



# Ohio Legislative Service Commission

## Bill Analysis

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### H.B. 369

131st General Assembly  
(As Introduced)

**Reps.** Koehler and Hambley, Maag, Boose, Thompson, Romanchuk

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## BILL SUMMARY

- Adopts the Compact for a Balanced Budget (see **COMMENT 1**).
- Declares that every state enacting, adopting, and agreeing to be bound by the Compact intends to ensure that their respective legislature's use of the power to originate a Balanced Budget Amendment under Article V of the U.S. Constitution will be exercised conveniently and with reasonable certainty as to its consequences.
- Applies to Congress for the calling of a convention for proposing amendments limited to the subject matter of proposing, for ratification, the Balanced Budget Amendment.<sup>1</sup>
- Specifies the nature of and rules for the convention for proposing amendments that Congress is asked to call. Specifically declares that the convention must be organized, construed, and conducted as a body exclusively representing and constituted by the several states<sup>2</sup> (see **COMMENT 2**).
- Prohibits states that are members of the Compact from participating in the convention unless Congress calls the convention in accordance with the Compact.<sup>3</sup>
- Proposes text for the Balanced Budget Amendment to the U.S. Constitution (see below).

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<sup>1</sup> Compact for a Balanced Budget, Article V.

<sup>2</sup> Compact for a Balanced Budget, Article VII.

<sup>3</sup> Compact for a Balanced Budget, Article VIII.

- Petitions Congress to refer the Balanced Budget Amendment to the states for ratification by three-fourths of their respective Legislatures<sup>4</sup> (see **COMMENT 3**).
- Specifies compact membership obligations and withdrawal procedures<sup>5</sup> (see **COMMENT 4**).
- Specifies that each state is entitled to one delegate as its sole and exclusive representative at the convention organized by Congress to propose amendments to the U.S. Constitution. And declares that each state's chief executive officer is appointed in an individual capacity as the states representative.<sup>6</sup>
- Requires that each state's delegate publicly take an oath or affirmation to act strictly in accordance with the Compact, and sets forth other limitations and instructions for delegates.<sup>7</sup>
- Specifies the nature of a Compact Commission, authorizes each state to appoint one member to the commission, and requires the commission to appoint and oversee a Compact Administrator.<sup>8</sup>
- Declares that the state prospectively ratifies the Balanced Budget Amendment when Congress effectively refers the Balanced Budget Amendment to the states for ratification<sup>9</sup> (see **COMMENT 5**).
- Declares that legislation adopting and agreeing to be bound by the Compact must be deemed to waive, repeal, supersede, or otherwise amend and conform all the rules, policies or procedures to allow for the effectiveness of the Compact to the fullest extent permitted by the state's constitution.<sup>10</sup>
- Declares that the convention, unless otherwise specified by Congress in its call, must be in Dallas, Texas and commence proceedings at 9 a.m. central standard time on the

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<sup>4</sup> Compact for a Balanced Budget, Article V, Section 2.

<sup>5</sup> Compact for a Balanced Budget, Article III.

<sup>6</sup> Compact for a Balanced Budget, Article VI.

<sup>7</sup> Compact for a Balanced Budget, Article VI.

<sup>8</sup> Compact for a Balanced Budget, Article IV.

<sup>9</sup> Compact for a Balanced Budget, Article IX.

<sup>10</sup> Compact for a Balanced Budget, Article X, Section 1.



sixth Wednesday after the latter of the effective date of Article V of the Compact or the enactment date of the Congressional resolution calling the convention.<sup>11</sup>

- Includes other contractual provisions that set forth organizational and operational requirements for the Compact and establish other obligations upon Compact members.
- Declares an emergency.

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## **CONTENT AND OPERATION**

### **Balanced Budget Amendment**

The proposed Compact for a Balanced Budget includes the complete text for a proposed Balanced Budget Amendment to the U.S. Constitution. The proposed amendment essentially sets forth the following:

Total outlays of the United States government may not exceed total receipts of the United States government at any point in time unless the excess of outlays over receipts is financed exclusively by debt issued in strict conformity with the Balanced Budget Amendment.

