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

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2011-2012 Regular Sessions

I N A S S E M B L Y

January 24, 2011

Introduced by M. of A. SCHIMMINGER, SCHROEDER -- Multi-Sponsored by -- M. of A. MAGEE, MAYERSOHN, REILLY -- read once and referred to the Committee on Ways and Means

CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY

proposing an amendment to article 7 of the constitution, relating to limiting the growth of New York state revenue, creates a revenue limitation and establishes a budget stabilization fund

Section 1. Resolved (if the Senate concur), That article 7 of the constitution be amended by adding a new section 7-a to read as follows:

S 7-A. LIMITATION OF STATE REVENUES. FOR THE PURPOSES OF THIS SECTION:

1. (A) "STATE REVENUES" SHALL MEAN ALL REVENUES RECEIVED BY THE STATE DURING ANY FISCAL YEAR WHICH ARE INCLUDED IN THE CASH BASIS FINANCIAL PLAN OF THE STATE, EXCLUDING THE PROCEEDS OF GENERAL OBLIGATION BONDS AND BOND ANTICIPATION NOTES AUTHORIZED BY THE VOTERS OF THE STATE AND ISSUED BY THE STATE COMPTROLLER PURSUANT TO SECTION TEN OR ELEVEN OF THIS ARTICLE, EXCLUDING FEDERAL GRANTS RECEIVED BY THE STATE AND EXCLUDING AMOUNTS NECESSARY FOR THE PAYMENT OF TAX REFUNDS DURING SUCH FISCAL YEAR.

(B) "EMERGENCY" SHALL MEAN AN EXTRAORDINARY, UNFORESEEN OR UNEXPECTED OCCURRENCE OR COMBINATION OF CIRCUMSTANCES, EXCLUDING ECONOMIC CONDITIONS, REVENUE SHORTFALLS, OR SALARY OR FRINGE BENEFIT INCREASES, IN A GIVEN FISCAL YEAR WHICH REQUIRES IMMEDIATE AND SUDDEN FISCAL ACTION OF A DRASTIC BUT TEMPORARY NATURE.

(C) "FISCAL GROWTH FACTOR" MEANS THE SUM OF INFLATION AND POPULATION CHANGE FOR THE PRIOR CALENDAR YEAR.

(D) "INFLATION" MEANS THE CONSUMER PRICE INDEX (ALL ITEMS) FOR THE NORTHEAST URBAN REGION OF THE UNITED STATES OF AMERICA FOR EACH CALENDAR YEAR, AS COMPUTED BY THE FEDERAL BUREAU OF LABOR STATISTICS OR ITS SUCCESSOR AGENCY.

(E) "POPULATION CHANGE" MEANS THE PERCENTAGE CHANGE IN STATE POPULATION FOR EACH CALENDAR YEAR AS DETERMINED BY THE FEDERAL CENSUS BUREAU OR ITS SUCCESSOR AGENCY.

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

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2. (A) THERE IS HEREBY ESTABLISHED A LIMIT ON THE TOTAL AMOUNT OF TAXES WHICH MAY BE IMPOSED BY THE LEGISLATURE IN ANY FISCAL YEAR ON THE TAXPAYERS OF THIS STATE. EFFECTIVE WITH THE FISCAL YEAR IN WHICH THIS SECTION TAKES EFFECT, AND FOR EACH FISCAL YEAR THEREAFTER, THE LEGISLATURE SHALL NOT IMPOSE TAXES OF ANY KIND WHICH, TOGETHER WITH ALL OTHER REVENUES OF THE STATE, FEDERAL FUNDS EXCLUDED, EXCEED THE REVENUE LIMITATION ESTABLISHED IN THIS SECTION. THE REVENUE LIMITATION SHALL BE CALCULATED FOR EACH FISCAL YEAR AND, FOR THE FISCAL YEAR IN WHICH THIS SECTION TAKES EFFECT, SHALL BE EQUAL TO THE PRIOR FISCAL YEAR'S REVENUE INCREASED BY A PERCENTAGE RATE, THE FISCAL GROWTH FACTOR; AND, FOR EACH SUBSEQUENT YEAR, SHALL BE EQUAL TO THE PRIOR YEAR'S ALLOWABLE REVENUE INCREASED BY A PERCENTAGE RATE, THE FISCAL GROWTH FACTOR.

(B) THE REVENUE LIMITATION ESTABLISHED IN THIS SECTION SHALL NOT APPLY TO TAXES IMPOSED FOR THE PAYMENT OF PRINCIPAL AND INTEREST ON BONDS, AUTHORIZED BY THE VOTERS OF THE STATE AND ISSUED BY THE STATE COMPTROLLER PURSUANT TO SECTION TEN OR ELEVEN OF THIS ARTICLE.

(C) IF BY ORDER OF ANY COURT, OR LEGISLATIVE ENACTMENT, THE COSTS OF A FEDERAL OR LOCAL GOVERNMENT PROGRAM ARE TRANSFERRED TO OR FROM THE STATE OF NEW YORK, THE OTHERWISE APPLICABLE REVENUE LIMITATION SHALL BE INCREASED OR DECREASED, AS THE CASE MAY BE, BY THE DOLLAR AMOUNT OF THE COSTS OF THE PROGRAM.

