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

4565

2011-2012 Regular Sessions

I N A S S E M B L Y

February 4, 2011

Introduced by M. of A. SCHROEDER -- read once and referred to the Committee on Ways and Means

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

Section 1. Resolved (if the Senate concur), That article 7 of the constitution be amended by adding a new section 11-a to read as follows:

S 11-A. 1. EXCEPT AS AUTHORIZED BY SECTION 11 OF THIS ARTICLE OR SUBDIVISION 2 OF THIS SECTION, THE STATE SHALL NOT ENTER INTO ANY FINANCING OR OTHER SIMILAR ARRANGEMENT, WHETHER BY STATUTE, CONTRACT, LEASE, OR OTHER SIMILAR AGREEMENT, OR OTHERWISE, WHEREBY THE STATE AGREES TO MAKE PAYMENTS WHICH WILL BE USED, DIRECTLY OR INDIRECTLY, FOR THE PAYMENT OF PRINCIPAL, INTEREST, OR RELATED PAYMENTS ON INDEBTEDNESS ISSUED OR CONTRACTED BY ANY STATE AGENCY, MUNICIPALITY, INDIVIDUAL, OR PUBLIC OR PRIVATE CORPORATION FOR STATE CAPITAL OR OPERATING PURPOSES OR TO FINANCE GRANTS MADE OR TO BE MADE BY OR ON BEHALF OF THE STATE FOR ANY PURPOSE. THE FOREGOING RESTRICTIONS SHALL APPLY WHETHER OR NOT THE OBLIGATION OF THE STATE TO MAKE PAYMENTS IS SUBJECT TO APPROPRIATION OR IS OTHERWISE CONTINGENT.

2. NOTWITHSTANDING THE PROVISIONS OF SECTION 11 OF THIS ARTICLE, THE LEGISLATURE MAY, BY LAW, WITHOUT VOTER APPROVAL, AUTHORIZE THE STATE TO CONTRACT DEBT SECURED BY A PLEDGE OF SPECIFIC STATE REVENUES AUTHORIZED BY SUCH LAW TO BE DEPOSITED IN A DEDICATED TRUST FUND OR FUNDS CREATED FOR CAPITAL WORKS OR PURPOSES. THE LEGISLATURE SHALL, BY LAW, IDENTIFY THE CAPITAL WORKS OR PURPOSES TO BE FINANCED WITH SUCH DEBT. REVENUES IN EXCESS OF THE REQUIRED PAYMENTS OF DEBT SERVICE AND RELATED PAYMENTS ON SUCH DEBT SHALL BE AVAILABLE FOR OTHER PURPOSES, AS PROVIDED BY LAW.

3. THE STATE MAY NOT CONTRACT DEBT PURSUANT TO SECTION 11 OF THIS 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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IN PARAGRAPHS (A) AND (B) OF THIS SUBDIVISION WILL BOTH BE MET AFTER SUCH DEBT HAS BEEN CONTRACTED.

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

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

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

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

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

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

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

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

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

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

Notwithstanding the foregoing provisions of this section, the comptroller may covenant with the purchasers of any state obligations that they shall have no further rights against the state for payment of such obligations or any interest thereon after an amount or amounts determined in accordance with the provisions of such covenant is deposited in a described fund or with a named or described agency or trustee. In such case, this section shall have no further application with respect to payment of such obligations or any interest thereon after the comptroller has complied with the prescribed conditions of such covenant.

S 3. 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.