

Hi, this is Chris Micheli, a principal with the Sacramento governmental relations firm of Aprea & Micheli and an Adjunct Professor at McGeorge School of Law in its Capital Lawyering program. Thanks for joining today's podcast where I talk about the balanced budget requirement in California.

First, does California actually have a balanced budget requirement? The short answer is, yes. I'll try to explore some of the interesting aspects of this requirement. Historically, there have been two provisions of the California Constitution that were interpreted to require a balanced budget.

The first is existing Article IV, Section 12(a). Remember Article IV of the Constitution deals with the Legislature. In Section 12, it deals with the budget and here is where it requires the governor to submit a budget by January 10th.

That provision also contains a clause that, "If recommended expenditures exceed estimated revenues, then the Governor shall recommend the sources from which those additional revenue should be provided." Basically, folks deemed this provision to require the Governor to submit a balanced budget.

Then in Article XVI, Section 1, it limits the Legislature's ability to incur debt of more than \$300,000 unless there is a two-thirds vote of both houses and a measure placed on the statewide ballot for adoption by the electorate. That was also viewed as, this is essentially why it has to be a balanced budgets adopted by the Legislature as well.

Then since 1983, there's been Government Code Section 13337.5, which states it a little bit more clearly. It says, "The annual budget act shall not provide for projected expenditures in excess of projected revenues."

"Further, it is the intention of the Legislature that in the event, after enactment of the Budget Act, revised estimates of expected revenues or expenditures, or both, show that expenditures will exceed estimated revenues, expenditures should be reduced or revenues increased, or both, to ensure that actual expenditures do not exceed actual revenues for that fiscal year."

A clear statement by statute of a balanced budget requirement, but this issue was put to bed with an amendment to Article IV, Section 12, which added a new subdivision (g). Again, this is Article IV, the State Constitution Section 12(g).

It says, "For the '04-'05 fiscal year, or any subsequent fiscal year, thereafter," obviously, "the Legislature may not send to the Governor for consideration, nor may the Governor sign into law, a budget bill that would appropriate from the General Fund for that fiscal year, a total amount," blah, blah, blah.

That is in excess of monies received, in other words, it would exceed General Fund revenues for that fiscal year. The limitation is on both branches of government.

This balanced budget requirement in Section 12(g) is obviously a constitutional mandate and it applies equally to both the legislative and executive branches of state government.

In other words, the Legislature is prohibited from sending the Governor an unbalanced budget and, of course, the Governor is prohibited from signing an unbalanced budget.

Now, this at least leads me to two questions. One is how do we determine if it's balanced, and who gets to decide if the budget is actually balanced?

We have the Constitution, again, Article IV, Section 12(g) and we have an important appellate court decision out of the Third District Court of Appeal. That determination is actually made based upon what's contained in the budget bill itself.

In other words, the budget bill contains both the listing of expenditures as well as the estimate of revenues for the forthcoming fiscal year. What does that mean in practical terms? It means that the determination of balanced is up to the legislative and executive branches of government.

This point of view is confirmed by the Third DCA in 2014, in the Steinberg v. Chiang decision. Yes, that is Darrell Steinberg, the then President Pro Tem of the Senate, and John Perez, the then Speaker of the Assembly versus then Controller John Chiang.

Basically, what happened was that the previous Controller Chiang argued that, based upon his audit capacity, he could determine whether the budget was balanced. For purposes of the 2011 state budget, Controller Chiang claimed that it was not balanced at the time that the Legislature sent the budget bill to the Governor.

That's because there were several bills that had yet to be gotten to the Governor's desk for signature, that the budget was premised upon. The appellate court unanimously disagreed with the Controller in a three to zero decision. By the way, the trial court also disagreed. What happened?

Both the trial court and appellate court concluded that the Legislature complies with the constitutional mandate for a balanced budget when it enacts a budget bill in which revenue estimates for the coming fiscal year exceed the total amount of existing appropriations for the fiscal year, any new appropriations proposed for the fiscal year and any transfers to the reserve fund.

At that point, the court said the Controller does not have any authority to make an independent assessment of the budget bill that it is or is not balanced. Here, the Legislature sought and they received a declaratory judgment by the appellate court, that, again, the Legislature complies with the balanced budget requirement in the Constitution when it passes the budget bill, where appropriations don't exceed the Legislature's estimate of revenues that will be received.

Basically, the Legislature sets forth its revenue estimate in the state budget bill and that estimate is essentially not subject to review by any constitutional officer or probably even a court. Again, specifically the appellate court in Steinberg v. Chiang, determined that the Controller simply cannot second guess these revenue estimates.

Here, the court said, "All that the balanced budget provision prescribes for the budget bill is inclusion of a legislative estimate of revenues made as of the date of the budget bill's passage, that exceeds the combination of the total amount of appropriations in the bill, the existing appropriations for the upcoming fiscal year, and transfers to the reserve fund."

Then the appellate court and Steinberg went on to explain that, "The balanced budget provision does not prescribe the manner in which the Legislature must calculate this estimate, the nature of the revenue sources that the Legislature may or may not take into account or any role for the Controller in overseeing the estimate."

In addition, the court ruled that the Constitution does not require the budget trailer bills to be enrolled and sent to the Governor for signature, before the constitutional deadline of June 15th. In other words, the June 15th deadline only applies to the budget bill itself.

Interestingly, the court also expressly addressed the issue of estimates on the receipt of federal funds. The court said, "Indeed, the Controller overlooks the extent to which California balances its budget with federal funds. The authorization for which is entirely outside the control of the Legislature and the predicted total of which bespeaks more legislative artistry than accounting skills."

Even in this case, where the Controller alleged that there might be phantom revenues included in the budget bills estimate, the appellate court ruled that, "It would amount to inappropriate judicial interference with the prerogatives of a coordinate branch of government to endorse the Controller's intrusion into the budget process under the guise of interpretation."

Now, that probably leads you to a final question of, if the Controller, for example, can't question it, how do we enforce the balanced budget requirement? The court addressed that question.

They said, "The Governor can enforce it either through vetoing the budget as a whole or exercising his power to veto line items to bring appropriations into balance with accurate revenues."

Essentially, the Legislature enacts what it designates to be a balanced budget, and the check is brought forth by the Governor by using his or her use of the blue pencil. A line-item veto authority.

It also means that the Legislature can adopt a "balanced budget" based upon its determination that federal funds or new revenues are forthcoming, even though there is no guarantee of receipt of those funds.

Thanks for joining me in this look at California's balanced budget requirement. I hope you enjoyed it. Thanks for joining.