

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

1 Section 1. Resolved (if the Assembly concur), That section 10 of arti-
2 cle 7 of the constitution be amended to read as follows:
3 S 10. In addition to the above limited power to contract debts, the
4 state may contract debts to repel invasion, suppress insurrection, [or]
5 defend the state in war, [or to suppress forest fires] OR TO RESPOND TO
6 ANY OTHER EMERGENCY STEMMING FROM A DISASTER INCLUDING, BUT NOT LIMITED
7 TO, A DISASTER CAUSED BY AN ACT OF TERRORISM; but the money arising from
8 the contracting of such debts shall be applied for the purpose for which
9 it was raised, or to repay such debts, and to no other purpose whatever.
10 NO DEBT SHALL BE CONTRACTED PURSUANT TO THIS SECTION WITHOUT THE CONCUR-
11 RENCE OF THE GOVERNOR, THE COMPTROLLER, THE ATTORNEY GENERAL AND
12 TWO-THIRDS OF THE MEMBERS ELECTED TO EACH HOUSE OF THE LEGISLATURE; AND
13 THE GOVERNOR SHALL HAVE POWER TO SUMMON THE COMPTROLLER AND THE ATTORNEY
14 GENERAL AND CONVENE THE LEGISLATURE IN EXTRAORDINARY SESSION FOR THE
15 PURPOSE OF CONSIDERING SUCH EMERGENCY DEBT. AT THE TIME, DATE AND PLACE
16 APPOINTED BY THE GOVERNOR, NO OTHER SUBJECT SHALL BE ACTED UPON UNTIL
17 EACH, IN THE FOLLOWING ORDER, HAS GIVEN THEIR APPROVAL OR ANY ONE THERE-
18 OF HAS GIVEN THEIR DISAPPROVAL OF THE DEBT PROPOSED BY THE GOVERNOR TO
19 ENABLE THE STATE TO RESPOND TO SUCH EMERGENCY: THE GOVERNOR, THE COMP-
20 TROLLER, THE ATTORNEY GENERAL, THE SENATE AND THE ASSEMBLY. THE PROPOSAL
21 OF SUCH EMERGENCY DEBT SHALL BE IN THE FORM OF A RESOLUTION PREPARED AND
22 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.

LBD89095-02-2

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

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

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

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

40 3. DURING THE FISCAL YEAR BEGINNING IN CALENDAR YEAR 2021 AND IN EVERY
41 FISCAL YEAR THEREAFTER, NO PROPOSITION CONCERNING SUCH A LAW SHALL BE
42 SUBMITTED TO THE PEOPLE FOR APPROVAL, AND NO SUCH LAW SHALL BE ENACTED
43 PURSUANT TO SUBDIVISION 5 OF THIS SECTION, UNLESS THE TOTAL PRINCIPAL
44 AMOUNT OF DEBT TO BE AUTHORIZED BY SUCH LAW, TOGETHER WITH THE TOTAL
45 PRINCIPAL AMOUNT OF DEBT EITHER ALREADY OUTSTANDING, OR AUTHORIZED TO BE
46 INCURRED PURSUANT TO THIS SECTION, SHALL BE EQUAL TO OR LESS THAN FIVE
47 PERCENT OF THE TOTAL PERSONAL INCOME OF THE STATE. SUCH PERSONAL INCOME
48 IS TO BE DETERMINED BY THE DEBT MANAGEMENT BOARD ESTABLISHED PURSUANT TO
49 SUBDIVISION 4 OF THIS SECTION IN ACCORDANCE WITH SUCH COMMONLY ACCEPTED
50 METHOD OR METHODS OF MEASURING THE ECONOMIC ACTIVITY OF THE STATE AS
51 SHALL BE PRESCRIBED BY A LAW, WHICH SHALL BE ENACTED NOT LATER THAN JUNE
52 30, 2014, AND AS MAY BE AMENDED FROM TIME TO TIME NOT INCONSISTENT WITH
53 THIS SECTION. DEBT SUBJECT TO THE LIMIT IMPOSED BY THIS SECTION SHALL
54 INCLUDE ALL DEBT SUPPORTED BY FINANCING ARRANGEMENTS DESCRIBED IN SUBDI-
55 VISION 1 OF THIS SECTION BUT SHALL NOT INCLUDE THE DEBTS SPECIFIED IN
56 SECTIONS 9, 10 AND 13 OF THIS ARTICLE OR DEBT PREVIOUSLY AUTHORIZED BY

