

New York needs real budget reform

But the Constitutional amendment proposed on the November ballot isn't it

By Robert B. Ward

This November, voters across New York State will be asked to approve an amendment to the state Constitution's provisions regarding state finances. Supporters of the amendment say it will force Albany to enact better and more timely budgets.

In reality, the proposed amendment would do the opposite. It would give the Legislature much more

The proposed amendment gives the Legislature strong incentives never to pass an on-time budget.

power over state spending whenever it fails to adopt a new budget by the start of a new fiscal year. Such a powerful incentive for delay would virtually guarantee late budgets every year. And history suggests that giving the Legislature more influence over the budget

will lead to higher spending and taxes — thus making it even harder for New York to compete for the jobs we need.

There are ways to improve New York State's budget process. The Constitutional change on this year's ballot, however, is the wrong approach.

A broken budget process?

On March 31, 1984, the Legislature completed action on the state budget for the fiscal year that began the following day. It was the last time New Yorkers would

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- ◆ **The Legislature is asking voters to approve a constitutional amendment that would make major changes in New York's state budget process.**
- ◆ **The proposal would reward the Legislature with more budgetary power in any year it fails to enact the spending plan on time.**
- ◆ **Al Smith, Franklin Roosevelt and other great New Yorkers developed our current system to combat uncontrolled spending. The amendment would undo their work.**
- ◆ **Albany already spends more than it can afford, year in and year out. The proposal would lead to still higher spending, and thus higher taxes.**
- ◆ **New York does need real budget reform. But that would mean putting more limits, rather than fewer, on spending and taxes.**

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The amendment attempts to pull off a dramatic, if hidden, shift of budget-making authority from the executive to the legislative branch of state government.

see an on-time state budget for more than two decades.

In 2004, as Albany faced the 20th straight year of late budgets, the Legislature felt public pressure to *do something*. Citizens, business groups, academics and editorial writers were complaining about New York State's "dysfunctional" Legislature. Legislators responded with a proposed Constitutional amendment, and implementing legislation, that supporters said would forever end late budgets. Among other things, the proposed changes would:

- Create an automatic contingency budget, based on the previous year's plan, to take effect if the Legislature has not completed action on the governor's proposal by the start of a new budget year.
- Shift the start of the fiscal year from April 1 to May 1, starting in 2007, and extend the 2006-07 fiscal year by one month to April 30, 2007.
- Establish a new Independent Budget Office to advise the Legislature, its fiscal committees and their staffs on fiscal matters.
- Require that all spending associated with the Health Care Reform Act be included in the budget.

There is a case to be made for each of those proposals, and none of them would represent a radical change in New York State's fiscal practices.

Just the opposite is true, though, of the most important element in the Legislature's "budget reform" amendment: a dramatic, if hidden, shift of budget-making authority from the executive to the legislative branch of state government.

Today's Constitution: A gift from the Progressive era

The existing Constitutional provisions that the proposed amendment would supersede date to the 1920s. Throughout the first quarter of the 20th Century, Progressive-era reformers in New York and other states said legislatures had failed to budget responsibly. Legislators thought of the budget not as a "budget" — a balanced plan of revenues and spending — but simply a list of spending items. As current Chief Judge Judith Kaye was to write in a 2004 Court of Appeals decision, "legislative budgeting produced wasteful pork barrel spending without any reasonable assessment of relative budget priorities."

Among reform-minded New Yorkers of a century ago, creating a powerful governor's office was a bipartisan imperative. Republican Governor Charles Evans Hughes first proposed a more carefully planned, centralized approach to budgeting. Another Republican, Henry Stimson, provided what may have been the best summary of why a strong budgetary role for the chief executive is important: "We cannot expect economy in the future unless some one man will have to lie awake nights to accomplish it. The only way to stop waste is for the people of the state to know whose fault it is if waste occurs."

Two Democratic governors won the fight to enact and defend what became known as the Executive Budget process. Governor Al Smith, who had previously served as Speaker of the Assembly, led the effort to win voter approval of the Constitutional changes in 1927. And in 1929, when the Legislature attempted to take back much of its historic power over spending, Governor Franklin Delano Roosevelt took the case to court, and won a decision that preserved the key

Table 1

How High Is Up?

What the Legislature has added to the governor's budget even without the new powers it is seeking in this amendment

Spending added by the Legislature to the Executive Budget, by fiscal year.

State Fiscal Year	Added Spending <i>(in millions of \$)</i>
FY 1996-97	\$ 1,475
FY 1997-98	1,080
FY 1998-99	700
FY 1999-2000	870
FY 2000-01	1,700
FY 2001-02	700
FY 2002-03	690
FY 2003-04	2,173
FY 2004-05	1,396
FY 2005-06	1,341
10-year total	\$12,125

Source: Office of the State Comptroller, Annual Reports on Enacted State Budgets

But the Legislature already has significant budget powers — including the power to add spending and override a governor's vetoes.

budget-making role for future chief executives.

The resulting Article VII of the state Constitution gives the governor the power to shape the budget debate by initiating both appropriation bills, which provide amounts of spending on specific programs, and “language” bills that make any necessary changes to relevant state laws such as the education-aid or Medicaid formulas.

