

CALTAX COMMENTARY: IT'S TIME TO IMPROVE CALIFORNIA'S BUDGET PROCESS



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Within the next 25 days, the Legislature must pass the 2015-16 state budget. During the past two decades, the process by which the budget was developed and brought to a vote became less and less open and transparent. At one time, the budget had to be approved on the floor of each house before being sent to conference committee, and was open for any member to amend. Only the differences between the Senate and Assembly versions were the subject of the conference committee.

Since the passage of Proposition 25, the 2010 ballot measure that allows the budget and trailer bills to be passed by a majority vote of the Legislature, the budget process has become even worse, and there has been an increase in the number of “budget trailer bills” with major policy issues that should be in stand-alone bills.

In a June 21, 2012 editorial, *The Sacramento Bee* said the “state budget process has become a sham,” and added that Proposition 25 had done nothing to increase transparency. Surprisingly, recent actions have violated the language of Proposition 25, as an unpublished court decision (see below) found that the Legislature passed budget trailer bills that, at the time budget passed in June, were identified only by number in the budget, and were devoid of content.

The budget process cries out for reform. Calls for budget process reform have come from a variety of sources – some legislators, the press, interested parties and groups, including CalTax. Every year, there seems to be a horror story about the Legislature voting on a budget trailer bill in the wee hours of the morning, before the bill is even in print.

First, let’s acknowledge the positives in the current development of the budget and trailer bills. The budget subcommittees in each house provide analyses of issues in the budget, and conduct public hearings on the issues. In addition, the budget conference committee is open to the public. Proposition 25 also encourages passage of an on-time budget (by June 15).

Yet, the final budget and the budget trailer bills often are cobbled together in private meetings, and brand-new issues are placed into bills via last-minute amendments. Lawmakers and the public have little time, if any, to review the end product.

Even worse, secrecy sometimes has been the intent of past legislative leaders who didn’t want the public – or even other legislators – to know what was in the budget and related trailer bills before they passed.

Actions speak louder than words, and because of actions in the past four years, key reforms should be enshrined in the California Constitution. However, each of the reforms suggested below could be implemented this year without constitutional or statutory requirements. With new leadership this year in both the Assembly and Senate, there is hope that they will break from their predecessors' policies and make an effort to improve transparency.

Budget process reforms for consideration:

- **Establish a Constitutional “Time in Print” Rule.** Transparency is the key to meaningful budget reform. A “days in print” requirement would provide the public and interested parties time to review budget and trailer bill provisions and let their representatives know how they feel about them. In essence, this is the heart of representative government in a democracy. For this very purpose, the drafters of California’s Constitution placed a “30-days-in-print” requirement in the document for “introduced” bills (Article IV, Section 8). However, the “gut-and-amend” process undermines the purpose of this requirement. Assembly Republican Leader Kristen Olsen has proposed a new constitutional provision, in [ACA 1](#), to require all bills to be in print for at least three days before a vote can be taken. That measure was taken under submission by an Assembly budget subcommittee. It is not known if there will be any further action to moving the measure forward.
- **Require That an Independent Analysis of Budget and Trailer Bills Be Made Available Prior to a Vote.** While transparency is a key reform, having an independent analysis of budget and trailer bills is equally important. If the proposals are written in Latin, or bureaucratic gobbledygook, or numbers and amendments are not easily understood, the public will not be informed about what is going on. Currently, the floor analyses of bills are very sketchy, particularly with respect to the budget. The legislative counsel’s digests, again particularly of the budget bill and trailer bills, do not provide the information needed to understand the proposals. The Legislative Analyst’s Office, after spending weeks analyzing the governor’s January budget and May revision, provides no analysis of the budget developed by the conference committee – the budget that is most important, as it is the one that actually will be voted on.
- **Require Each House to Approve a Real Budget Bill Before the Budget Is Sent to Conference Committee.** As mentioned above, this was the way the budget was developed for many years, and it worked well. It has two major advantages: It involves all members of the Legislature in the development of the budget, and it limits the last-minute provisions that have never seen the light of day from being added in conference committee.
- **Limit Budget Trailer Bills Narrowly to a Single Subject, and Only to Items of Appropriation in the Budget That Are Identified in the Trailer Bill.** The state constitution already limits bills to a single subject (Article IV, Section 9), yet budget trailer bills are jammed with many different provisions, and some have

only the remotest connection to an ambiguous title, such as “general government.” This forces legislators to vote for new provisions of law they might not agree with, because they are packaged with other provisions that are agreeable. Also, some of the trailer bill provisions have no relationship – or a very remote relationship – to the budget.

- **Prohibit Majority-Vote Budget Trailer Bills That Are Amended After Passage of the Budget or After June 30, Whichever Is Later.** Currently, budget trailer bills are being passed well after the passage of the budget, just to avoid placing an urgency clause in a bill, which would make the bill a two-thirds-vote bill. The effect is to do away with the constitutional provisions that require a two-thirds vote for urgency bills – those that take effect immediately upon being signed by the governor, rather than on the next January 1 (Article IV, Section 8(d)). In a January 23, 2013, decision (later unpublished), the Third District Court of Appeal ruled against late-blooming budget trailer bills. According to the court, the majority-vote provision of Article IV, Section 12(e) is limited to the budget at the time the budget is passed. The court said that a “transparent loophole in the budget process” would be created if the Legislature could “identify nothing more than a bill number in the budget bill” and, after passage of the budget, add substance and an appropriation to the spot bill and pass it by majority vote. This loophole would “defeat the electorate’s intent” that to qualify for majority-vote passage as a “bill providing for an appropriation related to the budget,” the bill must “pinpoint the idea or concept at the time the budget is passed” (*Howard Jarvis Taxpayers Association v. Debra Bowen, Secretary of State and the Legislature*).

The Legislature has been pushing for public transparency for several years, from requiring that local governments adhere to the Public Records Act regardless of costs, to forcing private businesses to disclose certain tax and expenditure information. If transparency is good enough for those entities, shouldn’t some of the most important laws enacted in each session of the Legislature (the budget and trailer bills) have similar transparency? There is an opportunity to make changes now and it should not be missed.