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

709

2011-2012 Regular Sessions

I N S E N A T E

(PREFILED)

January 5, 2011

Introduced by Sen. ROBACH -- 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 the constitution, in relation to providing the electors with the power of initiative and referendum

Section 1. Resolved (if the Assembly concur), That section 13 of article 3 of the constitution be amended to read as follows:

S 13. The enacting clause of all bills shall be "The People of the State of New York, represented in Senate and Assembly, do enact as follows," and no law shall be enacted except by bill; EXCEPT AS OTHERWISE PROVIDED IN ARTICLE TWENTY OF THIS CONSTITUTION.

S 2. RESOLVED (if the Assembly concur), That section 14 of article 3 of the constitution be amended to read as follows:

S 14. A. No bill shall be passed or become a law unless it shall have been printed and upon the desks of the members, in its final form, at least three calendar legislative days prior to its final passage, unless the governor, or the acting governor, shall have certified, under his or her hand and the seal of the state, the facts which in his or her opinion necessitate an immediate vote thereon, in which case it must nevertheless be upon the desks of the members in final form, not necessarily printed, before its final passage; nor shall any bill be passed or become a law, except by the assent of a majority of the members elected to each branch of the legislature; and upon the last reading of a bill, no amendment thereof shall be allowed, and the question upon its final passage shall be taken immediately thereafter, and the ayes and nays entered on the journal.

B. THIS SECTION SHALL NOT APPLY TO ANY INITIATIVE OR REFERENDUM THAT IS SUBJECT TO THE PROVISIONS OF ARTICLE TWENTY OF THIS CONSTITUTION.

S 3. RESOLVED (if the Assembly concur), That section 1 of article 19 of the constitution be amended to read as follows:

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

LBD89029-01-1

Section 1. A. Any amendment or amendments to this constitution may be proposed in the senate and assembly whereupon such amendment or amendments shall be referred to the attorney-general whose duty it shall be within twenty days thereafter to render an opinion in writing to the senate and assembly as to the effect of such amendment or amendments upon other provisions of the constitution. Upon receiving such opinion, if the amendment or amendments as proposed or as amended shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, and the ayes and noes taken thereon, and referred to the next regular legislative session convening after the succeeding general election of members of the assembly, and shall be published for three months previous to the time of making such choice; and if in such legislative session, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the legislature to submit each proposed amendment or amendments to the people for approval in such manner and at such times as the legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of the electors voting thereon, such amendment or amendments shall become a part of the constitution on the first day of January next after such approval. Neither the failure of the attorney-general to render an opinion concerning such a proposed amendment nor his or her failure to do so timely shall affect [th] THE validity of such proposed amendment or legislative action thereon.

B. THIS SECTION SHALL NOT APPLY TO AN AMENDMENT BY INITIATIVE SUBJECT TO THE PROVISIONS OF ARTICLE TWENTY OF THIS CONSTITUTION.

S 4. RESOLVED (if the Assembly concur), That section 16 of article 3 of the constitution be amended to read as follows:

S 16. A. No act shall be passed which shall provide that any existing law, or any part thereof, shall be made or deemed a part of said act, or which shall enact that any existing law, or part thereof, shall be applicable, except by inserting it in such act.

B. THIS SECTION SHALL NOT APPLY TO ANY INITIATIVE OR REFERENDUM SUBJECT TO THE PROVISIONS OF ARTICLE TWENTY OF THIS CONSTITUTION.

S 5. RESOLVED (if the Assembly concur), That section 7 of article 4 of the constitution be amended to read as follows:

S 7. A. Every bill which shall have passed the senate and assembly shall, before it becomes a law, be presented to the governor; if the governor approve, he or she shall sign it; but if not, he or she shall return it with his or her objections to the house in which it shall have originated, which shall enter the objections at large on the journal, and proceed to reconsider it. If after such reconsideration, two-thirds of the members elected to that house shall agree to pass the bill, it shall be sent together with the objections, to the other house, by which it shall likewise be reconsidered; and if approved by two-thirds of the members elected to that house, it shall become a law notwithstanding the objections of the governor. In all such cases the votes in both houses shall be determined by yeas and nays, and the names of the members voting shall be entered on the journal of each house respectively. If any bill shall not be returned by the governor within ten days (Sundays excepted) after it shall have been presented to him or her, the same shall be a law in like manner as if he or she had signed it, unless the legislature shall, by their adjournment, prevent its return, in which case it shall not become a law without the approval of the governor. No bill shall become a law after the final adjournment of the legislature,

