S T A T E O F N E W Y O R K

2391--A

2011-2012 Regular Sessions

I N S E N A T E

January 19, 2011

Introduced by Sen. LIBOUS -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- recommitted to the Committee on Judiciary in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY

proposing amendments to article 7 of the constitution, in relation to the authorization of debt in times of public emergency, a limit on the total amount of state debt, the establishment of a debt management board and refunding of state debts

Section 1. Resolved (if the Assembly concur), That section 10 of article 7 of the constitution be amended to read as follows:

S 10. In addition to the above limited power to contract debts, the state may contract debts to repel invasion, suppress insurrection, [or] defend the state in war, [or to suppress forest fires] OR TO RESPOND TO ANY OTHER EMERGENCY STEMMING FROM A DISASTER INCLUDING, BUT NOT LIMITED TO, A DISASTER CAUSED BY AN ACT OF TERRORISM; but the money arising from the contracting of such debts shall be applied for the purpose for which it was raised, or to repay such debts, and to no other purpose whatever. NO DEBT SHALL BE CONTRACTED PURSUANT TO THIS SECTION WITHOUT THE CONCURRENCE OF THE GOVERNOR, THE COMPTROLLER, THE ATTORNEY GENERAL AND TWO-THIRDS OF THE MEMBERS ELECTED TO EACH HOUSE OF THE LEGISLATURE; AND THE GOVERNOR SHALL HAVE POWER TO SUMMON THE COMPTROLLER AND THE ATTORNEY GENERAL AND CONVENE THE LEGISLATURE IN EXTRAORDINARY SESSION FOR THE PURPOSE OF CONSIDERING SUCH EMERGENCY DEBT. AT THE TIME, DATE AND PLACE APPOINTED BY THE GOVERNOR, NO OTHER SUBJECT SHALL BE ACTED UPON UNTIL EACH, IN THE FOLLOWING ORDER, HAS GIVEN THEIR APPROVAL OR ANY ONE THEREOF HAS GIVEN THEIR DISAPPROVAL OF THE DEBT PROPOSED BY THE GOVERNOR TO ENABLE THE STATE TO RESPOND TO SUCH EMERGENCY: THE GOVERNOR, THE COMPTROLLER, THE ATTORNEY GENERAL, THE SENATE AND THE ASSEMBLY. THE PROPOSAL OF SUCH EMERGENCY DEBT SHALL BE IN THE FORM OF A RESOLUTION PREPARED AND SUBMITTED BY THE GOVERNOR TO THE COMPTROLLER, THE ATTORNEY GENERAL, THE

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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SENATE AND THE ASSEMBLY, WHO SHALL APPROVE OR DISAPPROVE SUCH RESOLUTION WITHOUT ANY CHANGES THERETO; AND IF SUCH RESOLUTION IS APPROVED BY THE GOVERNOR, THE COMPTROLLER, THE ATTORNEY GENERAL, AND TWO-THIRDS OF THE MEMBERS ELECTED TO EACH HOUSE OF THE LEGISLATURE, THEN SUCH LAW OR LAWS SHALL BE ENACTED AS MAY BE NECESSARY OR ADVISABLE TO IMPLEMENT SUCH APPROVAL.

S 2. Resolved (if the Assembly concur), That section 11 of article 7 of the constitution be amended to read as follows:

S 11. 1. Except the debts or refunding debts specified in sections 9, 10 and 13 of this article, no debt shall be hereafter contracted by or [in] ON behalf of the state, unless such debt shall be authorized by law PURSUANT TO THIS SECTION, for some single work or purpose, to be distinctly specified therein. DEBT SUBJECT TO THE PROVISIONS OF THIS SECTION SHALL BE ANY DEBT OR OBLIGATION SUPPORTED IN WHOLE OR IN PART BY ANY FINANCING ARRANGEMENT WHEREBY THE STATE AGREES, WHETHER BY LAW, CONTRACT, OR OTHERWISE, TO MAKE PAYMENTS WHICH ARE TO BE USED, DIRECTLY OR INDIRECTLY, FOR THE PAYMENT OF PRINCIPAL, INTEREST, OR RELATED PAYMENTS ON INDEBTEDNESS INCURRED OR CONTRACTED BY THE STATE ITSELF FOR ANY PURPOSE, OR BY ANY STATE AGENCY, MUNICIPALITY, INDIVIDUAL, PUBLIC AUTHORITY OR OTHER PUBLIC OR PRIVATE CORPORATION OR ANY OTHER ENTITY FOR STATE CAPITAL OR OPERATING PURPOSES OR TO FINANCE GRANTS, LOANS OR OTHER ASSISTANCE PAYMENTS MADE OR TO BE MADE BY OR ON BEHALF OF THE STATE FOR ANY PURPOSE. IF THE STATE AGREES TO MAKE FUTURE REVENUES FROM A SPECIFIC STATE SOURCE AVAILABLE FOR THE PURPOSE OF SUPPORTING DEBT OF ANY MUNICIPALITY, INDIVIDUAL, PUBLIC OR PRIVATE CORPORATION OR ANY OTHER ENTITY, SUCH DEBT SHALL BE CONSIDERED TO BE A DEBT FOR THE PURPOSE OF FINANCING A STATE GRANT, LOAN OR OTHER ASSISTANCE PAYMENT AND SHALL BE SUBJECT TO THE PROVISIONS OF THIS SECTION. THE PROVISIONS OF THIS SECTION SHALL APPLY (I) WHETHER OR NOT THE OBLIGATION OF THE STATE TO MAKE PAYMENTS IS SUBJECT TO APPROPRIATION OR IS OTHERWISE CONTINGENT, OR (II) WHETHER OR NOT DEBT SERVICE IS TO BE PAID FROM A REVENUE STREAM TRANSFERRED BY THE STATE TO ANOTHER PARTY THAT IS RESPONSIBLE FOR MAKING SUCH PAYMENTS.

[No] 2. EXCEPT AS PROVIDED IN SUBDIVISION 5 OF THIS SECTION, NO such law shall take effect until it shall, at a general election, have been submitted to the people, and have received a majority of all the votes cast for and against it at such election nor shall it be submitted to be voted on within three months after its passage BY THE LEGISLATURE nor at any general election when any MORE THAN FOUR other [law or any bill] PROPOSITIONS shall be submitted to be voted for or against.

3. DURING THE FISCAL YEAR BEGINNING IN CALENDAR YEAR 2021 AND IN EVERY FISCAL YEAR THEREAFTER, NO PROPOSITION CONCERNING SUCH A LAW SHALL BE SUBMITTED TO THE PEOPLE FOR APPROVAL, AND NO SUCH LAW SHALL BE ENACTED PURSUANT TO SUBDIVISION 5 OF THIS SECTION, UNLESS THE TOTAL PRINCIPAL AMOUNT OF DEBT TO BE AUTHORIZED BY SUCH LAW, TOGETHER WITH THE TOTAL PRINCIPAL AMOUNT OF DEBT EITHER ALREADY OUTSTANDING, OR AUTHORIZED TO BE INCURRED PURSUANT TO THIS SECTION, SHALL BE EQUAL TO OR LESS THAN FIVE PERCENT OF THE TOTAL PERSONAL INCOME OF THE STATE. SUCH PERSONAL INCOME IS TO BE DETERMINED BY THE DEBT MANAGEMENT BOARD ESTABLISHED PURSUANT TO SUBDIVISION 4 OF THIS SECTION IN ACCORDANCE WITH SUCH COMMONLY ACCEPTED METHOD OR METHODS OF MEASURING THE ECONOMIC ACTIVITY OF THE STATE AS SHALL BE PRESCRIBED BY A LAW, WHICH SHALL BE ENACTED NOT LATER THAN JUNE 30, 2014, AND AS MAY BE AMENDED FROM TIME TO TIME NOT INCONSISTENT WITH THIS SECTION. DEBT SUBJECT TO THE LIMIT IMPOSED BY THIS SECTION SHALL INCLUDE ALL DEBT SUPPORTED BY FINANCING ARRANGEMENTS DESCRIBED IN SUBDIVISION 1 OF THIS SECTION BUT SHALL NOT INCLUDE THE DEBTS SPECIFIED IN SECTIONS 9, 10 AND 13 OF THIS ARTICLE OR DEBT PREVIOUSLY AUTHORIZED BY

LAW BUT NOT INCURRED BECAUSE OF THE SUBSEQUENT REPEAL OF SUCH AUTHORIZATION OR THE SUBSEQUENT PROHIBITION OF SUCH DEBT PURSUANT TO SUBDIVISION 10 OF THIS SECTION.

