*

[111] Taryn Purdy, *Priority Based Budgeting/Washington State's Priorities of Governance: A Report Prepared for the Committee on Efficiency in State Government*, MONT. LEGISLATIVE FISCAL DIV. 1 (2012); Williams, *supra* note 75. The underlying theory behind reality-based budgeting is that the state government, including all the various agencies and programs, is one unified enterprise. *See* Purdy, *supra* at 1. The states' primary responsibilities are those functions that the government deems to be its highest priorities, generally including such issues as education, healthcare, security, economic vitality, mobility, culture, environment, and governmental efficiency. *See id.*

[112] Williams, *supra* note 75. A driving philosophy behind reality-based budgeting is that situations change and barriers need to move in order to maximize results for citizens. *Id.*

[113] *Id.* (noting that agencies are no longer "fortified towers" that can siphon funds with little to no oversight).

[114] Purdy, *supra* note 111, at 1.

[115] *Id.* Ideally, this ensures that that expenditures cannot exceed the expected revenues for the coming year. *See* Pfiffner et al., *supra* note 79, at 28.

[116] Purdy, *supra* note 111, at 1.

money is not wasted on superfluous programs.[117] Third, lawmakers must consider the most effective methods to achieve their goals with the funds available.[118] Finally, the lawmakers must identify how to measure whether those core functions are achieved.[119] In this way, the government is meant to measure the efficacy of programs and prioritize accordingly.[120]

Although the vast majority of states utilize conventional budgeting, the State of Washington shows how reality-based budgeting can work in practice.[121] First, Washington identified a list of core functions: education, healthcare, security, economic vitality, mobility, culture, environment, and governmental efficiency.[122] It then determined the results it wanted to achieve: student achievement, improved healthcare, increased public safety, protected natural recourses, increased cultural opportunities for citizens, and economic development.[123] The state then published several metrics for measuring success and progress for those goals.[124] Finally, the state developed a results-based prioritization of activities that most directly accomplished the desired outcome and used that to inform the budget.[125]

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[117] Pfiffner et al., *supra* note 79, at 28. Ideally, this model would protect essential services from budget cuts and protect controversial programs from political, election-based rhetoric. *Id.* at 28–29. The central issue is whether market forces and competition can deliver those goals effectively and efficiently without compromising cost and quality. *Id.* at 29. Although the determination of what constitutes "essential public services" is expected to bring about debate amongst lawmakers and citizens, the determination nevertheless is a critical stage of reality-based budgeting. Williams, *supra* note 75.

[118] Pfiffner et al., *supra* note 79, at 29. To make this process easier, agencies and programs must make mission statements to show the state what their goals and objectives are. Williams, *supra* note 75. Ideally, the mission statements would be brief, precise descriptions of the agency's purpose, explaining how it intends to accomplish its mission, and what outcomes will result from its success. *Id.* These mission statements then inform the priority metrics. Pfiffner et al., *supra* note 79, at 29.

[119] Purdy, *supra* note 111, at 1.

[120] Pfiffner et al., *supra* note 79, at 29. A reality-based budgeting system requires measurable indicators of success, including the delivery of desired services. *Id.*

[121] Purdy, *supra* note 111, at 1. In 2002, Governor Gary Locke of Washington turned to this method with the hope of eliminating a $2.8 billion deficit without raising taxes. Pfiffner et al., *supra* note 79, at 30. After the deficit was erased, the technique was discontinued. Williams, *supra* note 75.

[122] Purdy, *supra* note 111, at 3; Pfiffner et al., *supra* note 79, at 30.

[123] Purdy, *supra* note 111, at 3.

[124] *Id.* (noting that there were over 900 different metrics used across the various goals). For example, some of the metrics used for public safety were incidents of crime per 1,000 people, highway fatalities per 100 million vehicle miles traveled, and recidivism rates for convicted criminals. *Improve the Safety of People and Property*, WASH. OFFICE OF FIN. MGMT., http://www.ofm.wa.gov/budget/pog/safety.asp, *archived at* http://perma.cc/U788-52ZS (last visited Jan. 18, 2015).

[125] Purdy, *supra* note 111, at 3. The process of individually naming, budgeting, and prioritizing agencies was performed at a multiagency level where appropriate. *Id.* This kind of budgeting has been hailed as a success where implemented. *See, e.g.*, JOHN F. SHIREY, CITY MANAGER ANNUAL REPORT OF SUCCESSES AND ACCOMPLISHMENTS 2 (2012), *available at* http://portal.cityofsacramento.org/~/media/Corporate/Files/CMO/CityManager/CMPerformance110912.pdf, *archived at* http://perma.cc/F3KR-PDYB (describing the implementation of reality-based budgeting as one of the city's successes of 2012); CTR. FOR PRIORITY BASED BUDGETING, http://www.pbbcenter.org/, *archived at* http://perma.cc/4KLX-HSAZ (last visited Jan. 18, 2015) (listing the communities they helped implement the

3. Alternative Enforcement Mechanisms

Although some states do have some form of an enforcement mechanism for their balanced budget requirements, they have generally shied away from granting authority to an independent source to ensure that such balanced budget provisions are followed.[126] The theory behind having an independent enforcement body is that, without proper policing, lawmakers will lack sufficient incentive to take the balanced budget requirements seriously and will gravitate towards violating them.[127] Such independent enforcement helps maintain the integrity of the decision-making process and ensure that the decision makers are detached from the results of their decision.[128]

The European Union's Fiscal Compact provides an example.[129] The enforcement measure relies on the Court of Justice of the European Union, which has been given binding authority on member states balanced budget issues.[130] The Compact only permits the European Commission, one of the governing branches of the European Union, to bring a grievance against a member state, but also allows any member state to challenge another for failing to meet the Compact's requirements.[131] If the Court of Justice of the European Union determines that a violation of the treaty has occurred, the violating member state must

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budgeting technique and calling the implementation successful and repeatable); *Priority Based Budgeting Update*, DOUGLAS CNTY. NV (Mar. 11, 2013), http://www.douglascountynv.gov/DocumentCenter/View/1771, *archived at* http://perma.cc/VXV8-HWTV (listing success stories resulting from reality-based budgeting implementation in Douglas County, Nevada).

[126] *See generally* Tobin, *supra* note 75 (outlining the various enforcement mechanisms utilized by the states).

[127] James V. Saturno & Richard G. Forgette, *The Balanced Budget Amendment: How Would It Be Enforced?*, 18 PUB. BUDGETING & FIN. 1, 33, 48 (1998) (explaining that, without explicit and official enforcement mechanisms, enforcement would be left to public opinion, which can be problematic in effectively policing proper adherence to balanced budget provisions); *see* Tobin, *supra* note 75, at 155 (arguing that the conflict between legislators' desires to obey balanced budget provisions and their desire to keep programs funded and taxes low will lead to an unwillingness to adhere strictly to the spirit of the requirements and an abuse of gimmicks); *see also* Dieck v. Unified Sch. Dist. of Antigo, 477 N.W.2d 613, 617–18 (Wis. 1991) (accusing the legislature of being all too willing and able to avoid balanced budget provisions).

[128] *See* Saturno & Forgette, *supra* note 127, at 38 (illustrating that Congress's prior attempt to enforce fiscal responsibility upon itself in the Gramm-Rudman-Hollings Act was ineffective due to political in-fighting and a lack of will to enforce the provisions).

[129] *See* Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, pmbl., art. 16, Mar. 2, 2012 [hereinafter Fiscal Compact], *available at* http://www.eurozone.europa.eu/euro-area/topics/treaty-on-stability,-coordination-and-governance-%28tscg%29/, *archived at* http://perma.cc/8EDE-62S2.

[130] *Id.*, art. 8(1). The Court of Justice of the European Union can be properly invoked due to a provision in the founding treaty of the European Union, which grants jurisdiction to the court for special treaties where both parties agree to submit the dispute to the authority of the court. Treaty on the Functioning of the European Union art. 273, Mar. 25, 1957, *available at* http://www.wipo.int/edocs/lexdocs/laws/en/eu/eu121en.pdf, *archived at* http://perma.cc/L2BM-KZ97.

[131] Fiscal Compact, *supra* note 129, art. 8.

take the necessary remedial actions.[132] If the member fails to comply with the judgment, a second case can be brought before the court, which can then sanction the state with a "lump sum or penalty payment appropriate in the circumstances."[133] Moreover, some sources of European Union financial aid are contingent upon compliance with the Compact.[134] Although judicial enforcement is one method of providing teeth to balanced budget provisions, it is not the only method.[135]

An alternative method of enforcement holds officials personally responsible for failing to balance the budget.[136] Although extremely rare among states, a provision in the Alabama Constitution holds any lawmaker who violates the balanced budget requirements personally liable.[137] It also provides for strict sanctions for that individual, up to $5,000 in fines and two years in prison.[138] The provision, however, has been attacked for being merely an empty threat because, despite past failures of public officials to reach a balanced budget, it is unclear if the provision has ever been utilized in its entire history.[139]

II. FALLING OUT OF BALANCE: PROBLEMS WITH STATES' BALANCED BUDGET REQUIREMENTS

Despite the prevalence of balanced budget requirements, states still face large budgetary shortfalls.[140] There are a number of reasons why states have not

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[132] *Id.*

[133] *Id.* The penalty cannot exceed 0.1% of the gross national product. *Id.*

[134] *Id.* pmbl.; Federico Fabbrini, *The Fiscal Compact, the "Golden Rule," and the Paradox of European Federalism*, 36 B.C. INT'L & COMP. L. REV. 1, 8 (2013). Although still young, the Fiscal Compact has thus far been successful in promoting member states, such as Italy and Spain, in passing balanced budget provisions. *See* Art. X, Costituzione [Cost.] (It.); C.E., B.O.E. n. 311, sec. 135, Dec. 29, 1978 (Spain) (revised Sept. 27, 2011). *See generally* Fabbrini, *supra* (discussing Spain and Italy as examples of EU member states adapting their constitutions to meet the Fiscal Compact's mandate). Despite its successes, the Fiscal Compact has received criticism from those that think it infringes on state sovereignty, imposes the will of larger states upon the smaller, and fosters mistrust among different peoples of Europe. Anna Kocharov, *The Fiscal Compact Treaty Disempowers National Parliaments and Undermines Trust Between the Peoples of Europe*, LONDON SCH. OF ECON. & POL. SCI. (May 7, 2012), http://blogs.lse.ac.uk/europpblog/2012/05/07/fiscal-compact-disempowers/, *archived at* http://perma.cc/K6W6-7SLY.