1 LAW BUT NOT INCURRED BECAUSE OF THE SUBSEQUENT REPEAL OF SUCH AUTHORI-
2 ZATION OR THE SUBSEQUENT PROHIBITION OF SUCH DEBT PURSUANT TO SUBDIVI-
3 SION 10 OF THIS SECTION.

4 4. A DEBT MANAGEMENT BOARD, CONSISTING OF THE GOVERNOR, THE COMP-
5 TROLLER AND A THIRD PERSON JOINTLY SELECTED BY THE GOVERNOR AND THE
6 COMPTROLLER, SHALL BE ESTABLISHED BY LAW. THE DEBT MANAGEMENT BOARD
7 SHALL ANNUALLY DETERMINE, WITHIN THE LIMITS ESTABLISHED PURSUANT TO
8 SUBDIVISION 3 OF THIS SECTION, A DEBT AFFORDABILITY LEVEL WHICH SHALL
9 PRESCRIBE FOR EACH FISCAL YEAR AND FORECAST FOR THE TWO SUCCEEDING
10 FISCAL YEARS THE TOTAL AMOUNT OF ADDITIONAL DEBT THAT MAY BE INCURRED
11 AND THE TOTAL DEBT SERVICE OBLIGATIONS THAT MAY BE UNDERTAKEN BY THE
12 STATE WITHOUT OVERBURDENING PRESENT OR FUTURE GENERATIONS. THE EXECUTIVE
13 BUDGET SUBMITTED PURSUANT TO SECTION 2 OF THIS ARTICLE FOR THE ENSUING
14 FISCAL YEAR AND THE BUDGET BILLS SUBMITTED PURSUANT TO SECTION 3 OF THIS
15 ARTICLE FOR SUCH FISCAL YEAR SHALL NOT PROPOSE ANY ADDITIONAL DEBT OR
16 NEW DEBT SERVICE EXPENSE THAT WOULD CAUSE TOTAL DEBT OR TOTAL DEBT
17 SERVICE EXPENSES TO EXCEED THE DEBT AFFORDABILITY LEVEL PRESCRIBED FOR
18 SUCH FISCAL YEAR, AND NEITHER THE GOVERNOR NOR THE LEGISLATURE SHALL, BY
19 LAW, CONTRACT, OR OTHERWISE, PROVIDE FOR ANY ADDITIONAL DEBT OR NEW DEBT
20 SERVICE EXPENSE THAT WOULD CAUSE TOTAL DEBT OR TOTAL DEBT SERVICE
21 EXPENSES TO EXCEED SUCH LEVEL WITHOUT THE UNANIMOUS APPROVAL OF THE DEBT
22 MANAGEMENT BOARD. DURING THE FISCAL YEAR BEGINNING IN 2017 AND IN EVERY
23 FISCAL YEAR THEREAFTER, THE DEBT MANAGEMENT BOARD SHALL NOT ESTABLISH
24 ANY DEBT AFFORDABILITY LEVEL WHICH WOULD RESULT IN A TOTAL PRINCIPAL
25 AMOUNT OF DEBT IN EXCESS OF THE LIMIT ESTABLISHED PURSUANT TO SUBDIVI-
26 SION 3 OF THIS SECTION.

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

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

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

1 APPLY TO STATE PAYMENTS WITH RESPECT TO ANY SUCH OBLIGATIONS UNLESS SUCH
2 PROVISIONS WOULD HAVE APPLIED PRIOR TO THE EFFECTIVE DATE OF THIS SUBDI-
3 VISION.

