

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

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2009-2010 Regular Sessions

I N S E N A T E

February 10, 2009

Introduced by Sen. STACHOWSKI -- read twice and ordered printed, and
when printed to be committed to the Committee on Judiciary

CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY

proposing amendments to article 7 of the constitution, in relation to
the prohibition of certain borrowing arrangements, the authorization
for the contracting of debt secured by the state revenues, and the
manner in which principal and interest payments are appropriated and
paid

1 Section 1. Resolved (if the Assembly concur), That article 7 of the
2 constitution be amended by adding a new section 11-a to read as follows:
3 S 11-A. 1. EXCEPT AS AUTHORIZED BY SECTION 11 OF THIS ARTICLE OR
4 SUBDIVISION 2 OF THIS SECTION, THE STATE SHALL NOT ENTER INTO ANY
5 FINANCING OR OTHER SIMILAR ARRANGEMENT, WHETHER BY STATUTE, CONTRACT,
6 LEASE, OR OTHER SIMILAR AGREEMENT, OR OTHERWISE, WHEREBY THE STATE
7 AGREES TO MAKE PAYMENTS WHICH WILL BE USED, DIRECTLY OR INDIRECTLY, FOR
8 THE PAYMENT OF PRINCIPAL, INTEREST, OR RELATED PAYMENTS ON INDEBTEDNESS
9 ISSUED OR CONTRACTED BY ANY STATE AGENCY, MUNICIPALITY, INDIVIDUAL, OR
10 PUBLIC OR PRIVATE CORPORATION FOR STATE CAPITAL OR OPERATING PURPOSES OR
11 TO FINANCE GRANTS MADE OR TO BE MADE BY OR ON BEHALF OF THE STATE FOR
12 ANY PURPOSE. THE FOREGOING RESTRICTIONS SHALL APPLY WHETHER OR NOT THE
13 OBLIGATION OF THE STATE TO MAKE PAYMENTS IS SUBJECT TO APPROPRIATION OR
14 IS OTHERWISE CONTINGENT.
15 2. NOTWITHSTANDING THE PROVISIONS OF SECTION 11 OF THIS ARTICLE, THE
16 LEGISLATURE MAY, BY LAW, WITHOUT VOTER APPROVAL, AUTHORIZE THE STATE TO
17 CONTRACT DEBT SECURED BY A PLEDGE OF SPECIFIC STATE REVENUES AUTHORIZED
18 BY SUCH LAW TO BE DEPOSITED IN A DEDICATED TRUST FUND OR FUNDS CREATED
19 FOR CAPITAL WORKS OR PURPOSES. THE LEGISLATURE SHALL, BY LAW, IDENTIFY
20 THE CAPITAL WORKS OR PURPOSES TO BE FINANCED WITH SUCH DEBT. REVENUES IN
21 EXCESS OF THE REQUIRED PAYMENTS OF DEBT SERVICE AND RELATED PAYMENTS ON
22 SUCH DEBT SHALL BE AVAILABLE FOR OTHER PURPOSES, AS PROVIDED BY LAW.
23 3. THE STATE MAY NOT CONTRACT DEBT PURSUANT TO SECTION 11 OF THIS
24 ARTICLE OR SUBDIVISION 2 OF THIS SECTION UNLESS THE CONDITIONS CONTAINED

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

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1 IN PARAGRAPHS (A) AND (B) OF THIS SUBDIVISION WILL BOTH BE MET AFTER
2 SUCH DEBT HAS BEEN CONTRACTED.