[135] *Compare* Fiscal Compact, *supra* note 129, art. 8 (providing independent judicial oversight), *with* ALA. CONST. art. XI § 213 (imposing personal liability on officials who fail to meet balanced budget standards as a possible enforcement tool).

[136] ALA. CONST. art. XI, § 213 (declaring that any state official found in violation of balanced budget requirements can be subject to fines up to $5,000 and up to two years in prison).

[137] *See id.*

[138] *See id.*

[139] *See* NCSL Fiscal Brief, *supra* note 37, at 9.

[140] *See* Karen Yourish & Laura Stanton, *States in Crisis*, WASH. POST, Feb. 2011, http://www.washingtonpost.com/wp-srv/special/politics/state-budget-crisis/, *archived at* http://perma.cc/D7NZ-GJWN (displaying the current state budgetary situations).

lived up to the lofty ideals of a balanced budget.[141] This Part studies the problems inherent with balanced budget requirements.[142] Section A considers the problems with the enforcement mechanisms states employ.[143] Section B then outlines the "creative accounting" and budgetary gimmicks state actors use to evade both the letter and spirit of the balanced budget requirements.[144] Finally, Section C addresses structural problems with balanced budget requirements that cause harm to state economies.[145]

A. Limitations with Current Budgetary Enforcement Mechanisms

States have different philosophies on how to enforce balanced budget requirements.[146] Most states have decided against using legal mechanisms to enforce compliance.[147] According to these states, the mere presence of a constitutional or statutory demand for a balanced budget is a sufficient guarantee because it creates political expectations on the government.[148] Moreover, some lawmakers argue that a tradition of balancing budgets is sufficient to generate political pressure to do so.[149] Critics of this practice point out that state officials frequently attempt to thwart the purpose behind the balanced budget requirements, such as shifting money from different funds to create the appearance of a

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[141] *See* ITA, *The Truth About Balanced Budgets*, *supra* note 12, at 25 (detailing the prevalence of balanced budget provisions among the states in either constitutional or statutory form).

[142] *See infra* notes 146–194 and accompanying text.

[143] *See infra* notes 146–158 and accompanying text.

[144] *See infra* notes 159–176 and accompanying text.

[145] *See infra* notes 177–194 and accompanying text.

[146] Koerner, *supra* note 37; *see* GAO, *supra* note 40, at 11–13; NCSL Fiscal Brief, *supra* note 37, at 9.

[147] *See* VA. CODE ANN. § 30-250 (2011 & Supp. 2014) (demanding a budget that balances total expenditures with total revenues, without a binding enforcement mechanism); GAO, *supra* note 40, at 21 (juxtaposing proposed legislation for a federal balanced budget amendment relying on extensive formula-based enforcement provisions with most state balanced budget requirements, which do not rely on formal legal sanctions); NCSL Fiscal Brief, *supra* note 37, at 9 (highlighting that twenty-seven states did not report having an enforcement mechanism tied to their balanced budget provisions). Many of the twenty-two states that reported having an enforcement mechanism consider the existence of the constitutional amendment itself as an enforcement device. NCSL Fiscal Brief, *supra* note 37, at 9.

[148] *See* Eucalitto, *supra* note 10 (explaining that state officials defend this strategy by arguing that the expectation of a balanced budget is enough incentive to replace actual sanctions); Koerner, *supra* note 37 (arguing that state legislatures fear backlash from fiscal conservatives if they fail to balance the budget, despite the fact that such backlash is rare and has been generally unsuccessful in most cases). *But see* ALA. CONST. art. XI, § 213 (declaring that any state official found in violation of balanced budget requirements can be subject to fines up to $5,000 and up to two years in prison).

[149] Gamage, *supra* note 11, at 764 (arguing that norms can be an effective constraint against states running deficits); Todd Haggerty, *Balanced Budget Requirements*, NAT'L CONFERENCE OF STATE LEGISLATURES (Apr. 25, 2012), http://ncsl.typepad.com/the_thicket/2012/04/who-was-a-little-budget-trivia.html, *archived at* http://perma.cc/GM9G-DBAU (explaining that a tradition of balanced budgets can act as a stronger political rule than sanctions).

balanced budget without ever matching revenues and expenditures.[150] Without actual sanctions behind those rules, political operators have even less incentive to obey them.[151]

Another common method of implementing balanced budget requirements is through the executive branch's authority over budgetary matters.[152] Some state governors have impounded or withheld funds that they would otherwise be obligated to spend in an effort to satisfy balanced budget requirements.[153] This growth in executive power either develops organically or has been written into the requirements themselves.[154] Other executive powers given by states include the power to reduce the enacted budget, spend unanticipated funds, and restrict the budget reductions without legislative approval.[155] Critics accuse this system of upsetting the separation of power, and granting the executive broad, undefined powers without standards to guide its discretion.[156]

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[150] *See infra* notes 159–176 and accompanying text (detailing a number of gimmicks and other practices employed by lawmakers to circumvent balanced budget requirements); *see also* Eucalitto, *supra* note 10 (listing a number of examples of lawmakers undercutting balanced budget requirements); Joe Luppino-Esposito, *The Worst State Budget Gimmicks of 2013*, STATE BUDGET SOLUTIONS (Jan. 3, 2014), http://www.statebudgetsolutions.org/publications/detail/the-worst-state-budget-gimmicks-of-2013, *archived at* http://perma.cc/5QGN-A3RZ (providing instances of public officials violating the spirit of balanced budget requirements).

[151] *See* Gamage, *supra* note 11, at 763 (explaining that during the 2001–2003 economic downturn, the lack of proper enforcement measures caused an increase in the number of state lawmakers using budget gimmicks to survive the initial wave of financial problems).

[152] *See* GAO, *supra* note 40, at 22 (explaining the control over budgetary cuts that many state governors enjoy); *see also Budget Processes in the States*, NAT'L ASS'N OF STATE BUDGET OFFICERS 12 (July 1992) [hereinafter 1992 NASBO Report], http://www.nasbo.org/sites/default/files/BP_1992.pdf, *archived at* http://perma.cc/Z57R-UX43 (illustrating the different types of gubernatorial responsibilities).

[153] Judy v. Schaefer, 627 A.2d 1039, 1054 (Md. 1993) (holding that the balanced budget amendment had expanded the governor's power to withhold public benefits to meet balanced budget demands); Tobin, *supra* note 75, at 166 (discussing the governor's use of line item vetoes and withholding funds to meet balanced budget requirements). In upholding the governor's power to withhold funds for balanced budget purposes, the Court of Appeals in Maryland discussed how the increasing presence of balanced budget requirements has led to a greater liberality for the executive branch to respond to economic and financial issues. *Judy*, 627 A.2d at 1051. Additionally, there have been instances of executive branch members refusing to issue debt, even when the debt has been expressly authorized by the legislator. People *ex rel.* Ogilvie v. Lewis, 274 N.E.2d 87, 96 (Ill. 1971) (forcing the Secretary of State to release transportation bonds).

[154] *Compare* N.C. CONST. art. III § 5 (requiring the governor to "effect the necessary economies in State expenditures" whenever he or she determines that there is a budget shortfall), *with Judy*, 627 A.2d at 1050–51 (holding that the governor's ability to withhold funds was implied by the balanced budget requirements and the increasing complexity of economic and financial demands of government).

[155] 1992 NASBO Report, *supra* note 152, at 12 (detailing which executive enforcement options each state utilizes in its balanced budget processes).

[156] *See Ogilvie*, 274 N.E.2d at 96 (curtailing executive branch's control over the issuing of bonds in the presence of legislative demand); *Judy*, 627 A.2d at 1051 (reiterating plaintiff's arguments that allowing the governor so much power violated separation of powers and failed to provide sufficient standards).

Although there have also been attempts to utilize the courts as an enforcement mechanism, judges thus far have been reluctant to intervene.[157] State courts have dismissed balanced budget complaints for various reasons, including mootness, a lack of standing, and nonjusticiability due to the political question doctrine.[158]

B. Avoiding the Rules: Circumventing Budgetary Requirements

Another way that state balanced budget requirements run into trouble is the increased use of budgetary gimmicks that state officials use to circumvent the requirements.[159] For example, state officials often redefine or manipulate interpretations of the wordings of the requirement in a way that defies the original intent of the requirement.[160] States have done this by interpreting the original wording of the balance budget requirements to claim that expenditures should not exceed revenues, but failing to specify what revenues include.[161] This interpretation leaves state officials with a myriad of options about the types of cash inflows that can be included.[162]

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[157] *See, e.g.*, Bishop v. Governor, 380 A.2d 220, 223 (Md. 1977) (holding that a complaint that the budget plan was unconstitutional was moot and also suggesting that they could step in if there was an emergency situation); Bd. of Educ. of the Twp. of Fairfield v. Kean, 457 A.2d 59, 64 (N.J. Super. Ct. Ch. Div. 1982) (asserting that courts should stay out of budgetary disputes); Tobin, *supra* note 75, at 170–71 (discussing the history of state courts' decisions in cases regarding enforcement of balanced budget requirements).