unless approved by the governor within thirty days after such adjournment. If any bill presented to the governor contain several items of appropriation of money, the governor may object to one or more of such items while approving of the other portion of the bill. In such case the governor shall append to the bill, at the time of signing it, a statement of the items to which he or she objects; and the appropriation so objected to shall not take effect. If the legislature be in session, he or she shall transmit to the house in which the bill originated a copy of such statement, and the items objected to shall be separately reconsidered. If on reconsideration one or more of such items be approved by two-thirds of the members elected to each house, the same shall be part of the law, notwithstanding the objections of the governor. All the provisions of this section, in relation to bills not approved by the governor, shall apply in cases in which he or she shall withhold approval from any item or items contained in a bill appropriating money.

B. THIS SECTION SHALL NOT APPLY TO ANY INITIATIVE OR REFERENDUM THAT IS SUBJECT TO THE PROVISIONS OF ARTICLE TWENTY OF THIS CONSTITUTION.

S 6. RESOLVED (if the Assembly concur), That article 20 of the constitution be renumbered article 21 and a new article 20 be added to read as follows:

ARTICLE XX
INITIATIVE AND REFERENDUM

SECTION 1. NOTWITHSTANDING ANY OTHER PROVISION OF THIS CONSTITUTION, THE PEOPLE RESERVE TO THEMSELVES THE POWER TO PROPOSE LAWS AND TO PROPOSE AMENDMENTS TO THE CONSTITUTION, AND TO ADOPT OR REJECT THE SAME, AT THE POLLS, INDEPENDENT OF THE LEGISLATURE, AND ALSO RESERVE THE POWER, AT THEIR OWN OPTION, TO SO ADOPT OR REJECT ANY ACT, OR SECTION OR PART OF ANY ACT, PASSED BY THE LEGISLATURE.

S 2. AS USED IN THIS ARTICLE: A. INITIATIVE IS THE POWER OF THE ELECTORS TO PROPOSE AMENDMENTS TO THE CONSTITUTION AND TO PROPOSE STATUTES; AND

B. REFERENDUM IS THE POWER OF THE ELECTORS TO APPROVE OR REJECT STATUTES OR PARTS OF STATUTES.

S 3. INITIATIVE MAY BE USED FOR ANY MEASURE EMBRACING A SINGLE OBJECT OR PURPOSE, EXCEPT THE FOLLOWING: CALLING ELECTIONS; APPROPRIATING FUNDS, EXCEPT FOR AN INITIATIVE PROPOSING AN APPROPRIATION FOR A SINGLE OBJECT OR PURPOSE; NAMING ANY INDIVIDUALS TO HOLD ANY OFFICE; OR NAMING OR IDENTIFYING ANY PRIVATE CORPORATION OR OTHER PRIVATE ENTITY TO PERFORM ANY FUNCTION OR TO HAVE ANY POWER OR DUTY. SUCH MEASURES MAY NOT BE SUBMITTED TO THE ELECTORS AND SHALL NOT HAVE THE FORCE AND EFFECT OF LAW.

S 4. AN INITIATIVE OR REFERENDUM MEASURE MAY BE PROPOSED BY PRESENTING TO THE STATE BOARD OF ELECTIONS A PETITION THAT SETS FORTH THE TEXT OF THE PROPOSED STATUTE, CONSTITUTIONAL AMENDMENT OR REFERENDUM AND THAT HAS BEEN SIGNED BY ELECTORS EQUAL IN NUMBER TO AT LEAST FIVE PERCENT OF THE VOTES CAST FOR ALL CANDIDATES FOR GOVERNOR AT THE LAST GUBERNATORIAL ELECTION. SUCH SIGNATURES MUST INCLUDE AT LEAST FIVE THOUSAND SIGNATURES FROM EACH OF AT LEAST THREE-FIFTHS OF THE CONGRESSIONAL DISTRICTS OF THE STATE.

