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

7544

I N S E N A T E

June 1, 2012

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 authorization of debt in times of public emergency, a limit on the total amount of state-funded debt, the refunding of state debts, providing for the use of conference committees, consensus forecasting and the submission of a capital program and financing plan

Section 1. Resolved (if the Assembly concur), That section 10 of article 7 of the constitution be amended to read as follows:

S 10. In addition to the above limited power to contract debts, the state may contract debts to repel invasion, suppress insurrection, [or] defend the state in war, [or] to suppress forest fires OR TO RESPOND TO ANY OTHER EMERGENCY STEMMING FROM A DISASTER INCLUDING, BUT NOT LIMITED TO, A DISASTER CAUSED BY AN ACT OF TERRORISM; but the money arising from the contracting of such debts shall be applied for the purpose for which it was raised, or to repay such debts, and to no other purpose whatever. NO DEBT SHALL BE CONTRACTED PURSUANT TO THIS SECTION WITHOUT THE CONCURRENCE OF THE GOVERNOR, THE COMPTROLLER, AND A MAJORITY OF THE MEMBERS ELECTED TO EACH HOUSE OF THE LEGISLATURE; AND THE GOVERNOR SHALL HAVE POWER TO SUMMON THE COMPTROLLER AND CONVENE THE LEGISLATURE IN EXTRAORDINARY SESSION FOR THE PURPOSE OF CONSIDERING SUCH EMERGENCY DEBT. AT THE TIME, DATE AND PLACE APPOINTED BY THE GOVERNOR, NO OTHER SUBJECT SHALL BE ACTED UPON UNTIL EACH, IN THE FOLLOWING ORDER, HAS GIVEN THEIR APPROVAL OR ANY ONE THEREOF HAS GIVEN THEIR DISAPPROVAL OF THE DEBT PROPOSED BY THE GOVERNOR TO ENABLE THE STATE TO RESPOND TO SUCH EMERGENCY: THE GOVERNOR, THE COMPTROLLER, THE SENATE AND THE ASSEMBLY. THE PROPOSAL OF SUCH EMERGENCY DEBT SHALL BE IN THE FORM OF A RESOLUTION PREPARED AND SUBMITTED BY THE GOVERNOR TO THE COMPTROLLER, THE SENATE AND THE ASSEMBLY, WHO SHALL APPROVE OR DISAPPROVE SUCH RESOLUTION WITHOUT ANY CHANGES THERETO; AND IF SUCH RESOLUTION IS APPROVED BY THE GOVERNOR, THE COMPTROLLER, AND A MAJORITY 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.

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

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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. [No such] DEBT SUBJECT TO THE PROVISIONS OF THIS SECTION SHALL INCLUDE ANY DEBT OR OBLIGATION, OTHER THAN DEBT OR REFUNDING DEBT INCURRED PURSUANT TO SECTIONS 9, 10 AND 13 OF THIS ARTICLE, 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 OR HAS AGREED ON OR AFTER APRIL FIRST, NINETEEN HUNDRED NINETY-SEVEN 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, OR, IF ON OR AFTER SUCH DATE, A PROGRAM OF DEBT IS AUTHORIZED TO BE ISSUED WHERE STATE AID IS INTENDED TO BE THE SOLE SOURCE OF PAYMENT OF DEBT SERVICE, 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 (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.

2. THE LEGISLATURE MAY, BY LAW, 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 A SINGLE CAPITAL WORK OR PURPOSE. THE LEGISLATURE SHALL, BY LAW, IDENTIFY THE CAPITAL WORK OR PURPOSE 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. EXCEPT AS PROVIDED IN SUBDIVISION 5 OF THIS SECTION, NO law AUTHORIZING DEBT TO BE CREATED BY THE STATE PURSUANT TO SUBDIVISIONS 1 AND 2 OF THIS SECTION 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 [nor at any general election when any other law or any bill shall be submitted to be voted for or against] BY THE LEGISLATURE.

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

4. DURING THE FISCAL YEAR BEGINNING APRIL FIRST, TWO THOUSAND TWENTY-TWO AND IN EVERY FISCAL YEAR THEREAFTER, NO DEBT AUTHORIZED PURSUANT TO THIS SECTION SHALL BE INCURRED UNLESS THE TOTAL PRINCIPAL AMOUNT OF DEBT TO BE INCURRED PURSUANT TO SUCH LAW, TOGETHER WITH THE TOTAL PRINCIPAL AMOUNT OF DEBT ALREADY OUTSTANDING, SHALL BE EQUAL TO OR LESS THAN FIVE PERCENT OF THE TOTAL PERSONAL INCOME OF THE STATE AS DETERMINED BY LAW.