[158] *See, e.g.*, *Bishop*, 380 A.2d at 223 (holding a budgetary complaint moot); *Bd. of Educ. of the Twp. of Fairfield*, 457 A.2d at 64 (refusing to allow courts to enter budgetary questions). Mootness is the court's refusal to hear a case because it is no longer a live controversy. *See* Walling v. James V. Reuter, Inc. 321 U.S. 671, 677 (1944). Standing is the ability of a party to bring a claim before a court by establishing that he or she suffered injury in fact, causation of that injury, and the court's ability to remedy the injury. *See* Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992). The political question doctrine renders a case nonjusticiable because it would be inappropriate for the judicial branch to decide an issue that fell under the auspices of a coequal branch of government. *See* Baker v. Carr, 369 U.S. 186, 210 (1962).

[159] *See infra* notes 160–176 and accompanying text (outlining the many different methods state officials have used to undermine the balanced budget requirements).

[160] *See* ITA, *The Truth About Balanced Budgets*, *supra* note 12, at 27 (detailing the "word games" played by states to avoid or undermine the spirit of balanced budget requirements). For example, legislators have relied on convenient definitions of critical words of statutory or constitutional language, used accruals only when beneficial, and claimed to have a balanced budget because the operating fund was balanced even though a massive structural deficit existed. *Id.* at 17.

[161] *See, e.g.*, ILL. CONST. art VIII, § 2 (requiring that expenditures should not exceed "funds estimated . . . to be available"); NEB. CONST. art. XIII, § 1 (requiring that expenditures should not exceed revenues or other means of financing); N.Y. CONST. art. VII, § 2 (requiring that the budget include "moneys and revenues" sufficient to meet proposed expenditures).

[162] *See* ITA, *The Truth About Balanced Budgets*, *supra* note 12, at 27. For example, when the requirement calls for state revenue to be balanced, budget-makers can choose what money counts as revenue and what does not. *Id.* The classic example, discussed below, is including debt as revenue to boost the number and portray a financial strength that is not actually present. *Id.*

Critics accuse state officials of taking advantage of this in several ways, including characterizing debt as revenue and fund sweeping.[163] Some states claim to have achieved a balanced budget while still running a structural deficit.[164] Although this technically complies with the balanced budget requirements, the state remains in fiscal danger.[165] Some of these "word games" have been so obvious or egregious that courts have intervened, if only to interpret the statutory or constitutional language.[166]

States also manipulate the calendar to gain the appearance of a more balanced budget.[167] Similar to how they would shift money from one fund to another, states will often shift money from one fiscal year to the next to achieve the

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[163] *See* ITA, *The Truth About Balanced Budgets*, *supra* note 12 at 27–28 (highlighting particular instances of states utilizing these methods). Characterizing debt as revenue means including money that the state has acquired through loans and considering it equivalent with all other state revenues. *See id.* A particularly egregious example of the categorization of debt as revenue occurred in Illinois in 2009 when the state borrowed over two billion dollars to finance the current service of state employees. *Id.* at 27. Although such action was contrary to the principles of accountability and a balanced budget, both the governor and legislature found that the action worked under the current phrasing of the balanced budget law, which called for expenditures to meet "funds available." *Id.*; *see* ILL. CONST. art VIII, § 2. Another example occurred in California in 2011, when the governor used $11 billion of loaned money from bonds to lower the deficit from $20.6 billion to $9.6 billion. Wayne Lusvardi, *Calif. Gov. Jerry Brown Debt Gimmicks 'Balance' Budget*, WATCHDOG.ORG (June 14, 2011), http://watchdog.org/9892/calif-gov-jerry-brown-debt-gimmicks-%E2%80%98balance%E2%80%99-budget/, *archived at* http://perma.cc/8P99-SN6L. Fund sweeping occurs when money from one fund is transferred to another to create the illusion that the latter fund is balanced. *See* ITA, *The Truth About Balanced Budgets*, *supra* note 12, at 27–28 (comparing fund sweeping to an individual switching money from his or her savings account to his or her checking account and declaring that they made money). Illinois engaged in fund sweeping in 2009 when the governor proposed to move $350 million from the state trust fund, which does not need to be balanced, to the state general fund, which does need to be balanced. *Id.*

[164] ITA, *The Truth About Balanced Budgets*, *supra* note 12, at 27–28. A structural deficit is defined as, "a condition in which the revenues produced by a state's tax system . . . are insufficient to maintain existing levels of services." Hal Hovey, *The Dangers of Structural Deficits for the Future of Public Education*, NAT'L EDUC. ASS'N RESEARCH, 4 (1998), *quoted in* ITA, *The Truth About Balanced Budgets*, *supra* note 12, at 28.

[165] ITA, *The Truth About Balanced Budgets*, *supra* note 12, at 27–28. In the short term, this means that current bills for ongoing services remain unpaid and in the long term that state employees' post-employment commitments are not recognized or are paid from money diverted from other funds. *Id.* at 28 (explaining the dangers of structural deficits).

[166] *See, e.g.*, Hovey v. Foster, 21 N.E. 39 (Ind. 1889) (approving a temporary loan to pay unexpected budgetary deficiencies); Louisiana Fed'n of Teachers v. State, 118 So.3d 1033, 1042 (La. 2013) (invalidating fund-shifting between education budgets as violating the state constitution); Wein v. State, 347 N.E.2d 586, 587 (N.Y. 1976) (deciding that borrowing cannot be considered either a gift or a loan, but must be made in anticipation of future revenue of taxes); *see also* ITA, *The Truth About Balanced Budgets*, *supra* note 12, at 27 (categorizing this kind of behavior as "word games").

[167] *See* Eucalitto, *supra* note 10 (outlining various examples of state officials manipulating the calendar to undermine balanced budget requirements). States strategically delay payments, such as employee paychecks or paying back debts, and push them into the next fiscal year so that they do not count for the current year's balanced budget requirements. *Id.*

illusion of a balanced budget.[168] Fiscal shifting involves delaying payments until the next fiscal year, which moves the financial debt burden to the next year and thus avoids running afoul of balanced budget amendments as well as political backlash.[169]

States also manipulate expenses by simply not paying their bills.[170] Many states allow government officials to delay the payment of vendor bills and to defer compensation costs, such as pension and other retirement benefits.[171] Critics argue that not only does this maneuver deny money to those who need or have earned it, but it also creates huge budget holes for the state that could take years to redress.[172]

Finally, critics accuse states of unrealistically inflating projections and revenue assumptions to justify increased expenditures.[173] To demonstrate a balanced budget and justify increased expenditures, state officials will often inflate revenue projections by creating unrealistic pictures of revenue growth or misrepresenting rates of inflation.[174] Similarly, states often fail to report the true cost of

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[168] *Id.* This is a more common tactic amongst states with strict rules about carrying deficits over to the next year, especially when faced with low net revenues, because there is greater need to acquire immediate cash to meet the more stringent requirements. *See* Anna Costello et al., The Hidden Consequences of Balanced Budget Requirements 30 (Sept. 2012) (unpublished manuscript), *available at* http://www.insead.edu/facultyresearch/areas/accounting/events/documents/TheHiddenConsequencesofBalancedBudgetRequirements.pdf, *archived at* http://perma.cc/LX4R-8AEA.

[169] *See* Eucalitto, *supra* note 10. Minnesota acted similarly when it delayed payments to school districts, which resulted in schools not having the necessary funds for a long period of time, with some receiving as low as only sixty percent of the required funds. *After Delays Caused by State Budget Shortages, Minn. Schools Seeing Aid Catch-Up Payments*, MINNEAPOLIS STAR TRIB. (Oct. 17, 2013), *available at* http://www.statebudgetsolutions.org/publications/detail/after-delays-caused-by-state-budget-shortages-minn-schools-seeing-aid-catch-up-payments, *archived at* http://perma.cc/Q7QP-3LYU.

[170] ITA, *The Truth About Balanced Budgets*, *supra* note 12, at 31. Some states' payment delays for budgetary purposes have become routine. *Id.* For example, Illinois had delayed payments to such an extent that the state comptroller announced in 2008 that there was an unprecedented billions of dollars worth of backlog of deferred payments. *The Section 25 Budget "Loophole*,*"* FISCAL FOCUS 7 (July 2008), *available at* http://www.ioc.state.il.us/index.cfm/resources/fiscal-focus/july-2008-medicaid/, *archived at* http://perma.cc/BF2P-J6XB.

[171] ITA, *The Truth About Balanced Budgets*, supra note 12, at 31. This occurs often in Illinois, when it fails to make Medicaid payments to health care providers in order to make the budget appear balanced, despite Medicaid receiving insufficient funding. *State Medicaid Programs Face Funding Challenges*, FISCAL FOCUS 1, 3–6 (July 2008), *available at* http://www.ioc.state.il.us/index.cfm/resources/fiscal-focus/july-2008-medicaid/, *archived at* http://perma.cc/BF2P-J6XB.