S 5. A. PETITIONS FOR AN INITIATIVE OR REFERENDUM MEASURE SHALL BE IN SUBSTANTIALLY THE SAME FORM AS PRESCRIBED BY THE ELECTION LAW FOR INDEPENDENT NOMINATING PETITIONS, AND SHALL BE CIRCULATED AND PRESENTED IN THE MANNER PRESCRIBED BY SUCH LAW, EXCEPT THAT THE PETITION SHALL STATE THAT THE REGISTERED VOTER DESIRES TO HAVE THE SPECIFIC INITIATIVE OR

REFERENDUM QUESTION NOTED ON THE PETITION PLACED ON THE BALLOT INSTEAD OF A CANDIDATE.

B. PETITIONS SHALL BE SUBMITTED TO THE STATE BOARD OF ELECTIONS. A SIGNATURE MADE EARLIER THAN ONE YEAR PRIOR TO THE NEXT GENERAL ELECTION SHALL NOT BE COUNTED. CHALLENGES TO SUCH PETITIONS SHALL BE RESOLVED BY THE STATE BOARD OF ELECTIONS, SUBJECT TO JUDICIAL REVIEW AS PROVIDED FOR BY LAW. NO CHALLENGE TO AN INITIATIVE OR REFERENDUM MAY BE FILED MORE THAN TEN DAYS AFTER SUBMISSION OF PETITIONS TO THE STATE BOARD OF ELECTIONS, AND ANY SUCH CHALLENGE SHALL BE FINALLY RESOLVED BY THE STATE BOARD OF ELECTIONS WITHIN TEN DAYS OF ITS FILING.

C. MEASURES PROPOSING OR REJECTING STATUTES SHALL BE PLACED ON THE BALLOT BY THE STATE BOARD OF ELECTIONS AT THE NEXT GENERAL ELECTION HELD AT LEAST NINETY DAYS AFTER SUCH MEASURE IS SUBMITTED. MEASURES PROPOSING AMENDMENTS TO THE CONSTITUTION SHALL BE PLACED ON THE BALLOT BY THE STATE BOARD OF ELECTIONS AT THE NEXT GENERAL ELECTION IN WHICH THERE ARE CANDIDATES FOR THE OFFICE OF MEMBER OF THE SENATE OR ASSEMBLY HELD AT LEAST NINETY DAYS AFTER THE MEASURE IS SUBMITTED TO THE STATE BOARD OF ELECTIONS AND AT THE NEXT SUCH GENERAL ELECTION.

S 6. A. PRIOR TO THE CIRCULATION OF AN INITIATIVE OR REFERENDUM PETITION FOR SIGNATURES, A COPY SHALL BE SUBMITTED TO THE ATTORNEY GENERAL OF THE STATE OF NEW YORK WHO SHALL PREPARE A TITLE AND SUMMARY, NOT TO EXCEED ONE HUNDRED WORDS, WHICH SHALL APPEAR ON THE PETITION AND ON THE BALLOT FOR EACH INITIATIVE OR REFERENDUM AND WHICH SHALL GIVE NO INDICATION OF SUPPORT OR OPPOSITION TO SUCH MEASURE, WITHIN TWENTY DAYS AFTER SUCH MEASURE IS SUBMITTED TO HIM OR HER.

B. A COPY OF SUCH INITIATIVE OR REFERENDUM PETITION SHALL ALSO BE SUBMITTED TO THE NEW YORK STATE LEGISLATIVE BILL DRAFTING COMMISSION OR ITS SUCCESSOR PRIOR TO CIRCULATION FOR SIGNATURES. SUCH COMMISSION SHALL RENDER TECHNICAL COMMENTS ON THE FORM OF THE PROPOSED MEASURE, WITH NO INDICATION OF SUPPORT OR OPPOSITION, TO THE PROPONENTS OF SUCH MEASURE WITHIN TWENTY DAYS OF SUBMISSION.

C. NO ACTION OR INACTION BY THE ATTORNEY GENERAL OR THE FAILURE OF THE LEGISLATIVE BILL DRAFTING COMMISSION OR ITS SUCCESSOR TO PROVIDE COMMENTS WITH RESPECT TO AN INITIATIVE OR REFERENDUM PETITION, OR TO TIMELY DO SO, SHALL AFFECT THE VALIDITY OF SUCH INITIATIVE OR REFERENDUM PETITION OR THE ACTION OF THE ELECTORS THEREON.