Supporters of this year's proposed amendment argue that Article VII, as interpreted by the courts, gives the governor too much authority. But the Constitution also, appropriately, gives the Legislature significant power. It can delete or reduce any appropriation proposed by the governor; when both the Senate and Assembly pass a budget bill with such changes, those provisions become law with no further recourse for the governor. The Legislature can also add items of appropriation, subject to the governor's veto.

When the governor does reject legislative additions, the Legislature can override the veto with a two-thirds vote in each house — as it did just two years

In times of fiscal difficulty for New York State, the Legislature has repeatedly forced through hundreds of millions of dollars in spending increases that the state could not afford.

ago with billions of dollars' worth of new spending and taxes.

Supporters of the amendment also claim it's essential if the state is to provide adequately for vital public services, such as taking proper care of the needy. The reality is precisely the opposite: Only by setting clear priorities among thousands of spending demands will state leaders be able to make sure that the most vital needs are addressed. Governors are more likely than individual lawmakers to focus on big priorities; legislators generally feel they must respond to as many parochial requests as possible.

Franklin Delano Roosevelt, whose presidency was marked by dramatic expansion of federal programs for the needy, enacted state-level versions of such services while serving as governor. If not for the strong executive-budget system in Albany, he said, "the great improvements to which the state of New York is committed could not be carried out economically or within a reasonable time, if indeed they could be undertaken at all."

Time to abandon the Smith-Hughes-FDR reforms?

The proposed amendment on this November's statewide ballot would reverse key elements of the Smith-Hughes-FDR Constitution.

It provides that, if the Legislature has not acted on the governor's budget bills by the start of the fiscal year, it cannot do so at all — those bills become dead letters. The Legislature then is empowered to draft its own appropriation bills, becoming the "constructor" of the budget (as the Court of Appeals has described the role currently assigned to the governor).

Such a change might seem esoteric to most New Yorkers. But Governor Smith said "the very essence" of the budget system he helped create was "to prevent legislative juggling with the appropriation bills."

Given that, the proposed amendment would lead to a significant change for the worse in New York State's fiscal policies.

Time after time, when the state has faced major budget problems, governors have proposed responsible fiscal plans that would bring Albany's spending more closely in line with its resources. Governor Carey did so on taking office in 1975, and throughout his eight years as the chief executive. Governor Cuomo did it in 1991, and Governor Pataki, in 1995 and 1996.

In each of those years, the Legislature pushed back, forcing hundreds of millions of dollars in unaffordable spending increases. And if the governor's position had been weaker, spending — and New York's chronic fiscal problems — would have grown still more.

The same has happened in recent years, even as Albany has struggled to achieve a balanced budget in the wake of the national recession and the 9/11 terrorist attacks.

As the table on Page 3 and the graph on the back page show, the Legislature added \$1.3 billion to Governor Pataki's spending proposal this year, and \$1.4 billion the year before. In the past 10 years, the Legislature has added a total of more than \$12 billion to the governor's Executive Budget proposals. In good times and bad, in other words, the Legislature always wants to spend more.

The nature of the job makes spending discipline virtually impossible for most legislators. After all, individual lawmakers hear thousands of requests for more spending every year — and few, if any, demands for a balanced budget. The Legislature’s tendency to accede to as many spending demands as possible is a key reason New York leads the nation in both taxes and public debt.

Governor Pataki has called the proposed amendment “deeply flawed.” Among other things, the Governor has noted, the proposal gives the Legislature an incentive to delay budget adoption every year.

The Division of the Budget has warned that the proposed amendment could “disrupt” state finances and force a return to annual short-term borrowing.

Attorney General Spitzer has also criticized the plan.

“The history of the budget process in the state suggests there is greater fiscal prudence, fiscal discipline and greater accountability when you have an executive who is solely responsible for leading the budget process,” he said in recent comments to the news media.

The proposed amendment also effectively eliminates a budget “reform” that the Legislature enacted just a few years ago — the provision that, once a new fiscal year starts, legislators not receive paychecks until they adopt the final budget.

Then what would real reform look like?

New York State does have very real fiscal problems. But this year’s proposed Constitutional amendment does not address them.

Legislators insist they need more time to properly review the governor’s spending proposal. That may be true. State government is much bigger and more complicated than it was decades ago, when the current timetable for budget action was created.

But giving the Legislature more time to review and act on the budget does not require changing the Constitution. The fiscal year is set by the State Finance Law, and can be changed at any time by action of the Legislature and the governor (or by approval of the Legislature and override of a gubernatorial veto).

Even the argument that the governor has too much power, because of the December 2004 Court of Appeals decision in *Pataki v. Silver*, is less than meets the eye. As described above, no budgetary measure can be enacted without approval from the Legislature.

Then there is the political reality that surrounds adoption of each year’s budget. Every governor wants voters to perceive his or her action on the budget in positive (or, at least, not in negative) terms. Members of the Legislature, and the pro-spending organizations whose goals they often support, are fully capable of taking their case to the people, to build pressure on a governor to negotiate changes to a proposed Executive Budget. Unions representing health-care workers and teachers have spent millions of dollars on advertising campaigns precisely to create such pressure. If anything, the success of such political-style campaigns is an indication that we need *stronger* Constitutional protection against out-of-

Individual lawmakers hear thousands of requests for more spending every year — and few, if any, demands for a balanced budget.