4. A DEBT MANAGEMENT BOARD, CONSISTING OF THE GOVERNOR, THE COMPTROLLER AND A THIRD PERSON JOINTLY SELECTED BY THE GOVERNOR AND THE COMPTROLLER, SHALL BE ESTABLISHED BY LAW. THE DEBT MANAGEMENT BOARD SHALL ANNUALLY DETERMINE, WITHIN THE LIMITS ESTABLISHED PURSUANT TO SUBDIVISION 3 OF THIS SECTION, A DEBT AFFORDABILITY LEVEL WHICH SHALL PRESCRIBE FOR EACH FISCAL YEAR AND FORECAST FOR THE TWO SUCCEEDING FISCAL YEARS THE TOTAL AMOUNT OF ADDITIONAL DEBT THAT MAY BE INCURRED AND THE TOTAL DEBT SERVICE OBLIGATIONS THAT MAY BE UNDERTAKEN BY THE STATE WITHOUT OVERBURDENING PRESENT OR FUTURE GENERATIONS. THE EXECUTIVE BUDGET SUBMITTED PURSUANT TO SECTION 2 OF THIS ARTICLE FOR THE ENSUING FISCAL YEAR AND THE BUDGET BILLS SUBMITTED PURSUANT TO SECTION 3 OF THIS ARTICLE FOR SUCH FISCAL YEAR SHALL NOT PROPOSE ANY ADDITIONAL DEBT OR NEW DEBT SERVICE EXPENSE THAT WOULD CAUSE TOTAL DEBT OR TOTAL DEBT SERVICE EXPENSES TO EXCEED THE DEBT AFFORDABILITY LEVEL PRESCRIBED FOR SUCH FISCAL YEAR, AND NEITHER THE GOVERNOR NOR THE LEGISLATURE SHALL, BY LAW, CONTRACT, OR OTHERWISE, PROVIDE FOR ANY ADDITIONAL DEBT OR NEW DEBT SERVICE EXPENSE THAT WOULD CAUSE TOTAL DEBT OR TOTAL DEBT SERVICE EXPENSES TO EXCEED SUCH LEVEL WITHOUT THE UNANIMOUS APPROVAL OF THE DEBT MANAGEMENT BOARD. DURING THE FISCAL YEAR BEGINNING IN 2017 AND IN EVERY FISCAL YEAR THEREAFTER, THE DEBT MANAGEMENT BOARD SHALL NOT ESTABLISH ANY DEBT AFFORDABILITY LEVEL WHICH WOULD RESULT IN A TOTAL PRINCIPAL AMOUNT OF DEBT IN EXCESS OF THE LIMIT ESTABLISHED PURSUANT TO SUBDIVISION 3 OF THIS SECTION.

5. DURING ANY FISCAL YEAR, A LAW OR LAWS AUTHORIZING DEBT IN THE COMBINED AGGREGATE AMOUNT OF ONE BILLION DOLLARS, OR THREE PERCENT OF THE LIMIT DETERMINED PURSUANT TO SUBDIVISION 3 OF THIS SECTION, WHICHEVER IS GREATER, MAY BE ENACTED WITHOUT BEING SUBMITTED FOR APPROVAL BY THE PEOPLE. HOWEVER, IN NO EVENT SHALL DEBT INCURRED IN FISCAL YEARS BEGINNING IN 2021 AND THEREAFTER PURSUANT TO SUCH LAW OR LAWS RESULT IN A TOTAL PRINCIPAL AMOUNT OF DEBT IN EXCESS OF THE LIMIT DETERMINED PURSUANT TO SUBDIVISION 3 OF THIS SECTION OR THE DEBT AFFORDABILITY LEVEL ESTABLISHED PURSUANT TO SUBDIVISION 4 OF THIS SECTION.