D. ANY ACTION OR PROCEEDING IN WHICH ANY QUESTION ARISES AS TO THE VALIDITY OF AN INITIATIVE OR REFERENDUM MEASURE, WHETHER AN INITIATIVE OR REFERENDUM MEASURE SHOULD APPEAR ON THE BALLOT OR WHICH CHALLENGES THE TITLE AND SUMMARY OF SUCH MEASURE PREPARED BY THE ATTORNEY GENERAL AS FAILING TO ACCURATELY DESCRIBE SUCH MEASURE, SHALL BE HEARD IN THE SUPREME COURT OF THE STATE AND PREFERRED OVER ALL OTHER CIVIL CAUSES IN ALL COURTS OF THE STATE AND SHALL BE HEARD AND DETERMINED IN PREFERENCE TO ALL OTHER CIVIL BUSINESS PENDING THEREIN. NO ACTION OR PROCEEDING CHALLENGING WHETHER AN INITIATIVE OR REFERENDUM MEASURE MAY APPEAR ON THE BALLOT OR WHICH CHALLENGES ANY ACTION OR INACTION BY THE ATTORNEY GENERAL RESPECTING THE TITLE OR SUMMARY OF SUCH MEASURE MAY BE BROUGHT MORE THAN FOURTEEN DAYS AFTER ACTION BY THE ATTORNEY GENERAL PURSUANT TO SUBDIVISION A OF THIS SECTION OR, IF THE ATTORNEY GENERAL FAILS TO ACT, THEN NO LATER THAN FOURTEEN DAYS AFTER THE DEADLINE FOR SUCH ACTION PURSUANT TO SUCH SUBDIVISION A.

S 7. EXCEPT TO THE EXTENT REQUIRED BY SECTION EIGHT OF THIS ARTICLE, A MAXIMUM OF FOUR DISCRETE INITIATIVE MEASURES, OR FOUR DISCRETE REFERENDUM MEASURES, OR ANY COMBINATION OF DISCRETE INITIATIVE MEASURES OR REFERENDUM MEASURES NOT TO EXCEED A TOTAL OF FOUR MAY BE SUBMITTED TO THE ELECTORS AT ANY ONE GENERAL ELECTION. IF MORE THAN FOUR MEASURES

QUALIFY, THOSE INITIATIVE MEASURES AND REFERENDA MEASURES SUBMITTED TO THE STATE BOARD OF ELECTIONS EARLIEST IN TIME SHALL BE PLACED ON THE BALLOT.

S 8. ANY INITIATIVE OR REFERENDUM NOT PLACED ON A BALLOT BECAUSE OF THE PROVISIONS OF SECTION SEVEN OF THIS ARTICLE SHALL AUTOMATICALLY BE PLACED ON THE BALLOT FOR THE NEXT GENERAL ELECTION, NOTWITHSTANDING THE PROVISIONS OF SECTION SEVEN OF THIS ARTICLE.

S 9. A. TO BE ENACTED, AN INITIATIVE OR REFERENDUM MEASURE PROPOSING OR REJECTING A STATUTE MUST BE APPROVED BY A MAJORITY OF THE ELECTORS OF THE STATE VOTING ON THE MEASURE STATE-WIDE. AN INITIATIVE OR REFERENDUM MEASURE THAT HAS BEEN APPROVED SHALL TAKE EFFECT ON THE FIRST DAY OF JANUARY OF THE YEAR NEXT SUCCEEDING ITS PASSAGE UNLESS THE MEASURE EXPRESSLY PROVIDES OTHERWISE. IF A REFERENDUM PETITION IS APPROVED REPEALING A PART OF A STATUTE, THE REMAINDER OF THE STATUTE SHALL NOT BE DELAYED FROM GOING INTO EFFECT.