Even with high taxes and enormous debt, Albany is always on the brink of going broke. Do we want to make the situation worse?

control spending.

The Legislature proved this year it can adopt the budget on time (or very close to it) under the current Constitutional arrangement. That was no surprise. After all, the basic rules governing New York State's finances took effect in 1928, and the state budget was adopted on time virtually every year for the next half-century.

The real budget problem in New York

The most obvious problem with New York State's budget is that it spends too much.

That's not just a value judgment regarding our highest-in-the-nation taxes. Our state debt, too, is far too high, as three state comptrollers — Republican Edward V. Regan in the 1980s, Democrat H. Carl McCall in the 1990s, and incumbent Democrat Alan G. Hevesi — have shown in report after report.

But the best indicator of how badly New York State manages its finances may be this: *Even with high taxes and enormous debt, Albany is always on the brink of going broke.*

Every year, when the Legislature adds hundreds of millions of dollars, it has to find the money somewhere. When the economy is booming, that's generally not a problem — strong economic growth produces a flood of new revenue.

But often, the Legislature wants to spend money the state simply does not have. (Governors have been guilty of this, too — but governors virtually always want to spend less than the Legislature does.) When that happens, Albany looks to reserve funds, public-authority accounts, and elsewhere for “one-shot” revenues to balance the budget.

Thus, the state budget is almost never in long-term balance. Currently, the state Budget Division projects a budget gap of \$2.9 billion for the fiscal year starting next April 1. Every enacted budget in recent years has created a lingering gap in the succeeding year — meaning that, every year, the state spends more than it can really afford.

The proposed amendment would worsen that tendency. Besides giving legislators more power over spending, and thus increasing the chances of out-year gaps, *it does not even require the Legislature to enact a balanced budget in the current year.*

Real budget reform would increase, rather than decrease, the chances for honest-to-goodness, long-term budget balance without higher taxes. Making such provisions part of the Constitution should be the goal of today's budget reformers. It could even be done while satisfying the Legislature's desire to have more say over where, exactly, New York State spends its taxpayer dollars.

Is it time for taxpayer rights in New York?

Across the country, state leaders and citizen activists are working to enact Taxpayer Bill of Rights (or TABOR) laws, to limit runaway state spending and tax increases. Unfortunately, to date there is no such move in New York — the state

where taxpayers most need a bill of rights.

Our workers and businesses labor under extraordinarily high income taxes, property taxes, sales taxes – and the highest overall tax burden in the country. If other states are working to limit taxes, how can New York’s leaders justify a choice to keep the status quo?

The idea of a legal limit on state spending is not new. Governor Cuomo and the Legislature enacted a spending cap in 1990. It linked increases in spending to the increase in personal income. But the cap was too roomy to actually impose any limit on spending, and it was allowed to expire in 1992.

More than 20 states already have some tax or spending limit in place. One that *The Wall Street Journal* calls “a national model” is that of Colorado, which limits the growth of most state revenue to inflation plus population. That allows spending to grow with the costs of goods and services, and the number of people served by government. (Federal aid, which is not covered by the limit, allows for additional spending increases.)

In New York, such an approach would have allowed Governor Pataki and the Legislature to increase spending by roughly \$2 billion this year. That would have meant substantial increases in aid to education, Medicaid, transportation and other programs. It would not have provided increases as big as Albany’s powerful pro-spending lobbies wanted, and got; the actual increase in the budget was \$4.9 billion. But it would have made the state budget more responsibly balanced, and eased pressure for future tax increases. Saving \$2.9 billion *this year* would effectively wipe out *next year’s* projected deficit.

For decades, one of the state’s bad fiscal habits has been to shift service responsibilities, expenses and debt to its public authorities, governmental agencies that operate largely outside the regular state budget. To prevent further fiscal manipulation, a real limit on state spending would have to apply to the public authorities as well as operations already included in the official state financial plan.

If New Yorkers had Constitutional assurance that their elected representatives would not overspend, then the Legislature might reasonably argue for a revised balance of power in Albany’s decisions on *how* to spend the taxpayers’ dollars. One potential approach is contained in a separate proposed amendment to which the Senate and Assembly gave first passage this year. If approved by both houses a second time in 2007, the proposal could go to voters that November. It would require the governor, when making changes to state law as part of a budget proposal, to place such changes in non-appropriation bills. The effect would be to make it easier for the Legislature to resist statutory changes to which it objects.

The Constitution should also require that each year’s enacted budget be balanced; currently, it only requires the governor to submit a balanced fiscal plan. And the Constitutional limits on state debt should be made significantly tighter.

Whether through Constitutional amendment or in state law, Albany should require of itself the same sort of taxpayer-friendly disclosure it requires of school districts. Districts must send taxpayers an annual notice of the percentage increase in spending and taxes, compared to inflation. Why shouldn’t Albany hold itself to the same standard?

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