3 (A) THE TOTAL OUTSTANDING PRINCIPAL AMOUNT OF DEBT SHALL BE LESS THAN
4 THE DESIGNATED PERCENTAGE OF THE TOTAL PERSONAL INCOME OF THE STATE,
5 WHERE SUCH PERSONAL INCOME IS DEFINED BY AND CALCULATED IN ACCORDANCE
6 WITH LAW. THE TOTAL OUTSTANDING PRINCIPAL AMOUNT OF DEBT SHALL INCLUDE
7 ALL DEBT OR OTHER OBLIGATIONS AUTHORIZED AND CONTRACTED PURSUANT TO
8 SECTION 11 OF THIS ARTICLE AND SUBDIVISION 2 OF THIS SECTION ON OR AFTER
9 THE EFFECTIVE DATE OF THIS SECTION. THE OUTSTANDING PRINCIPAL AMOUNT OF
10 DEBT, WITH REGARD TO THE INCLUSION OF EITHER REFUNDED AND REFUNDING
11 OBLIGATIONS, SHALL BE DEFINED BY LAW. THE DESIGNATED PERCENTAGE SHALL BE
12 ONE-HALF PERCENT FOR THE FISCAL YEAR COMMENCING IMMEDIATELY AFTER THIS
13 PARAGRAPH TAKES EFFECT, AND SHALL INCREASE BY ONE-THIRD OF ONE PERCENT
14 IN EACH OF THE EIGHT SUBSEQUENT FISCAL YEARS. THE DESIGNATED PERCENTAGE
15 FOR FISCAL YEAR TWO THOUSAND NINETEEN--TWO THOUSAND TWENTY AND FOR EACH
16 FISCAL YEAR THEREAFTER SHALL BE THREE AND ONE-HALF PERCENT.

17 (B) NO DEBT SHALL BE ISSUED AFTER JANUARY FIRST, NEXT SUCCEEDING THE
18 EFFECTIVE DATE OF THIS PARAGRAPH PURSUANT TO SUBDIVISION 2 OF THIS
19 SECTION OR SECTION 11 OF THIS ARTICLE IF THE SUM OF (I) THE AGGREGATE
20 AMOUNT OF DEBT SERVICE, AS DETERMINED BY THE COMPTROLLER, DUE ON ALL
21 DEBT CONTRACTED PURSUANT TO SUBDIVISION 2 OF THIS SECTION AND SECTION 11
22 OF THIS ARTICLE AND OUTSTANDING AS OF THE LAST DAY OF THE IMMEDIATELY
23 PRECEDING FISCAL YEAR AND (II) ALL PAYMENTS PURSUANT TO FINANCING
24 ARRANGEMENTS THAT WOULD BE PROHIBITED BY PARAGRAPH (A) OF THIS SUBDIVI-
25 SION IF THEY HAD BEEN ENTERED AFTER THE EFFECTIVE DATE OF THIS SECTION
26 SHALL IN ANY FISCAL YEAR EXCEED 5.75 PERCENT OF TOTAL GOVERNMENTAL FUNDS
27 RECEIPTS OF THE STATE FOR SUCH IMMEDIATELY PRECEDING FISCAL YEAR.

28 4. THE LEGISLATURE SHALL PROVIDE BY LAW FOR THE MANNER BY WHICH DEBT
29 AUTHORIZED BY THIS SECTION SHALL BE CONTRACTED, PROVIDED THAT NEITHER
30 HOUSE OF THE LEGISLATURE SHALL CONSIDER ANY SUCH BILL UNLESS IT SHALL
31 HAVE BEEN PRINTED AND UPON THE DESKS OF THE MEMBERS, IN ITS FINAL FORM,
32 AT LEAST FOURTEEN CALENDAR LEGISLATIVE DAYS PRIOR TO ITS FINAL PASSAGE.

33 5. THE LEGISLATURE MAY, AT ANY TIME, IF NO DEBT SHALL HAVE BEEN
34 CONTRACTED IN PURSUANCE OF A PARTICULAR LAW AUTHORIZED UNDER SUBDIVISION
35 2 OF THIS SECTION, REPEAL SUCH LAW AUTHORIZING THE ISSUANCE OF SUCH
36 DEBT; AND MAY AT ANY TIME, BY LAW, FORBID THE CONTRACTING OF ANY FURTHER
37 DEBT OR LIABILITY UNDER SUCH LAW.

38 6. NO DEBT SHALL BE CONTRACTED PURSUANT TO SUBDIVISION 2 OF THIS
39 SECTION, EXCEPT TO FINANCE CAPITAL WORKS OR PURPOSES.