6. ALL DEBT SUBJECT TO THE PROVISIONS OF THIS SECTION (I) SHALL, EXCEPT FOR REFUNDING DEBT, BE INCURRED ONLY FOR A CAPITAL PURPOSE AUTHORIZED BY LAW, AND (II) SHALL, IF INCURRED ON OR AFTER THE FIRST DAY OF THE FIRST FISCAL YEAR BEGINNING AT LEAST ONE YEAR AFTER THE EFFECTIVE DATE OF THIS SUBDIVISION, BE IN THE FORM OF OBLIGATIONS ISSUED BY THE COMPTROLLER.

7. NOTHING CONTAINED IN THIS SECTION SHALL INVALIDATE DEBT OBLIGATIONS OUTSTANDING ON THE EFFECTIVE DATE OF THIS SUBDIVISION THAT WOULD BE SUBJECT TO THE PROVISIONS OF THIS SECTION IF INCURRED AFTER THE EFFECTIVE DATE OF THIS SUBDIVISION, AND THE STATE MAY CONTINUE TO PROVIDE FOR PAYMENTS RELATED TO SUCH DEBT ON THE SAME TERMS UNDER WHICH SUCH DEBT WAS INCURRED; PROVIDED, HOWEVER, THAT NO SUCH DEBT SHALL BE REFUNDED UNLESS (I) SUCH REFUNDING COMPLIES IN ALL RESPECTS WITH THE REQUIREMENTS OF SECTION 13 OF THIS ARTICLE, AND (II) ANY REFUNDING OBLIGATIONS ISSUED ON OR AFTER THE FIRST DAY OF THE FIRST FISCAL YEAR BEGINNING AT LEAST ONE YEAR AFTER THE EFFECTIVE DATE OF THIS SUBDIVISION ARE ISSUED BY THE COMPTROLLER. SUCH OUTSTANDING DEBT OBLIGATIONS AND THE DEBT SERVICE EXPENSES, DIRECT OR INDIRECT, REQUIRED FOR SUCH OBLIGATIONS SHALL BE INCLUDED IN THE DETERMINATION OF THE LIMIT IMPOSED BY SUBDIVISION 3 OF THIS SECTION AND THE DEBT AFFORDABILITY LEVEL REQUIRED BY SUBDIVISION 4 OF THIS SECTION. THE PROVISIONS OF SECTION 16 OF THIS ARTICLE SHALL NOT

APPLY TO STATE PAYMENTS WITH RESPECT TO ANY SUCH OBLIGATIONS UNLESS SUCH PROVISIONS WOULD HAVE APPLIED PRIOR TO THE EFFECTIVE DATE OF THIS SUBDIVISION.

8. DEBT OBLIGATIONS ISSUED TO REFUND OUTSTANDING STATE DEBT, REGARDLESS OF WHETHER SUCH OUTSTANDING DEBT WAS INCURRED PRIOR TO THE EFFECTIVE DATE OF THIS SUBDIVISION, SHALL NOT BE COUNTED FOR THE PURPOSES OF THE LIMIT IMPOSED BY SUBDIVISION 3 OF THIS SECTION AND THE DEBT AFFORDABILITY LEVEL REQUIRED BY SUBDIVISION 4 OF THIS SECTION IF SUCH REFUNDING COMPLIES IN ALL RESPECTS WITH SECTION 13 OF THIS ARTICLE. DEBT SERVICE EXPENSES ON DEBT THAT HAS BEEN REFUNDED IN ACCORDANCE WITH SECTION 13 OF THIS ARTICLE SHALL BE EXCLUDED FROM THE DEBT AFFORDABILITY LEVEL TO THE EXTENT THAT SUCH DEBT SERVICE EXPENSES ARE TO BE PAID FROM AN ESCROW FUND ESTABLISHED WITH PROCEEDS OF THE REFUNDING DEBT, BUT DEBT SERVICE EXPENSES ON THE REFUNDING DEBT SHALL BE INCLUDED EXCEPT TO THE EXTENT THAT SUCH DEBT SERVICE EXPENSES ARE TO BE PAID FROM SUCH AN ESCROW FUND. FOR PURPOSES OF THIS SUBDIVISION AND SUBDIVISIONS 7 AND 9 OF THIS SECTION, ANY REFUNDING DEBT THAT DOES NOT EXTEND BEYOND THE FINAL MATURITY OF THE DEBT BEING REFUNDED SHALL BE DEEMED TO COMPLY WITH THE PROVISIONS OF SUBDIVISION 6 OF SECTION 13 OF THIS ARTICLE, PROVIDED THAT THERE IS AN ACTUAL DEBT SERVICE SAVINGS IN EVERY YEAR TO MATURITY AS A RESULT OF THE ISSUANCE OF THE REFUNDING DEBT.

