

525

2009-2010 Regular Sessions

I N S E N A T E

(PREFILED)

January 7, 2009

Introduced by Sen. LIBOUS -- 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 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
23 SENATE AND THE ASSEMBLY, WHO SHALL APPROVE OR DISAPPROVE SUCH RESOLUTION
24 WITHOUT ANY CHANGES THERETO; AND IF SUCH RESOLUTION IS APPROVED BY THE

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

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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 2017 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, 2012, 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 AUTHORI-

1 ZATION OR THE SUBSEQUENT PROHIBITION OF SUCH DEBT PURSUANT TO SUBDIVI-
2 SION 10 OF THIS SECTION.

3 4. A DEBT MANAGEMENT BOARD, CONSISTING OF THE GOVERNOR, THE COMP-
4 TROLLER AND A THIRD PERSON JOINTLY SELECTED BY THE GOVERNOR AND THE
5 COMPTROLLER, SHALL BE ESTABLISHED BY LAW. THE DEBT MANAGEMENT BOARD
6 SHALL ANNUALLY DETERMINE, WITHIN THE LIMITS ESTABLISHED PURSUANT TO
7 SUBDIVISION 3 OF THIS SECTION, A DEBT AFFORDABILITY LEVEL WHICH SHALL
8 PRESCRIBE FOR EACH FISCAL YEAR AND FORECAST FOR THE TWO SUCCEEDING
9 FISCAL YEARS THE TOTAL AMOUNT OF ADDITIONAL DEBT THAT MAY BE INCURRED
10 AND THE TOTAL DEBT SERVICE OBLIGATIONS THAT MAY BE UNDERTAKEN BY THE
11 STATE WITHOUT OVERBURDENING PRESENT OR FUTURE GENERATIONS. THE EXECUTIVE
12 BUDGET SUBMITTED PURSUANT TO SECTION 2 OF THIS ARTICLE FOR THE ENSUING
13 FISCAL YEAR AND THE BUDGET BILLS SUBMITTED PURSUANT TO SECTION 3 OF THIS
14 ARTICLE FOR SUCH FISCAL YEAR SHALL NOT PROPOSE ANY ADDITIONAL DEBT OR
15 NEW DEBT SERVICE EXPENSE THAT WOULD CAUSE TOTAL DEBT OR TOTAL DEBT
16 SERVICE EXPENSES TO EXCEED THE DEBT AFFORDABILITY LEVEL PRESCRIBED FOR
17 SUCH FISCAL YEAR, AND NEITHER THE GOVERNOR NOR THE LEGISLATURE SHALL, BY
18 LAW, CONTRACT, OR OTHERWISE, PROVIDE FOR ANY ADDITIONAL DEBT OR NEW DEBT
19 SERVICE EXPENSE THAT WOULD CAUSE TOTAL DEBT OR TOTAL DEBT SERVICE
20 EXPENSES TO EXCEED SUCH LEVEL WITHOUT THE UNANIMOUS APPROVAL OF THE DEBT
21 MANAGEMENT BOARD. DURING THE FISCAL YEAR BEGINNING IN 2015 AND IN EVERY
22 FISCAL YEAR THEREAFTER, THE DEBT MANAGEMENT BOARD SHALL NOT ESTABLISH
23 ANY DEBT AFFORDABILITY LEVEL WHICH WOULD RESULT IN A TOTAL PRINCIPAL
24 AMOUNT OF DEBT IN EXCESS OF THE LIMIT ESTABLISHED PURSUANT TO SUBDIVI-
25 SION 3 OF THIS SECTION.

26 5. DURING ANY FISCAL YEAR, A LAW OR LAWS AUTHORIZING DEBT IN THE
27 COMBINED AGGREGATE AMOUNT OF ONE BILLION DOLLARS, OR THREE PERCENT OF
28 THE LIMIT DETERMINED PURSUANT TO SUBDIVISION 3 OF THIS SECTION, WHICHEV-
29 ER IS GREATER, MAY BE ENACTED WITHOUT BEING SUBMITTED FOR APPROVAL BY
30 THE PEOPLE. HOWEVER, IN NO EVENT SHALL DEBT INCURRED IN FISCAL YEARS
31 BEGINNING IN 2017 AND THEREAFTER PURSUANT TO SUCH LAW OR LAWS RESULT IN
32 A TOTAL PRINCIPAL AMOUNT OF DEBT IN EXCESS OF THE LIMIT DETERMINED
33 PURSUANT TO SUBDIVISION 3 OF THIS SECTION OR THE DEBT AFFORDABILITY
34 LEVEL ESTABLISHED PURSUANT TO SUBDIVISION 4 OF THIS SECTION.

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

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

1 PROVISIONS WOULD HAVE APPLIED PRIOR TO THE EFFECTIVE DATE OF THIS SUBDI-
2 VISION.

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

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

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

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

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