[172] *See* ITA, *The Truth About Balanced Budgets*, *supra* note 12, at 31. In 2007, California taxpayers had to pay $700 million, including interest, for the legal action following California lawmakers' attempt to decrease the budgetary shortfall by withholding teachers' retirement payments. Teacher's Ret. Bd. v. Genest, 65 Cal. Rptr. 3d 326, 350–51 (Ct. App. 2007).

[173] *See* Luppino-Esposito, *supra* note 150 (highlighting several recent incidents of inflated projections or unfounded assumptions).

[174] *Id.* This occurred in Minnesota in 2013 when Governor Mark Dayton was forced to reevaluate his budget predictions after he had inflated revenue predictions by $58 million. *Minn. G.O.P. Ques-*

retirement obligations.[175] The budgets only include the pension contributions legislatures decide they want to pay going forward, but ignore retirement benefits that have been earned by the workers during the current budget period.[176]

C. Balancing the Wrong Things: Incentivizing the Wrong Behavior

Another common criticism against state balanced budget requirements is that they incentivize the state to behave in ways that can actually cause more harm to the economy.[177] Recently, states have been accused of misusing funds that were designated for a particular purpose.[178]

For example, Arizona took money from the National Mortgage Settlement, designed to help homeowners who lost equity during the market collapse, and instead transferred it to the state general fund.[179] Another example comes from the 1998 Tobacco Settlement Master Agreement, in which tobacco companies promised to pay over $200 billion to the states over twenty years to cover tobacco-related healthcare costs.[180] Rather than putting these funds to their intended use, many states, like New Hampshire, applied the proceeds to unrelated funds, including the general fund.[181]

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tions 'Cuts' in Dayton Budget, YAHOO! NEWS (Jan. 28, 2013, 4:19 PM), http://news.yahoo.com/minn-gop-questions-cuts-dayton-211948650.html, *archived at* http://perma.cc/ZHA4-C3DA.

[175] ITA, *The Truth About Balanced Budgets*, *supra* note 12, at 30. Indeed, retirement and pension projections can fluctuate wildly and states already have a difficult time structuring and predicting pension plans without the element of budgetary gimmickry. *Cf.* David C. John, *States Created Their Public Pension Problems, and States Should Solve Them*, HERITAGE FOUND. (Jan. 17, 2012), http://www.heritage.org/research/reports/2012/01/state-and-local-government-problems-with-public-pension-plans, *archived at* http://perma.cc/R65D-VA6S (listing issues with the structure of the pension programs and the difficulties states face with predicting and budgeting for pensions).

[176] ITA, *The Truth About Balanced Budgets*, *supra* note 12, at 30. For example, in 2007, California taxpayers had to pay $700 million to make up for lawmakers' failure to pay teachers' retirement benefits. *Teachers Ret. Bd.*, 65 Cal. Rptr. 3d at 350–51.

[177] *See infra* notes 178–194 and accompanying text.

[178] Luppino-Esposito, *supra* note 150 (outlining some of the most egregious recent examples of misuse of funds).

[179] *Arizona OK to Use Mortgage Settlement Funds for General Purposes*, PHX. BUS. J. (Sept. 25, 2013), http://www.bizjournals.com/phoenix/morning_call/2013/09/arizona-ok-to-use-mortgage-settlement.html, *archived at* http://perma.cc/7SQQ-3ZQD. Six other states (Missouri, California, South Carolina, Georgia, Alabama, and New Jersey) have also ignored the intended use for similar funds and have not directed any of it toward housing-related activities. Luppino-Esposito, *supra* note 150. Additionally, fourteen other states, including Idaho and Illinois, are using less than half of the funds for their intended purpose. *Id.*

[180] Eucalitto, *supra* note 10. State credit ratings are an additional mechanism to judge a state's financial health, as their financial problems are often reflected in their credit ratings. *See* John Klingner, *Illinois Has the Lowest Credit Rating of All 50 States*, ILLINOISPOLICY.ORG, (Nov. 19, 2013), http://www.illinoispolicy.org/illinois-has-lowest-credit-rating-of-all-50-states/, *archived at* http://perma.cc/LQ78-MZ5Q (describing how Illinois's low credit rating is linked to the state's continuing struggle with pension plans).

[181] Grant Bosse, *New Hampshire Relies on Tobacco Money to Balance*, N.H. WATCHDOG.ORG, (Apr. 3, 2013), http://newhampshire.watchdog.org/11853/nh-house-budget-relies-on-tobacco-money-

States also borrow more money to meet balanced budget demands.[182] Because many of the balanced budget requirements define revenue to include debt, many states liberally incur debt to meet balanced budget requirements.[183] Such action is heavily criticized because it worsens the state's long-term financial health.[184] This stopgap measure also creates uncertainty because the state must rely on a lenders' determination of the interest rate the state must pay bondholders.[185]

States also have turned to one-time sales of state-owned assets to bridge budgetary gaps, which damages the states in the long term.[186] Critics denounce such tactics because states tend to have to sell such assets at a substantial discount.[187] Additionally, the sale of government assets represents a one-time cash infusion.[188] Although it may provide temporary relief, without further action, the problems will simply reoccur in the next fiscal years.[189] Furthermore, in requir-

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to-balance/, *archived at* http://perma.cc/ZPE7-QD9N. New Mexico and New York have also reported that the Tobacco Settlement money has not been dedicated for the stated purposes, but has been allocated to other funds, including heavily into the general operating budget. *See* Eucalitto, *supra* note 10. In addition to misusing funds, states have also inadequately funded necessary government programs, such as education and Medicaid, to make up the budgetary gap. Kristen De Pena, *Budget Gimmicks February 2013*, STATE BUDGET SOLUTIONS (Feb. 5, 2013), http://www.statebudgetsolutions.org/publications/detail/budget-gimmicks-february-2013, *archived at* http://perma.cc/2UQU-XRLU. For example, Hawaii diverted all of its funds intended for private hospitals to help offset the cost of treating Medicaid patients. *Id.*

[182] *See* Luppino-Esposito, *supra* note 150 (providing recent examples of states incurring debt to reach balanced budget status).

[183] *See* Eucalitto, *supra* note 10 (describing the word manipulation gimmicks of states, including states' inclusion of debt to count against expenditures in balanced budget calculations). For example, in 2013, Governor Dannel Malloy of Connecticut borrowed $10 million to pay off state obligations, but characterized the money as "savings" for budgetary purposes. De Pena, *supra* note 181. Typically, a state borrows money through the issuance of bonds. Luppino-Esposito, *supra* note 150.

[184] *See* Eucalitto, *supra* note 10 ("Without limits on the ability to issue debt to 'balance' annual budgets, states are free to impose harsh obligations on future generations.").

[185] RICHARD BRIFFAULT, BALANCING ACTS: THE REALITY BEHIND STATE BALANCED BUDGET REQUIREMENTS 5 (1996) (arguing that lenders have heavy control over state budget decisions because of their control over interest rates); *see* Eucalitto, *supra* note 10 (explaining that states taking on too much debt imposes harsh obligations upon future generations).

[186] *See* Costello et al., *supra* note 168, at 7 (concluding that when states are in serious financial trouble, they are far more likely to sell off assets). For example, Detroit is considering selling its art collection for an estimated $500 million, which is millions below the actual value of the art, in addition to being an incalculable cultural loss to the city. Randy Kennedy, *Detroit Art Museum Offers Plan to Avoid Sale of Art*, N.Y. TIMES, Jan. 30, 2014, at A18.

[187] *See* Costello et al., *supra* note 168, at 7 (discussing results depicting that a $100 per capita deficit shock in a state with a strict balanced budget requirement results in a 30% reduction in the ratio of the proceeds from asset sales to the book value of the assets sold). This is because private sector property buyers take advantage of the state's desperation for funds and inexperience in negotiating these types of transactions. *See* ITA, *The Truth About Balanced Budgets*, *supra* note 12, at 29; *see also* Eucalitto, *supra* note 10.

[188] Costello et al., *supra* note 168, at 2.

[189] De Pena, *supra* note 181 (noting that selling assets to cover the budgetary gap effectively creates larger future deficits because expenditures including the sale do not decrease in the following

ing immediate cash flows from the sale of assets, the state can lose substantial future revenue from that asset, which could cost taxpayers dearly.[190]

Finally, critics claim that flaws in state balanced budget requirements frustrate states' ability to adequately fund special funds reserved for periods of economic recession, sometimes referred to as "rainy-day funds."[191] Although many states invest in rainy-day funds, most are inadequately funded.[192] By focusing balanced budget requirements around short-term deadlines, politicians are incentivized to focus only on the short-term economic picture.[193] Instead of building rainy-day funds for future needs, politicians generally deplete the funds to cut taxes or increase spending and advance short-term political agendas.[194]

III. BALANCING THE EQUATION: SOLUTIONS TO HELP STATE BALANCED BUDGET REQUIREMENTS

With serious problems continuing to undermine states' efforts to effectively utilize and meet their balanced budget requirements, states are searching for solutions to obtain better results.[195] By adopting reality-based budgeting, stricter

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fiscal years despite the absence of the sale of the assets); *see* Costello et al., *supra* note 168, at 10 (discussing the trade-off between needing cash now and the future cash flows from the assets). The lack of political accountability in these decisions is also particularly troubling because the elected officials making these immediate selling decisions are unlikely to be in office when the foregone future cash flows are most needed. Costello et al., *supra* note 168, at 10.