40 7. THE STATE MAY CONTRACT DEBT TO REFUND DEBT CONTRACTED PURSUANT TO
41 SUBDIVISION 2 OF THIS SECTION, PROVIDING SUCH REFUNDINGS ARE CONDUCTED
42 IN ACCORDANCE WITH THE PROVISIONS OF SECTION 13 OF THIS ARTICLE.

43 8. THE PROVISIONS OF SUBDIVISION 1 OF THIS SECTION SHALL NOT PROHIBIT
44 THE STATE FROM PROVIDING MONIES FOR THE PAYMENT OF PRINCIPAL, INTEREST,
45 OR RELATED PAYMENTS ON OBLIGATIONS WHICH WERE CONTRACTED PRIOR TO THE
46 EFFECTIVE DATE OF THIS SUBDIVISION OR ON OBLIGATIONS ISSUED TO REFUND
47 SUCH OBLIGATIONS, PROVIDED SUCH REFUNDINGS ARE CONDUCTED IN ACCORDANCE
48 WITH THE PROVISIONS OF SECTION 13 OF THIS ARTICLE.

49 S 2. Resolved (if the Assembly concur), That section 16 of article 7
50 of the constitution be amended to read as follows:

51 S 16. The legislature shall annually provide by appropriation for the
52 payment of the interest upon and installments of principal of all debts
53 or refunding debts created on behalf of the state except those
54 contracted under section 9 of this article, as the same shall fall due,
55 and for the contribution to all of the sinking funds created by law, of
56 the amounts annually to be contributed under the provisions of section

1 12, 13 or 15 of this article. [If] WITH RESPECT TO DEBT CONTRACTED OTHER
2 THAN PURSUANT TO SUBDIVISION 2 OF SECTION 11-A OF THIS ARTICLE, IF at
3 any time the legislature shall fail to make any such appropriation, the
4 comptroller shall set apart from the first revenues thereafter received,
5 applicable to the general fund of the state, a sum sufficient to pay
6 such interest, installments of principal, or contributions to such sink-
7 ing fund, as the case may be, and shall so apply the moneys thus set
8 apart. IF AT ANY TIME THE LEGISLATURE SHALL FAIL TO MAKE AN APPROPRI-
9 ATION FOR THE PAYMENT OF INTEREST OR INSTALLMENTS OF PRINCIPAL OR SINK-
10 ING FUND PAYMENTS OR RELATED PAYMENTS ON ANY DEBT CONTRACTED PURSUANT TO
11 SUBDIVISION 2 OF SECTION 11-A OF THIS ARTICLE, THE COMPTROLLER SHALL SET
12 APART FROM THE FIRST REVENUES RECEIVED AND PLEDGED TO SUCH PAYMENTS, A
13 SUM SUFFICIENT TO PAY SUCH INTEREST OR INSTALLMENT OF PRINCIPAL OR
14 CONTRIBUTIONS TO SUCH SINKING FUND PAYMENTS OR RELATED PAYMENTS, AND
15 SHALL SO APPLY THE MONEYS THUS SET APART, PROVIDED, HOWEVER, THAT SUCH
16 REVENUES MUST BE SET ASIDE AND APPLIED IN A MANNER WHICH ENSURES THAT
17 PLEDGED REVENUES ARE APPLIED ONLY TO PAYMENTS ON DEBT FOR WHICH SUCH
18 REVENUES WERE PLEDGED PURSUANT TO SUBDIVISION 2 OF SECTION 11-A OF THIS
19 ARTICLE. The comptroller may be required to set aside and apply such
20 revenues as aforesaid, at the suit of any holder of such bonds.

21 Notwithstanding the foregoing provisions of this section, the comp-
22 troller may covenant with the purchasers of any state obligations that
23 they shall have no further rights against the state for payment of such
24 obligations or any interest thereon after an amount or amounts deter-
25 mined in accordance with the provisions of such covenant is deposited in
26 a described fund or with a named or described agency or trustee. In such
27 case, this section shall have no further application with respect to
28 payment of such obligations or any interest thereon after the comp-
29 troller has complied with the prescribed conditions of such covenant.

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