(D) NO EXPENSES OF STATE GOVERNMENT, EXCLUDING THE DISBURSEMENT OF THE PROCEEDS OF GENERAL OBLIGATION BONDS AND BOND ANTICIPATION NOTES AUTHORIZED BY THE VOTERS OF THE STATE AND ISSUED BY THE STATE COMPTROLLER PURSUANT TO SECTION TEN OR ELEVEN OF THIS ARTICLE, EXCLUDING THE DISBURSEMENT OF FEDERAL GRANTS RECEIVED BY THE STATE OF NEW YORK AND EXCLUDING THE PAYMENT OF TAX REFUNDS DURING THE CURRENT FISCAL YEAR, SHALL BE INCURRED IN ANY FISCAL YEAR WHICH EXCEED THE SUM OF THE REVENUE LIMITATION ESTABLISHED IN THIS SECTION.

3. THE STATE OF NEW YORK IS PROHIBITED FROM REQUIRING ANY NEW OR EXPANDED ACTIVITIES BY COUNTIES OR OTHER POLITICAL SUBDIVISIONS WITHOUT FULL STATE FINANCING, OR FROM SHIFTING THE TAX BURDEN TO COUNTIES AND OTHER POLITICAL SUBDIVISIONS.

4. PURSUANT TO THIS SECTION, THE STATE OF NEW YORK IS HEREBY PROHIBITED FROM REDUCING THE STATE FINANCED PROPORTION OF THE COSTS OF ANY EXISTING ACTIVITY OR SERVICE REQUIRED OF COUNTIES AND OTHER POLITICAL SUBDIVISIONS. A NEW ACTIVITY OR SERVICE OR AN INCREASE IN THE LEVEL OF ANY ACTIVITY OR SERVICE BEYOND THAT REQUIRED BY EXISTING LAW SHALL NOT BE REQUIRED BY THE LEGISLATURE OR ANY STATE AGENCY OF COUNTIES OR OTHER POLITICAL SUBDIVISIONS, UNLESS A STATE APPROPRIATION IS MADE AND DISBURSED TO PAY THE COUNTY OR OTHER POLITICAL SUBDIVISION FOR ANY INCREASED COSTS.

5. THE REVENUE LIMITATION OF THIS SECTION MAY BE EXCEEDED ONLY IF ALL THE FOLLOWING CONDITIONS ARE MET: (A) THE GOVERNOR FINDS AND DECLARES AN EMERGENCY; (B) THE GOVERNOR PRESENTS TO THE LEGISLATURE A SPECIFIC PLAN AS TO THE NATURE OF THE EMERGENCY, THE DOLLAR AMOUNT OF THE EMERGENCY, AND THE METHOD BY WHICH THE EMERGENCY SHALL BE FUNDED; AND (C) THE LEGISLATURE AUTHORIZES THE PLAN BY A TWO-THIRDS VOTE OF THE MEMBERS ELECTED TO AND SERVING IN EACH HOUSE. SUCH AUTHORIZATION SHALL OCCUR IN ACCORDANCE WITH THIS SUBDIVISION PRIOR TO INCURRING ANY OF THE EXPENSES WHICH CONSTITUTE THE EMERGENCY PLAN. THE REVENUE LIMITATION MAY BE EXCEEDED ONLY DURING THE FISCAL YEAR FOR WHICH THE EMERGENCY IS DECLARED.

6. IN ANY FISCAL YEAR IF STATE REVENUES EXCEED THE REVENUE LIMITATION ESTABLISHED IN THIS SECTION, ONE-HALF OF THE EXCESS REVENUE SHALL BE REFUNDED TO THE TAXPAYERS OF THE STATE OF NEW YORK PRO RATA BASED ON THE

LIABILITY REPORTED ON NEW YORK STATE INCOME TAX ANNUAL RETURNS FILED FOLLOWING THE CLOSE OF SUCH FISCAL YEAR AND THE OTHER ONE-HALF OF THE EXCESS REVENUE SHALL BE PLACED IN THE BUDGET STABILIZATION FUND IN ACCORDANCE WITH SECTION SEVENTEEN-A OF THIS ARTICLE.

7. ANY TAXPAYER OR STATEWIDE ELECTED OFFICIAL MAY BRING AN ACTION IN A COURT OF PROPER JURISDICTION IN ORDER TO ENFORCE COMPLIANCE WITH THE PROVISIONS OF THIS ARTICLE; IF THE SUIT IS SUSTAINED, THE TAXPAYER OR STATEWIDE ELECTED OFFICIAL SHALL RECEIVE FROM THE APPLICABLE UNIT OF GOVERNMENT HIS OR HER COSTS, INCLUDING REASONABLE ATTORNEYS' FEES INCURRED IN MAINTAINING SUCH SUIT.