[190] Eucalitto, *supra* note 10; Costello et al., *supra* note 168, at 13. For example, a 2009 Arizona sale and lease-back that was sold for $735 million is estimated to cost the state over $1.5 billion in lease-back fees over the next two decades. Jennifer Steinhauer, *In Need of Cash, Arizona Puts Offices on Sale*, N.Y. TIMES, Sept. 25, 2009, at A16.

[191] *See* Gamage, *supra* note 11, at 766 (explaining states' problems with effectively creating and using rainy-day funds).

[192] *Id.*; *see* NAT'L ASS'N OF STATE BUDGET OFFICERS, BUDGETING AMID FISCAL UNCERTAINTY: ENSURING BUDGET STABILITY BY FOCUSING ON THE LONG TERM 14–15 (2004), *available at* http://www.nasbo.org/sites/default/files/pdf/budgetstabilityFeb2004.pdf, *archived at* http://perma.cc/5J9C-L7UD (describing how states create and use rainy-day funds). For example, the rainy-day funds created during the economic boom of the 1990s covered less than one-sixth of the revenue shortfalls during the subsequent downturn. Gamage, *supra* note 11, at 766; Robert Zahradnik, *Rainy Day Funds: Opportunities for Reform*, CTR. ON BUDGET & POL'Y PRIORITIES 1 (Mar. 9, 2005), *available at* http://www.cbpp.org/cms/index.cfm?fa=view&id=168, *archived at* http://perma.cc/HLW8-8UL5 (indicating that states only had $30 billion in reserve funds, while facing an over $250 billion deficit in 2001).

[193] Gamage, *supra* note 11, at 766.

[194] *Id.* (explaining that politicians see rainy-day funds as a gift to their unknown successors and prefer to use it for their own ends rather than give it away to a future generation). *But see* Elizabeth McNichol, *When and How States Should Strengthen Their Rainy Day Funds*, CTR. ON BUDGET & POL'Y PRIORITIES (Apr. 16, 2014), http://www.cbpp.org/cms/?fa=view&id=4129, *archived at* http://perma.cc/9RX6-R26H (stating that, since 2010, many states have begun to slowly restore their rainy-day funds).

[195] *See* Gamage, *supra* note 11 (describing the recent history of states' failures to maintain a balanced budget); *see also* Katherine Barrett & Richard Greene, *Do States Really Balance Their Budgets?*, GOVERNING.COM (Oct. 2011), http://www.governing.com/columns/smart-mgmt/do-states-really-balance-their-budgets.html, *archived at* http://perma.cc/L5C5-KNTP (arguing that because of gimmicks and loopholes, balanced budgets are an unobtainable goal for most states).

enforcement mechanisms, and cycle-based timelines, states can solve many of the problems that currently afflict their balanced budget system.[196] Section A argues that reality-based budgeting can produce sounder financial situations for states, while also eliminating the desirability of many budgetary gimmicks and abuses.[197] Section B describes how a cyclical-based budgetary timeline can strengthen states' budgetary procedures, including eliminating gimmicks and encouraging long-term sustainability.[198] Finally, Section C concludes that stricter enforcement mechanisms would lead to more effective application of balanced budget provisions.[199] To that end, Section C provides two possibilities for enforcement: having an independent state agency as a budgetary watchdog and imposing personal liability for state officials committing egregious misconduct.[200]

A. Reality Check: States Should Adopt Reality-Based Budgeting

Conventional budgeting techniques are a major source of the problems for state budgetary systems.[201] By focusing on agencies' baseline budgets and intentions, rather than on their efficacy, states waste money on unsuccessful initiatives.[202] Conventional budgeting also fails to encourage agencies to increase goal-oriented productivity.[203] Moreover, the current system traps legislatures into giving money to agencies based on precedent, rather than inspiring agencies to achieve key policy goals.[204] By giving money without looking into an agency's operations, legislatures allocate funds to outmoded sources or agencies with

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[196] *See infra* notes 201–284 and accompanying text.

[197] *See infra* notes 201–231 and accompanying text.

[198] *See infra* notes 232–255 and accompanying text.

[199] *See infra* notes 256–284 and accompanying text.

[200] *See infra* notes 256–284 and accompanying text.

[201] *See* Williams, *supra* note 75 (describing the importance of budgetary techniques in the budgetary process).

[202] *Id.* For example, the state of Illinois recently came under fire for unnecessary spending, including $5 million for a state fair, $3.34 million for a shooting complex, $2.37 million for a new 3-D cinema, and over $20 thousand for a pig racing event. Benjamin Van Metre, *Illinois State Government Wastes Hundreds of Millions of Taxpayer Dollars*, ILLINOISPOLICY.ORG (Sept. 17, 2013), http://www.illinoispolicy.org/illinois-state-government-wastes-hundreds-of-millions-of-taxpayer-dollars/, *archived at* http://perma.cc/TVK8-45K2.

[203] *See* Williams, *supra* note 75. By guaranteeing a baseline of money, conventional budgeting fails to promote initiative and motivate agencies to distinguish themselves with inventiveness and improvement. *See id.*

[204] *See* Pfiffner et al., *supra* note 79, at 27 (stating that agencies are placed on equal footing, regardless of their size or effectiveness, simply because it was funded the previous year); *see also Outcomes-Based Budget Overview*, NEWTONMA.GOV, http://www.newtonma.gov/civicax/filebank/documents/51346, *archived at* http://perma.cc/QDE2-3A6N (last visited Jan. 19, 2015) (explaining that counter-productivity results from not deciding a budget based on the goals to be accomplished).

flawed designs.[205] When states fail to maximize the use of their money with serious considerations of effectiveness and efficiency, conventional spending produces a tendency to overspend.[206]

Reality-based budgeting is an improved method over conventional budgeting because it encourages careful spending by scrutinizing whether funds are going to the most effective sources possible.[207] By taking an objective look at each agency, legislatures are given more clear-cut choices and made acutely aware of how their decisions impact taxes and spending.[208] Additionally, the outcomes are improved, as wasteful agencies are eliminated and only the most efficient and effective agencies receive funds.[209] By using tangible metrics in assessing the performance of agencies, legislators are better equipped to predict future success and areas of improvement for each program.[210] The focus becomes how to maximize every dollar, and thus the results reflect lower spending with higher value returned.[211]

Reality-based budgeting would discourage the use of budgetary gimmicks to bridge budgetary gaps.[212] Conventional budgeting allocates money based on previous allocations and then bridges the resulting shortfall.[213] In order to meet balanced budget requirements for that year, states may engage in one-time asset

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[205] Williams, *supra* note 75. Legislators may also unwittingly give funding to agencies with directly conflicting policy activities. *Id.* (explaining that legislators may give money to agencies that devote resources in direct conflict with that lawmakers' policy views).

[206] *Id.* (stating that conventional budgeting "virtually guarantees overspending"); *see* Pfiffner et al., *supra* note 79, at 28 (arguing that conventional budgeting is not the best way to spend taxpayer dollars).

[207] *See* David Osborne & Peter Hutchinson, *Budgeting for Outcomes: How Government Can Deliver More Value for the Tax Dollars Citizens Spend*, IQ REP., Nov. 2004, at 1, 8–9.

[208] *See* Pfiffner et al., *supra* note 79, at 28.

[209] *See* Osborne & Hutchinson, *supra* note 207, at 9. For example, in the Baltimore CitiStat initiative, Mayor Martin O'Malley required every department head to give direct personal feedback every two weeks and held department heads accountable for solving problems, improving performance, and saving money. Robert D. Behn, *What All Mayors Would Like to Know About Baltimore's CitiStat Performance Strategy*, IBM CTR. FOR BUS. OF GOV'T 7, 23 (2007), *available at* http://web.pdx.edu/~stipakb/download/PerfMeasures/CitiStatPerformanceStrategy.pdf, *archived at* http://perma.cc/DSE5-LLPL The results were immediate: in the first year the initiative saved the city $13.6 million. *Id.* at 38. The process also saves by eliminating unnecessary layers of organization. *Id.* at 7. For example, the Iowa Department of Transportation saved $35 million annually when it eliminated offices and garages, while maintaining core services by cross-training employees to handle a greater range of tasks. *Id.* at 38.

[210] Williams, *supra* note 75. In addition to tools like quantitative metrics, legislators can also use tools like organizational strategy maps, where an organization outlines what it aims to do and how it plans on achieving its goals, to determine if that organization will be able to support the state's goals. *See* Shayne C. Kavanagh et al., *Anatomy of a Priority-Driven Budget Process*, GOV'T FIN. OFFICERS ASS'N 8, http://www.gfoa.org/anatomy-priority-driven-budget-process, *archived at* http://perma.cc/5BZL-RLYS.

[211] *See* Williams, *supra* note 75.

[212] *See* Pfiffner et al., *supra* note 79, at 27–28; Williams, *supra* note 75.

[213] *See* Williams, *supra* note 75 (arguing that conventional budgeting leads to an allocation strategy where few questions are asked, inevitably leading to overspending).

sales, fund-shifting, redefining the terms of the requirements, and other budgetary gimmicks.[214] With reality-based budgeting, however, the focus shifts away from the spending-first-and-balancing-after model to funding only the most effective programs.[215] In that way, reality-based budgets rely heavily on a constant awareness of the finite resources available and on allocating those resources carefully.[216]

Additionally, reality-based budgeting discourages agencies from manipulating data to garner a greater share of the budget.[217] Since the emphasis shifts from what a program needs to what the program can bring to the table, there is less opportunity for agencies inflate their data.[218] Reality-based budgeting focuses on careful spending and long-term viability, eliminating the need for quick, short-term budgetary balancing gimmicks.[219]

Although steps can be taken to put the force of law behind reality-based budgeting, lasting change can only come with legislative support.[220] Some critics object to reality-based budgeting, arguing that it is impossible to force budget-makers to adhere to it.[221] Balanced budget provisions, however, *can* be amended to include procedural stages that echo reality-based budgeting ideals, such as the creation of metrics by which to measure the effectiveness of agencies.[222] Nonetheless, reality-based budgeting cannot be effective unless the deci-

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[214] *See id.* (stating that states turn to short-term solutions, including gimmicks, to reconcile budget deficits after the allocations have been decided).