B. A MEASURE AMENDING THE CONSTITUTION MUST BE APPROVED BY A MAJORITY OF THE ELECTORS OF THE STATE VOTING ON THE MEASURE IN TWO SUCCESSIVE ELECTIONS IN WHICH THERE ARE CANDIDATES FOR STATE SENATE OR STATE ASSEMBLY ON THE BALLOT. SUCH MEASURE SHALL TAKE EFFECT ON THE FIRST DAY OF JANUARY OF THE YEAR NEXT SUCCEEDING ITS SECOND APPROVAL UNLESS THE MEASURE EXPRESSLY PROVIDES OTHERWISE.

C. IF PROVISIONS OF TWO OR MORE MEASURES APPROVED AT THE SAME ELECTION CONFLICT, THOSE OF THE MEASURE RECEIVING THE HIGHEST NUMBER OF AFFIRMATIVE VOTES SHALL PREVAIL.

D. A REFERENDUM MEASURE REJECTING ALL OR PART OF A STATUTE CANNOT BE REPEALED, AMENDED OR OTHERWISE RECONSIDERED BY THE LEGISLATURE FOR A PERIOD OF TWO YEARS. A MEASURE ADOPTED THROUGH INITIATIVE CANNOT BE REPEALED, AMENDED OR OTHERWISE RECONSIDERED BY THE LEGISLATURE FOR A PERIOD OF TWO YEARS. AFTER TWO YEARS NO LAW TO AMEND, REPEAL OR OTHERWISE RECONSIDER A MEASURE ADOPTED BY INITIATIVE OR REFERENDUM 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 SO SUBMITTED TO THE PEOPLE WITHIN THREE MONTHS AFTER ITS PASSAGE.

E. ANY REFERENDUM OR INITIATIVE ADOPTED BY THE VOTERS MAY BE REPEALED, AMENDED, OR OTHERWISE RECONSIDERED BY THE PEOPLE AT ANY TIME THROUGH THE PROCESS ESTABLISHED BY THIS ARTICLE FOR INITIATIVE OR REFERENDUM MEASURES.

S 10. INITIATIVE AND REFERENDUM IN CITIES, TOWNS, VILLAGES AND COUNTIES. A. INITIATIVE AND REFERENDUM POWERS ARE RESERVED FOR EVERY CITY, TOWN, VILLAGE AND COUNTY IN THE STATE AS TO ALL LOCAL MATTERS THAT SUCH MUNICIPALITY IS OR SHALL BE EMPOWERED TO ACT PURSUANT TO ARTICLE IX OF THIS CONSTITUTION.

B. INITIATIVE AND REFERENDUM IN CITIES, TOWNS, VILLAGES AND COUNTIES SHALL BE CONDUCTED IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE; PROVIDED, HOWEVER, THAT:

(I) SIGNATURES OF REGISTERED ELECTORS OF SUCH MUNICIPALITY EQUAL IN NUMBER TO AT LEAST THIRTY THOUSAND OR FIVE PERCENT OF THE VOTES CAST IN SUCH CITY, TOWN, VILLAGE OR COUNTY FOR ALL CANDIDATES FOR GOVERNOR AT THE LAST GUBERNATORIAL ELECTION, WHICHEVER IS LESS, SHALL BE REQUIRED TO PROPOSE ANY MEASURE BY INITIATIVE AND REFERENDUM;

(II) THE AFFIRMATIVE VOTE OF THE MAJORITY OF ELECTORS OF THE MUNICIPALITY VOTING ON THE MEASURE SHALL BE REQUIRED TO ENACT SUCH MEASURE;

(III) PETITIONS SHALL BE SUBMITTED TO THE COUNTY BOARD OF ELECTIONS WHICH SHALL HAVE THE POWERS CONFERRED AND THE DUTIES IMPOSED ON THE STATE BOARD OF ELECTIONS BY THIS ARTICLE; AND

(IV) THE PROVISIONS OF SUBDIVISION B OF SECTION SIX OF THIS ARTICLE SHALL NOT BE APPLICABLE.

S 11. THIS ARTICLE OF THE CONSTITUTION SHALL BE IN ALL RESPECTS SELF-EXECUTING, EXCEPT THAT THE MANNER AND METHOD OF EXERCISING THE POWER OF INITIATIVE AND REFERENDUM MAY BE PRESCRIBED PURSUANT TO LAW, CONSISTENT WITH AND LIMITED BY THE PROVISIONS OF THIS ARTICLE.

S 7. RESOLVED (if the Assembly 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.