S 2. Resolved (if the Senate concur), That article 7 of the constitution be amended by adding a new section 17-a to read as follows:

S 17-A. BUDGET STABILIZATION FUND. 1. THERE IS HEREBY ESTABLISHED A FUND, TO BE KNOWN AS THE BUDGET STABILIZATION FUND, TO AID IN THE STABILIZATION OF STATE REVENUES, THE REDUCTION OF STATE TAXES, AND THE REDUCTION OF STATE INDEBTEDNESS. THE MONIES OF THE FUND SHALL BE HELD SEPARATE AND APART FROM THE MONIES OF ALL OTHER FUNDS OF THE STATE. THE BUDGET STABILIZATION FUND SHALL NOT EXCEED FIVE PER CENTUM OF STATE REVENUES AS AUTHORIZED AND DEFINED BY THIS SECTION.

2. FOR THE PURPOSE OF THIS SECTION: (A) "STATE REVENUES" SHALL MEAN ALL REVENUES RECEIVED BY THE STATE DURING ANY FISCAL YEAR WHICH ARE INCLUDED IN THE CASH BASIS FINANCIAL PLAN OF THE STATE, EXCLUDING THE PROCEEDS OF GENERAL OBLIGATION BONDS AND BOND ANTICIPATION NOTES AUTHORIZED BY THE VOTERS OF THE STATE AND ISSUED BY THE STATE COMPTROLLER PURSUANT TO SECTION TEN OR ELEVEN OF THIS ARTICLE, EXCLUDING FEDERAL GRANTS RECEIVED BY THE STATE AND EXCLUDING AMOUNTS NECESSARY FOR THE PAYMENT OF TAX REFUNDS DURING SUCH FISCAL YEAR.

(B) "EMERGENCY" SHALL MEAN AN EXTRAORDINARY, UNFORESEEN OR UNEXPECTED OCCURRENCE OR COMBINATION OF CIRCUMSTANCES, EXCLUDING ECONOMIC CONDITIONS, REVENUE SHORTFALLS, OR SALARY OR FRINGE BENEFIT INCREASES, IN A GIVEN FISCAL YEAR WHICH REQUIRES IMMEDIATE AND SUDDEN FISCAL ACTION OF A DRASTIC BUT TEMPORARY NATURE.

3. IN ANY FISCAL YEAR IF STATE REVENUES EXCEED THE REVENUE LIMITATION, ONE-HALF OF THE EXCESS REVENUE SHALL, UPON RECEIPT, BE TRANSFERRED TO THIS FUND. INCOME EARNED ON THE FUND SHALL ACCRUE TO THE FUND.

4. THE MONIES OF THIS FUND MAY BE WITHDRAWN AND DISBURSED PURSUANT TO APPROPRIATION, BY THE APPROVAL OF TWO-THIRDS OF THE LEGISLATURE, DURING ANY FISCAL YEAR ONLY WHEN STATE REVENUES ARE LESS THAN THE REVENUE LIMITATION FOR SUCH YEAR OR WHEN THE GOVERNOR DECLARES AN EMERGENCY, PROVIDED THAT THE REVENUE LIMITATION SHALL NOT BE EXCEEDED THROUGH SUCH APPROPRIATION.

5. IF IN ANY FISCAL YEAR THE MONIES IN THE FUND EXCEED FIVE PER CENTUM OF STATE REVENUES AS AUTHORIZED AND DEFINED BY THIS SECTION, THE EXCESS MONIES SHALL BE WITHDRAWN AND DISBURSED PURSUANT TO APPROPRIATION, BY THE APPROVAL OF THE LEGISLATURE: (A) FOR THE REDUCTION OF STATE TAXES; AND/OR (B) FOR THE RETIREMENT OF THE PRINCIPAL AMOUNT OF INDEBTEDNESS ISSUED BY OR ON BEHALF OF THE STATE EXCLUDING NOTES ISSUED IN ANTICIPATION OF TAX OR OTHER REVENUES OF THE STATE; AND/OR (C) IN ANY OTHER MANNER DETERMINED BY THE STATE LEGISLATURE, PROVIDED THAT THE REVENUE LIMITATION SHALL NOT BE EXCEEDED THROUGH SUCH OTHER DETERMINATION.

S 3. Resolved (if the Senate concur), That section 17 of article 7 of the constitution be amended to read as follows:

S 17. The legislature may establish a fund or funds, OTHER THAN THE BUDGET STABILIZATION FUND ESTABLISHED PURSUANT TO SECTION SEVENTEEN-A OF THIS ARTICLE, to aid in the stabilization of the tax revenues of the state available for expenditure or distribution. Any law creating such a

fund shall specify the tax or taxes to which such fund relates, and shall prescribe the method of determining the amount of revenue from any such tax or taxes which shall constitute a norm of each fiscal year. Such part as shall be prescribed by law of any revenue derived from such tax or taxes during a fiscal year in excess of such norm shall be paid into such fund. No moneys shall at any time be withdrawn from such fund unless the revenue derived from such tax or taxes during a fiscal year shall fall below the norm for such year; in which event such amount as may be prescribed by law, but in no event an amount exceeding the difference between such revenue and such norm, shall be paid from such fund into the general fund.

No law changing the method of determining a norm or prescribing the amount to be paid into such a fund or to be paid from such a fund into the general fund may become effective until three years from the date of its enactment.

S 4. Resolved (if the Senate 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.