[215] *See* Osborne & Hutchinson, *supra* note 207, at 8–9; Pfiffner et al., *supra* note 79, at 27–28; Williams, *supra* note 75.

[216] Pfiffner et al., *supra* note 79, at 30. The effectiveness of this strategy is demonstrated by Washington State, which eliminated a $2.8 billion deficit in a year using this strategy. *Id.*

[217] Luppino-Esposito, *supra* note 150 (outlining some of the most egregious recent examples of this practice); *see* Eucalitto, *supra* note 10 (highlighting some examples of this frequently used budgetary gimmick). Although reality-based budgeting may be criticized for shifting the emphasis from data regarding what agencies need to data regarding how agencies performed, in fact, the data required for reality-based budgeting is often objective and easily independently verifiable. *Cf. Priorities and Performance Based Budgeting (PPBB)*, NEVADA.US 4, http://www.leg.state.nv.us/Session/77th2013/Budgets/PPBB.pdf, *archived at* http://perma.cc/UE23-T5T3 (last updated Dec. 18, 2014) (displaying the kinds of statistics and data used by the state of Nevada in evaluating various agencies according to reality-based budgeting). Additionally, the government, not the agencies, sets the goals, thus reducing the opportunity for manipulation. *See id.* (showing the objectives set by the governor and the data used to judge various agencies by those goals in Nevada).

[218] *See* Williams, *supra* note 75.

[219] *See* Purdy, *supra* note 111 (arguing that Washington State's reality-based budget model uses only the most effective ways to address priorities and the most cost-efficient and operationally efficient ways of achieving desired results).

[220] *See* Pfiffner et al., *supra* note 79, at 27 (recommending that the legislature adopt a reality-based budgeting model).

[221] *See* Williams, *supra* note 75 (stating that "lazy" legislators prefer funding special interest groups without inquiring more about the effectiveness of that money).

[222] *See id.* Although the likelihood of passing such provisions may be in question, it should be noted that support for this budgeting technique has come from both sides of the aisle. *Id.* The Demo-

sion-makers earnestly adhere to its ideals.[223] To that end, producing reality-based-budgeting-inspired provisions encourages such thinking and may foster the legislative mindset necessary to make reality-based budgeting an actual reality.[224]

With reality-based budgeting on the rise at the local level, it is time for states to correct their budgetary issues by doing the same.[225] Since 2012, over sixty large and mid-sized communities, including cities such as Sacramento and Cincinnati, began using reality-based budgeting with effective and scalable results.[226] Furthermore, it has proven workable on a statewide level.[227] Thus far, most states have been slow to adopt this new method because of the creation of competition amongst agencies for resources.[228] Yet, this very competition can be used to drive agencies to achieve better results.[229] Additionally, states have balked at the notion of spending time and money to evaluate budgets in such a way every year, which has led new reality-based budget proposals to provide for multi-year or cyclical reviews to save the time and money.[230] No matter what the final form may be for reality-based budgeting, with increasing political pressure for states to adopt this form of budgeting, states will soon need to

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cratic Leadership Council has pushed for outcome-based budgeting techniques akin to reality-based budgeting to "[maximize] the value of each hard-earned dollar." *Id.*

[223] *See generally* De Pena, *supra* note 181 (asking state legislators to take the lead and adopt the priority-based budgeting mindset in their decision-making).

[224] *See* Osborne & Hutchinson, *supra* note 207, at 8–9; Pfiffner et al., *supra* note 79, at 27–28; Williams, *supra* note 75.

[225] *See* CTR. FOR PRIORITY BASED BUDGETING, *supra* note 125.

[226] *See id.* (stating that the Center for Priority Based Budgeting has helped many of these communities install reality-based budgeting techniques, and describing the results as "effective," "scalable," and "repeatable"); *see also* SHIREY, *supra* note 125, at 2 (identifying the implementation of reality-based budgeting as one of Sacramento's successes for 2012); *Priority-Driven Budgeting*, CITY OF CINCINNATI, http://www.cincinnati-oh.gov/finance/budget/priority-driven-budgeting/, *archived at* http://perma.cc/FXZ4-9Y2L (last visited Jan. 19, 2015) (describing the priority-based budgeting plan of the City of Cincinnati).

[227] *See* Pfiffner et al., *supra* note 79, at 30 (describing the state of Washington's use of the system to eliminate a multi-billion dollar budget); Ronald Snell, *NCSL Fiscal Brief: Zero-Base Budgeting in the States*, NAT'L CONFERENCE OF STATE LEGISLATORS 5–6 (Jan. 2012) http://www.ncsl.org/documents/fiscal/zbb2012.pdf, *archived at* http://perma.cc/4EQQ-BR77 (discussing the use and success of a similar budgeting technique in New Hampshire and Idaho).

[228] *Cf.* Snell, *supra* note 227, at 3 (listing reasons why states have rejected proposals for alternatives to conventional budgeting in the past).

[229] *See* Williams, *supra* note 75.

[230] *See* Snell, *supra* note 227, at 4. Performing reality-based budgeting annually can prove to be an unwieldy endeavor and cost even the smallest state government billions to perform the task every year. *See id.* (describing the expenses in the similar budgeting plan of Oklahoma and Florida). Yet, using cyclical structures to relieve the financial pressures of annual budgeting, combined with streamlining the process by keeping the focus on the basic government goals can make the project a manageable endeavor. *See* De Pena, *supra* note 181 (describing the ways reality-based budgeting can be a more manageable endeavor than an annual line-by-line approval budget system); *cf.* Snell, *supra* note 227, at 4 (stating that many states looking for alternatives to conventional budgeting also look to cyclical budgeting timelines to make the process more affordable).

reevaluate their budgetary processes in the face of growing pressure and the ineffectiveness of alternatives.[231]

B. States Should Adopt Cyclical-Based Budgeting

In addition to reality-based budgeting, states should also adopt cyclical models for their budgetary timelines.[232] To that end, states should base balanced budget requirements around multiyear periods that are based on the economic cycle.[233] Subsection 1 explains how having a cyclical-based structure would shift legislative focus to long-term economic sustainability.[234] Subsection 2 then discusses how a cyclical-based structure prevents the use of many budgetary gimmicks.[235]

1. Cyclical-Based Budgeting Places a Greater Emphasis on Long-Term Fiscal Sustainability

The current annual model of budgeting creates problems because it forces budget-makers to look only at the next year, rather than into the future.[236] The one-time sale of state assets that help cover shortfalls for the next year, but end up costing the state millions in generated revenue in the long run, exemplifies one of the problems with the annual model.[237] It also leads to poor management of rainy-day funds because they do not serve immediate financial needs.[238] Fi-

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[231] *See, e.g.*, S. 33, 151st Gen. Assemb., Reg. Sess. (Ga. 2011); H. 7076, 2012 Leg., Jan. Sess. (R.I. 2012); *see also* Snell, *supra* note 227, at 6 (listing seventeen states of varying sizes, including Iowa, Kansas, Rhode Island, South Carolina, California, Georgia, Illinois, and Ohio that have had serious interest in alternative budgeting proposed legislation).

[232] Geier & Beljean, *supra* note 104, at 5 (crediting the cyclical structure as a model for successful budgeting and citing its success in Switzerland).

[233] *See* SWISS CONST. art. 26 (providing a template for how a cyclical system would operate); Geier, *supra* note 102, at 12–13 (describing a possible model of a cyclically-based budget structure); *see also* Federal Finance Administration, *supra* note 106, at 97 (showing how the Swiss model of cyclical structure last for approximately three years).

[234] *See infra* notes 236–249 and accompanying text.

[235] *See infra* notes 250–255 and accompanying text.

[236] *See Beyond the Annual Budget: Global Experiences with Medium Term Expenditure Frameworks*, THE WORLD BANK 7 (2013), *available at* http://www.imf.org/external/np/seminars/eng/2013/fiscalpolicy/pdf/brumby.pdf, *archived at* http://perma.cc/Y8E8-A42T. (explaining the shortcomings of annual budgeting, including short-sightedness).

[237] *See* Costello et al., *supra* note 168, at 7 (explaining the damaging effects of selling state assets to cover current budget issues, including the loss of future funds).