Outstanding debt may not exceed authorized debt, which initially must be an amount equal to 105% of the outstanding debt on the Balanced Budget Amendment's effective date. Authorized debt must not be increased above the initial amount unless the increase is first approved by the legislatures of the several states as provided for in the Compact.

Occasionally, Congress may increase authorized debt to an amount in excess of the initial amount only if it first publicly refers to the legislatures of the several states an unconditional, single subject measure proposing the amount of the increase, in the form as provided by law, and the measure is publicly and unconditionally approved by a simple majority of the legislatures of the several states, in the form as provided respectively by state law; provided that no inducement requiring an expenditure or tax levy may be demanded, offered, or accepted as a quid pro quo for approval. If approval is not obtained within 60 calendar days after referral then the measure must be deemed disapproved and the authorized debt remains unchanged.

Whenever the outstanding debt exceeds 98% of the debt limit, the U.S. President must enforce the limit by publicly designating specific expenditures for impoundment

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<sup>11</sup> Compact for a Balanced Budget, Article X, Section 2.



in an amount sufficient to ensure outstanding debt does not exceed the authorized debt. The impoundment must become effective in 30 days, unless Congress first designates an alternate impoundment of the same or greater amount by concurrent resolution, which must become immediately effective. The Compact also declares that failure of the President to designate or enforce the required impoundment is an impeachable misdemeanor, and that any purported issuance or incurrence of any debt in excess of the debt limit is void.

No Congressional bill that provides for a new or increased general revenue tax may become law unless approved by a two-thirds roll call vote of the whole number of each House of Congress. However, this requirement does not apply to any bill that provides for a new end user sales tax which would completely replace every existing income tax levied by the U.S. government; or for the reduction or elimination of an exemption, deduction, or credit allowed under an existing general revenue tax.

Under the Compact, "debt" means any obligation backed by the full faith and credit of the U.S. government; "outstanding debt" means all debt held in any account and by any entity at a given point in time; "authorized debt" means the maximum total amount of debt that may be lawfully issued and outstanding at any single point in time under the Balanced Budget Amendment; "total outlays of the U.S. government" means all expenditures of the U.S. government from any source; "total receipts of the U.S. government" means all tax receipts and other income of the U.S. government, excluding proceeds from its issuance or incurrence of debt or any type of liability; "impoundment" means a proposal not to spend all or part of a sum of money appropriated by Congress; and "general revenue tax" means any income tax, sales tax, or value-added tax levied by the U.S. government excluding imposts and duties.

The Balanced Budget Amendment is immediately operative upon ratification, self-enforcing, and Congress may enact conforming legislation to facilitate enforcement.

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## COMMENT

1. The U.S. Constitution prohibits any state, without the consent of Congress, from entering into any agreement or compact with another state.<sup>12</sup>

2 Article V of the U.S. Constitution reads in part "Congress . . . on the application of the Legislatures of two thirds of the several states, shall call a Convention . . ."<sup>13</sup> This language suggests it would be up to Congress to determine the make-up and

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<sup>12</sup> U.S. Constitution, Article I, Section 10.

<sup>13</sup> U.S. Constitution, Article V.



organization of the convention. The Compact for a Balanced Budget is proposing to specify the make-up and organization of the convention.

3. Article V of the U. S. Constitution sets forth that Congress may propose the "Mode of Ratification" as either "the Legislatures of three fourths of the several states, or by Conventions in three fourths thereof." The Compact for a Balanced Budget is proposing to specify the mode of ratification.

4. The U.S. Supreme Court has held that an interstate compact cannot be unilaterally nullified. Once having entered into a compact, a state may not unilaterally withdraw from the compact.<sup>14</sup> The Compact for a Balanced Budget proposes the circumstances and the manner in which a member state may withdraw from the Compact.

5. The Compact for a Balanced Budget includes a provision that declares that the state prospectively ratifies the Balanced Budget Amendment when Congress effectively refers the Balanced Budget Amendment to the states for ratification. This may be an unlawful delegation of legislative authority under Ohio's Constitution.<sup>15</sup>

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## HISTORY

ACTION	DATE
Introduced	10-19-15

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<sup>14</sup> *West Virginia ex rel. Dyer et al. v. Sims, State Auditor*, 341 U.S. 22 (1951).

<sup>15</sup> Ohio Const. Article II, Sections 1 and 26.