9. AFTER THE EFFECTIVE DATE OF THIS SECTION THE STATE SHALL NOT, EXCEPT AS SPECIFICALLY AUTHORIZED IN SOME OTHER SECTION OF THIS CONSTITUTION, AGREE TO MAKE PAYMENTS, DIRECTLY OR INDIRECTLY, WHETHER OR NOT SUBJECT TO APPROPRIATION, THAT ARE TO BE AVAILABLE TO PAY DEBT SERVICE ON ANY DEBT INCURRED BY A MUNICIPALITY, INDIVIDUAL, PUBLIC AUTHORITY OR OTHER PUBLIC OR PRIVATE CORPORATION OR ANY OTHER ENTITY, FOR ANY PURPOSE, IF SUCH PAYMENTS ARE EXPECTED TO BE USED TO PAY DEBT SERVICE ONLY IF OTHER SOURCES AVAILABLE FOR THE PAYMENT OF DEBT SERVICE ARE INADEQUATE. OUTSTANDING DEBT THAT WOULD BE PROHIBITED BY THIS SUBDIVISION IF SUCH DEBT HAD BEEN INCURRED AFTER THE EFFECTIVE DATE OF THIS SUBDIVISION MAY BE REFUNDED BY THE ENTITY THAT INCURRED THE OUTSTANDING DEBT PROVIDED THAT ALL PROVISIONS OF SUBDIVISIONS 7 AND 8 OF THIS SECTION ARE COMPLIED WITH EXCEPT THE REQUIREMENT THAT SUCH REFUNDING DEBT OBLIGATIONS BE ISSUED BY THE COMPTROLLER, AND REFUNDING DEBT SERVICE EXPENSES SHALL ONLY BE INCLUDED IN THE DEBT AFFORDABILITY LEVEL IF THE DEBT SERVICE EXPENSES ON THE DEBT BEING REFUNDED WOULD HAVE BEEN INCLUDED.

10. The legislature may, at any time after the ENACTMENT OR approval of such law [by the people], if no debt shall have been contracted in pursuance thereof, repeal the same; and may at any time, by law, forbid the contracting of any further debt or liability under such law.

S 3. Resolved (if the Assembly concur), That subdivisions 6 and 7 of section 13 of article 7 of the constitution be amended to read as follows:

6. In no event shall the last annual installment or contribution on any portion of refunding debt, including refunding obligations issued to refund other refunding obligations, be made after THE LAST INSTALLMENT ON THE RELEVANT PORTION OF THE DEBT TO BE REFUNDED OR AFTER the termination of the period of probable life of the projects financed with the proceeds of the relevant portion of the debt to be refunded, or any debt previously refunded with the refunding obligations to be refunded, determined as of the date of issuance of the original obligations pursuant to section 12 of this article to finance such projects, or forty years from such date, if earlier; provided, however, that in lieu of the foregoing, an entire refunding issue or portion thereof may be struc-

tured to mature over the remaining weighted average useful life of all projects financed with the obligations being refunded.

7. [Subject to the provisions of subdivision 5 of this section, each annual installment or contribution of principal of refunding obligations shall be equal to the amount that would be required by subdivision 1 of section 12 of this article if such installments or contributions were required to be made from the year that the next installment or contribution would have been due on the obligations to be refunded, if they had not been refunded, until the final maturity of the refunding obligations but excluding any year in which no installment or contribution would have been due on the obligations to be refunded or, in the alternative, the] THE total payments of principal and interest on the refunding bonds shall be less in each year to their final maturity than the total payments of principal and interest on the bonds to be refunded in each such year.

S 4. Resolved (if the Assembly concur), That the foregoing amendments be referred to the first regular legislative session convening after the next succeeding general election of members of the assembly, and, in conformity with section 1 of article 19 of the constitution, be published for 3 months previous to the time of such election.