[238] *See* Gamage, *supra* note 11, at 767 (describing states' poor management of rainy-day funds); *see also* Brian Galle & Kirk J. Stark, *Beyond Bailouts: Federal Tools for Preventing State Budget Crises*, 87 IND. L.J. 599, 612 (2012) (arguing that when lawmakers are not obligated to contribute to rainy-day funds, they tend not to do so).

nally, the annual model also tends to aggravate recessions, as inflexibility in deficit spending leads to fiscal tightening that worsens economic conditions.[239]

The cyclical model resolves many of these problems by focusing on long-term economic sustainability.[240] Because a cyclical model would allow states to take on debt during a recession, states would no longer feel the pressure to make poor long-term decisions for short-term gain.[241] For example, the strategy of selling state assets for a quick infusion of cash would no longer be necessary because states would have more breathing room during recessions and could instead use the future income from those assets to repay deficits during an economic boom.[242] The cyclical model also creates a buffer for the uncertainty associated with unplanned revenues and expenditures that frequently occur throughout the fiscal year.[243] Finally, the cyclical model promotes better management of rainy-day funds.[244]

Although the cycle-based structure helps alleviate many of the problems facing state budgets, it comes at a price.[245] One problem is that legislators have difficulty adequately preparing for the cyclical changes, as it is challenging to predict when such change is coming.[246] Although it is impossible to remove this

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[239] David A. Super, *Rethinking Fiscal Federalism*, 118 HARV. L. REV. 2544, 2611 (2005) (echoing the macroeconomic theory that raising taxes and cutting spending during a recession, common traits of the annual model, are not an effective means of recovery); John T. Harvey, *The Great Recession: How We Got Here (and How to Get Out)*, FORBES, Oct. 7, 2011, http://www.forbes.com/sites/johntharvey/2011/10/07/the-great-recession/, *archived at* http://perma.cc/7RED-5NFA (explaining that heavy government spending is the best method of economic recovery during recession); *see* N.J. STAT. ANN. § 52:27BBB-44.1 (West 2010 & Supp. 2014) (providing economic stimulus packages to revitalize economically depressed areas).

[240] *See* Gamage, *supra* note 11, at 766 (explaining the difference between how politicians handle their state's budget and the economic realities surrounding it and concluding that proper state use of surpluses by saving them for later use during downturns would be a successful method of solving state volatility problems).

[241] *See, e.g.*, Gamage, *supra* note 11, at 766 (explaining states' problems with effectively creating and using rainy-day funds); Costello et al., *supra* note 168, at 7 (outlining the dangers of states' one-time sales of assets, including the loss of future funds and selling the property far beneath its worth); Eucalitto, *supra* note 10 (outlining various examples of state officials manipulating the calendar to undermine balanced budget requirements).

[242] *See* Costello et al., *supra* note 168, at 7 (explaining the harmful effects of selling state properties to cover annual shortfalls).

[243] *See* Geier, *supra* note 102, at 20 (noting how the cyclical method is more effective than an annual model in reacting to unexpected revenues and expenditures).

[244] *See* Geier & Beljean, *supra* note 104, at 121 (explaining how the Swiss cyclical structure was able to rein in the temptation to spend extra funds during economic booms and instead put them aside for the future); *see also Governor Gregoire's Rainy Day Fund Proposal: Potential Benefits and Serious Limitations*, WASH. STATE BUDGET & POLICY CTR. (Jan. 2007), http://budgetandpolicy.org/reports/governor-gregoire2019s-rainy-day-fund-proposal-potential-benefits-and-serious-limitations/pdf_version, *archived at* http://perma.cc/4YHH-VMPX (explaining the connection between rainy-day funds and temporary cyclical deficits).

[245] *See* Gamage, *supra* note 11, at 756.

[246] Jon David Vasché & Brad Williams, *Revenue Volatility in California*, 36 ST. TAX NOTES 35, 40 (2005) (explaining the difficulty of predicting economic cycle movements); *see* Gamage, *supra*

uncertainty, the cyclical model does promote behavior that allows for lawmakers to prepare for the future changes, whenever they occur.[247] Despite this shift to longer term planning, budgetary revisions can give legislators the freedom needed to react to urgent short-term needs whenever necessary.[248] Continuing to contribute to rainy-day funds while dampening the effects of a recession through spending would be a much more effective and practical balanced-budget mechanism that will strengthen and provide stability to the state's economy.[249]

2. Cyclical-Based Systems Prevent Gimmicks

The cyclical-based structure can also remove some of the budgetary gimmicks that the annual structure permits states to abuse.[250] States would no longer be able to transfer funds from one year to another to create the illusion of a balanced budget.[251] Since there is no longer pressure to balance the budget annually, lawmakers could focus less on moving money around and more on dealing with what the financial status of the state actually looks like over the course of the cycle.[252] The cyclical structure also discourages putting off payments until the following year.[253] This tactic would be less useful as the postponement would often last for a substantial period of time in order to cross into the next cycle.[254] Thus, cyclical budgeting is preferable to an annual system because it discourages state budgetary gimmicks that mask the very problems balanced budget requirements seek to prevent.[255]

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note 11, at 756 (hypothesizing that politicians would have prepared differently had they known about the impending economic downturns of 2000 or 2007); *see also* Ronald K. Snell, *State Experiences with Annual and Biannual Budgeting*, NAT'L CONFERENCE OF STATE LEGISLATORS 6–7 (Apr. 2011), http://www.ncsl.org/documents/fiscal/BiennialBudgeting_May2011.pdf, *archived at* http://perma.cc/B6UC-N4YF (describing the problem between a biennial budget and an annual budget lying in the difference between predicting the next twelve months and the next thirty, as biennial predictions had twice as high of an average error than annual predictions).

[247] *See* Geier & Beljean, *supra* note 104, at 7 (explaining how cyclical models can help encourage the proper use of funds for future planning during boom times).

[248] Snell, *supra* note 246, at 7.

[249] *See* Harvey, *supra* note 239 (arguing for the necessity of increased governmental spending for economic recession).

[250] *See supra* notes 159–176 and accompanying text.

[251] *See* Eucalitto, *supra* note 10 (describing the "calendar games" employed by states, such as shifting funds from year to year to create the illusion of balance).

[252] *See* Gamage, *supra* note 11, at 766 (explaining the difference between how politicians handle their states budget and the economic realities surrounding it).

[253] *See* ITA, *The Truth About Balanced Budgets*, *supra* note 12, at 31 (discussing states' habits of failing to pay vendor bills to aid budget balancing); *see also* Teachers Ret. Bd. v. Genest, 65 Cal. Rptr. 3d 326, 350–51 (Ct. App. 2007) (deciding that the government's failure to pay into schoolteacher pension fund warranted a remedy of $7,000).

[254] *See* ITA, *The Truth of Balanced Budgets*, *supra* note 12, at 26.

[255] *See generally id.* (describing the litany of balanced budget issues caused by manipulating the annual system, such as fund shifting and payment delays).

C. Stricter Enforcement Models Could Discourage Harmful Behavior By Lawmakers

Although reality-based budgeting and cyclical models can ameliorate many of the problems faced by state budgets, stricter enforcement is also necessary to ensure responsibility and accountability in the budgetary process.[256] A major problem with state balanced budget requirements is the lack of effective enforcement mechanisms to make politicians take them seriously or to discourage politicians from abusing the process through gimmicks.[257] By amending current balanced budget requirements to have an independent state agency provide oversight and impose individual liability for egregious conduct, states can better ensure that politicians will respect the budgetary process.[258] Subsection 1 describes how an independent state agency could enforce balanced budget provisions.[259] Subsection 2 offers an additional enforcement mechanism in personal liability provisions for lawmakers who violate the requirements.[260]

1. Independent State Agencies Should Oversee and Enforce State Budgetary Processes

By granting certain powers to independent state agencies, legislatures can create enforcement measures to discourage budgetary abuses.[261] Having an independent body provide recommended interpretations of the language of the balanced budget provisions can discourage lawmakers from manipulating terminology, such as fund-sweeping and redefining revenue to include debt.[262] It can also provide persuasive authority for courts if interpretative questions arise.[263] Furthermore, arming independent state agencies with investigative powers can promote transparency in the budget process and discourage strategies detri-

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[256] *See infra* notes 261–284 and accompanying text.

[257] *See, e.g.*, ITA, *The Truth About Balanced Budgets*, *supra* note 12, at 27 (detailing the "word games" played by states to avoid or undermine the spirit of balanced budget requirements); Eucalitto, *supra* note 10 (outlining various examples of state officials manipulating the calendar to undermine balanced budget requirements); *The Section 25 Budget "Loophole*,*" supra* note 170, at 7 (providing an example of a state failing to pay Medicaid payments to health care providers to create appearance of balanced budget).

[258] *See infra* notes 261–284 and accompanying text.

[259] *See infra* notes 261–275 and accompanying text.

[260] *See infra* notes 276–284 and accompanying text.

[261] *See* Fabbrini, *supra* note 134, at 24–28 (examining how the presence of the Court of Justice of the European Union was an effective mechanism for driving the acceptance of stronger balanced budget standards for many member states).

[262] *See* ITA, *The Truth About Balanced Budgets*, *supra* note 12, at 27–28 (explaining how politicians rely on the vagaries of the requirements to utilize these gimmicks).

[263] *See* Wein v. State, 347 N.E.2d 586, 589 (N.Y. 1976) (utilizing similar persuasive authority when considering the comptroller's report in balance budget provision interpretation issue).

mental to taxpayers.[264] Finally, granting an independent agency sanctioning power over the state should it continuously fail to meet balanced budget requirements creates force behind such provisions.[265]

Some states, by giving existing agencies more power, would create effective budget oversight mechanisms.[266] For example, California's State Auditor allows state employees and anyone seeking to engage in business with the state to report significant waste or misuse of state resources, including funds and property, as well as misconduct, incompetency, or inefficiency by state employees.[267] Currently, however, California's policy stops short of investigating members of the legislative branch, including budget-makers.[268]

Despite some difficulties with enacting this kind of enforcement, because it requires legislative approval, the current political atmosphere provides opportunities to overcome such challenges.[269] Predictably, legislators would be reluctant

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[264] *See* Dirk Niepelt & Cristoph A. Schaltegger, *The Swiss Debt Brake—Ten Years On*, 149 SWISS J. OF ECON. & STAT. 111, 111–12 (2013) (noting the important role that public awareness and pressure have played in increasing political accountability, which has acted as an effective enforcement mechanism in the Swiss system).