4 8. DEBT OBLIGATIONS ISSUED TO REFUND OUTSTANDING STATE DEBT, REGARD-
5 LESS OF WHETHER SUCH OUTSTANDING DEBT WAS INCURRED PRIOR TO THE EFFEC-
6 TIVE DATE OF THIS SUBDIVISION, SHALL NOT BE COUNTED FOR THE PURPOSES OF
7 THE LIMIT IMPOSED BY SUBDIVISION 3 OF THIS SECTION AND THE DEBT AFFORDA-
8 BILITY LEVEL REQUIRED BY SUBDIVISION 4 OF THIS SECTION IF SUCH REFUNDING
9 COMPLIES IN ALL RESPECTS WITH SECTION 13 OF THIS ARTICLE. DEBT SERVICE
10 EXPENSES ON DEBT THAT HAS BEEN REFUNDED IN ACCORDANCE WITH SECTION 13 OF
11 THIS ARTICLE SHALL BE EXCLUDED FROM THE DEBT AFFORDABILITY LEVEL TO THE
12 EXTENT THAT SUCH DEBT SERVICE EXPENSES ARE TO BE PAID FROM AN ESCROW
13 FUND ESTABLISHED WITH PROCEEDS OF THE REFUNDING DEBT, BUT DEBT SERVICE
14 EXPENSES ON THE REFUNDING DEBT SHALL BE INCLUDED EXCEPT TO THE EXTENT
15 THAT SUCH DEBT SERVICE EXPENSES ARE TO BE PAID FROM SUCH AN ESCROW FUND.
16 FOR PURPOSES OF THIS SUBDIVISION AND SUBDIVISIONS 7 AND 9 OF THIS
17 SECTION, ANY REFUNDING DEBT THAT DOES NOT EXTEND BEYOND THE FINAL MATU-
18 RITY OF THE DEBT BEING REFUNDED SHALL BE DEEMED TO COMPLY WITH THE
19 PROVISIONS OF SUBDIVISION 6 OF SECTION 13 OF THIS ARTICLE, PROVIDED THAT
20 THERE IS AN ACTUAL DEBT SERVICE SAVINGS IN EVERY YEAR TO MATURITY AS A
21 RESULT OF THE ISSUANCE OF THE REFUNDING DEBT.

22 9. AFTER THE EFFECTIVE DATE OF THIS SECTION THE STATE SHALL NOT,
23 EXCEPT AS SPECIFICALLY AUTHORIZED IN SOME OTHER SECTION OF THIS CONSTI-
24 TUTION, AGREE TO MAKE PAYMENTS, DIRECTLY OR INDIRECTLY, WHETHER OR NOT
25 SUBJECT TO APPROPRIATION, THAT ARE TO BE AVAILABLE TO PAY DEBT SERVICE
26 ON ANY DEBT INCURRED BY A MUNICIPALITY, INDIVIDUAL, PUBLIC AUTHORITY OR
27 OTHER PUBLIC OR PRIVATE CORPORATION OR ANY OTHER ENTITY, FOR ANY
28 PURPOSE, IF SUCH PAYMENTS ARE EXPECTED TO BE USED TO PAY DEBT SERVICE
29 ONLY IF OTHER SOURCES AVAILABLE FOR THE PAYMENT OF DEBT SERVICE ARE
30 INADEQUATE. OUTSTANDING DEBT THAT WOULD BE PROHIBITED BY THIS SUBDIVI-
31 SION IF SUCH DEBT HAD BEEN INCURRED AFTER THE EFFECTIVE DATE OF THIS
32 SUBDIVISION MAY BE REFUNDED BY THE ENTITY THAT INCURRED THE OUTSTANDING
33 DEBT PROVIDED THAT ALL PROVISIONS OF SUBDIVISIONS 7 AND 8 OF THIS
34 SECTION ARE COMPLIED WITH EXCEPT THE REQUIREMENT THAT SUCH REFUNDING
35 DEBT OBLIGATIONS BE ISSUED BY THE COMPTROLLER, AND REFUNDING DEBT
36 SERVICE EXPENSES SHALL ONLY BE INCLUDED IN THE DEBT AFFORDABILITY LEVEL
37 IF THE DEBT SERVICE EXPENSES ON THE DEBT BEING REFUNDED WOULD HAVE BEEN
38 INCLUDED.

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

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

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

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

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

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