[265] *See* Eucalitto, *supra* note 10 (concluding that the strength of balanced budgetary requirements are only as powerful as the willingness of the politicians to obey them). Such sanctioning power could be crafted after models that provide for multiple chances to meet certain budgetary standards before automatic sanctions are administered. *See* Fiscal Compact, *supra* note 129, art. 8 (affording member states multiple chances to meet budgetary standards before sanction is applied). In addition to providing increased incentives to meet the standards, the threat of sanctions would highlight failures and increase political pressure for results. *See* Frank Marty & Martin Weder, *Debt Brake: A Mechanism for Sustainable Success*, 18 ECONOMIESUISSE 1, 2 (2012) (crediting the public support for the program as its main enforcement mechanism); Klaus Wille & Matthias Wabl, *Swiss 'Debt Brake' Generates Surplus as Greece Battles Deficit*, BLOOMBERG, Apr. 29, 2010, http://www.bloomberg.com/news/2010-04-29/swiss-debt-brake-generates-surplus-as-greek-deficit-leads-to-junk-rating.html, *archived at* http://perma.cc/JVW4-AF33 (arguing that the direct democracy system is a key way of keeping politicians accountable).

[266] *See, e.g.*, *Mission and Philosophy*, CAL. STATE AUDITOR (2013), http://www.bsa.ca.gov/aboutus/mission, *archived at* http://perma.cc/WQ2G-2UCH; *The Budget Process*, IND. STATE BUDGET AGENCY, http://www.in.gov/sba/2372.htm, *archived at* http://perma.cc/EQJ7-AFUQ (last visited Jan. 19, 2015).

[267] *Frequently Asked Questions*, CAL. STATE AUDITOR (2013) http://www.bsa.ca.gov/hotline/faqs, *archived at* http://perma.cc/7B85-AL9Z.

[268] *Id.* (stating definitively that the California State Auditor does not investigate members of the legislative branch of the government). Even without investigating the legislative branch, the California State Auditor found hundreds of thousands of misspent taxpayer money, including an agency spending $64,666 on circumventing bidding procedures and an agency manager costing the state $12,379 by using state vehicles for personal use. Patrick McGreevy, *California Taxpayers' Money Wasted, Misused, State Auditor Finds*, L.A. TIMES, Jan. 19, 2011, http://articles.latimes.com/2011/jan/19/local/la-me-0119-waste-20110119, *archived at* http://perma.cc/F6HL-APYX.

[269] *Cf.* Duncan Murray, *Term Limits for Congress: How Can We Do It*, STANDARD-EXAMINER (Nov. 5, 2013), https://web.archive.org/web/20131110232700/http://www.standard.net/stories/2013/11/01/term-limits-congress-how-we-can-do-it, *archived at* https://perma.cc/9SFD-GXV7 (using the question of Congressional term-limits to illustrate the difficulty in convincing legislators to limit themselves in a significant way). By expanding its jurisdiction to include investigating budgetary misconduct amongst legislators, an independent agency could become an effective force. *See* Fabbrini, *su-*

to limit themselves in such a drastic measure.[270] Although such a roadblock is daunting, it is not insurmountable.[271] Emanating from the recession, the current political atmosphere is charged with a debate about the fiscal responsibility of government.[272] With the movement for stronger budgetary accountability, the time is ripe for such change.[273] Additionally, the referendum process could be used to effectuate increased budgetary enforcement.[274] Although there are practical challenges to creating an independent agency charged with oversight, such change is critical to ensuring that balanced budgeting requirements are met.[275]

2. Imposing Personal Liability on State Officials Could Deter Egregious Budgetary Misconduct

States adopting and enforcing sanctions against individual authorities that knowingly committed egregious misconduct in the budgetary process would also be effective in discouraging abuses.[276] The threat of personal liability would discourage politicians from abusing the budgetary process to better their public image.[277] The most serious and obvious budgetary abuses, such as intentionally

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pra note 134, at 9–18 (showcasing the effectiveness of independent budgetary enforcement in the EU). One major problem would be the delicate separation of powers between the legislative and executive branches that many states have set for their budgetary process, and requiring these enforcement methods runs the risk of upsetting the balance and could require statutory or even constitutional amendments to become permissive. *See generally* NCSL Executive Summary, *supra* note 37 (outlining some of the separation of powers concerns between the executive and legislative branches in state governments regarding the budgetary process). *But see* Judy v. Schaefer, 627 A.2d 1039, 1050–51 (Md. 1993) (holding that the executive branch's expanding role into the budgetary process did not constitute a violation of separation of powers).

[270] *See* Murray, *supra* note 269.

[271] *See* Nichols, *supra* note 19, at 584 (predicting that public demand for increased fiscal responsibility will lead to changes that were previously thought impossible, such as a federal balanced budget amendment).

[272] *See* Greenblatt, *supra* note 19 (reporting on the new effort by Republicans to get a balanced budget amendment in the federal Constitution in response to public outcry about overspending).

[273] *See id.*

[274] *See* Stephen Shapiro, *The Referendum Process in Maryland: Balancing Respect for Representative Government with the Right to Direct Democracy*, 44 U. BALT. L.F. 1, 8 (2013) (explaining the benefits of a referendum process, including passing publicly popular bills that the legislature could not handle and giving a public check on the legislative action). *See generally* Peter Siegenthaler, *Lessons from the History and Challenges for the Future of the Debt Brake: A Note*, 149 SWISS J. OF ECON. & STAT. 137 (2013) (arguing that public legitimization is necessary for a successful balanced budget system and credits the Swiss direct democracy procedure as a model for success).

[275] *Cf.* Fabbrini, *supra* note 134, at 21–28 (exploring how enforcement mechanisms were a critical part of the EU's fiscal policy).

[276] *See* George A. Bermann, *Integrating Governmental and Officer Tort Liability*, 77 COLUM. L. REV. 1175, 1197 (1977) (discussing the benefits of personal liability of public officials for egregious misconduct).

[277] *See id.* (identifying the deterrence capabilities of personal liability for public officials).

failing to provide promised pensions and gross misuse of directed funds, would be deterred.[278]

This solution comes with potential drawbacks.[279] One problem is the difficulty in getting such provisions enacted and enforced.[280] Another problem is that it limits the ability of state actors to perform necessary duties in extraordinary circumstances.[281] Specifying the type of conduct that would be covered under the provision can ameliorate this problem.[282] Specifically, in order to give officials flexibility, the personal responsibility sanction should protect only against the more egregious budgetary misconduct, such as gross budgetary mismanagement and continuous serious abuse of budgetary gimmicks.[283] Although not a perfect solution, this enforcement mechanism can help prevent the outer bounds of misconduct and provide relief for egregious behavior from public servants.[284]

CONCLUSION

Despite the presence of balanced budget requirements, states have struggled to maintain balanced budgets. As most states face multi-billion dollar deficits, they simply have been unable to bridge those gaps. These major shortfalls are symptoms of underlying fundamental problems in states' balanced budget requirements. Lack of enforcement, rampant reliance on budgetary gimmicks, and encouragement of shortsighted "quick fixes" undermine the goal of balanced budget requirements: to achieve long-term fiscal responsibility and sustainability.

Implementing several structural changes to these balanced budget requirements can ameliorate many of these problems. Greater use of reality-based

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[278] *See id.* (arguing that personal liability works best as a deterrent when it is applied against wanton and willful misconduct).

[279] *See* Evan J. Mandery, *Qualified Immunity or Absolute Impunity? The Moral Hazards of Extending Qualified Immunity to Lower-Level Public Officials*, 17 HARV. J.L. & PUB. POL'Y 479, 498 (1994) (discussing the risks of extending personal liability for public officials, such as overdeterrence).

[280] *See* Murray, *supra* note 269. This is a similar problem, with a similar solution, to the problem facing independent state agency enforcement discussed above. *See supra* notes 261–275 and accompanying text (outlining the strategy and limitations of independent state agency enforcement of balanced budget requirements).

[281] *See* Lauren Oren, *Immunity and Accountability in Civil Rights Litigation: Who Should Pay?* 50 U. PITT. L. REV. 935, 937 (1989) (discussing how the common law roots of qualified immunity for public officials was justified by a desire to allow them to perform their jobs fearlessly and independently since they were spared personal liability for honest mistakes).

[282] *See* Bermann, *supra* note 276, at 1197 (concluding that personal liability for public officials serves its purposes best for incidents of gross, willful misconduct).

[283] *See The Section 25 Budget "Loophole," supra* note 170, at 7 (providing an example of egregious misconduct of public officials refusing to adhere to promises to pay pensions); CAMPAIGN FOR TOBACCO-FREE KIDS, *supra* note 1, at i (discussing the rampant misuse of funds from the 1998 Tobacco Settlement).

[284] *See* Bermann, *supra* note 276, at 1197.

budgeting can encourage better budgetary decision-making and eliminate many incentives for common abuses. Cyclical-based timelines prioritizes long-term planning over shortsightedness and provide states with the flexibility necessary to respond to the natural fluctuations of economic cycles. Finally, stricter enforcement mechanisms, such as independent state agency watchdogs and imposing personal liability on public officials for egregious abuse, can encourage proper behavior by budget authorities. By implementing these changes, states can speed up their economic recoveries and set themselves up for future success. These improvements can tilt the scales in their favor so that they can finally achieve balance.

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