DEBT SUBJECT TO THE LIMIT IMPOSED BY THIS SECTION SHALL INCLUDE ALL DEBT, WHENEVER ISSUED, DESCRIBED IN SUBDIVISIONS 1 AND 2 OF THIS SECTION BUT SHALL NOT INCLUDE THE DEBTS SPECIFIED IN SECTIONS 9, 10 AND 13 OF THIS ARTICLE.

5. DURING ANY FISCAL YEAR, DEBT IN THE COMBINED AGGREGATE AMOUNT OF TWO HUNDRED FIFTY MILLION DOLLARS MAY BE INCURRED PURSUANT TO A LAW OR LAWS THAT ARE NOT SUBMITTED FOR APPROVAL BY THE PEOPLE. SUCH DEBT SHALL BE INCURRED ONLY FOR CRITICAL CAPITAL NEEDS. HOWEVER, IN NO EVENT SHALL DEBT INCURRED IN FISCAL YEARS BEGINNING IN TWO THOUSAND TWENTY-TWO AND THEREAFTER PURSUANT TO SUCH LAW OR LAWS RESULT IN A TOTAL PRINCIPAL AMOUNT OF DEBT IN EXCESS OF THE LIMIT DETERMINED PURSUANT TO SUBDIVISION 4 OF THIS SECTION.

6. (I) ALL DEBT SUBJECT TO THE PROVISIONS OF THIS SECTION SHALL, EXCEPT FOR REFUNDING DEBT, BE INCURRED ONLY FOR A CAPITAL PURPOSE AUTHORIZED BY LAW, AND (II) ALL DEBT SUBJECT TO THE PROVISIONS OF THIS SECTION AND ALL DEBT AND REFUNDING DEBT SPECIFIED IN SECTIONS 9, 10 AND 13 OF THIS ARTICLE SHALL, IF INCURRED ON OR AFTER THE FIRST DAY OF THE FIRST FISCAL YEAR BEGINNING AT LEAST ONE YEAR AFTER THE EFFECTIVE DATE OF THIS SUBDIVISION, BE IN THE FORM OF OBLIGATIONS ISSUED BY THE COMPTROLLER.

7. NOTHING CONTAINED IN THIS SECTION SHALL INVALIDATE DEBT OBLIGATIONS OUTSTANDING ON THE EFFECTIVE DATE OF THIS SUBDIVISION THAT WOULD BE SUBJECT TO THE PROVISIONS OF THIS SECTION IF INCURRED AFTER SUCH EFFECTIVE DATE, AND THE STATE MAY CONTINUE TO PROVIDE FOR PAYMENTS RELATED TO SUCH DEBT ON THE SAME TERMS UNDER WHICH SUCH DEBT WAS INCURRED; PROVIDED, HOWEVER, THAT NO SUCH DEBT SHALL BE REFUNDED UNLESS SUCH REFUNDING COMPLIES IN ALL RESPECTS WITH THE REQUIREMENTS OF SECTION 13 OF THIS ARTICLE. THE PROVISIONS OF SECTION 16 OF THIS ARTICLE SHALL NOT APPLY TO STATE PAYMENTS WITH RESPECT TO ANY SUCH OUTSTANDING OBLIGATIONS UNLESS SUCH PROVISIONS WOULD HAVE APPLIED PRIOR TO THE EFFECTIVE DATE OF THIS SUBDIVISION.

8. DEBT OBLIGATIONS ISSUED TO REFUND OUTSTANDING STATE DEBT, REGARDLESS OF WHETHER SUCH OUTSTANDING DEBT WAS INCURRED PRIOR TO THE EFFECTIVE DATE OF THIS SUBDIVISION, SHALL NOT BE COUNTED FOR THE PURPOSES OF THE LIMIT IMPOSED BY SUBDIVISION 3 OF THIS SECTION IF SUCH REFUNDING COMPLIES IN ALL RESPECTS WITH SECTION 13 OF THIS ARTICLE. FOR PURPOSES OF THIS SUBDIVISION AND SUBDIVISION 7 OF THIS SECTION, ANY REFUNDING DEBT THAT DOES NOT EXTEND BEYOND THE FINAL MATURITY OF THE DEBT BEING REFUNDED SHALL BE DEEMED TO COMPLY WITH THE PROVISIONS OF SUBDIVISION 6 OF SECTION 13 OF THIS ARTICLE, PROVIDED THAT THERE IS AN ACTUAL DEBT SERVICE SAVINGS IN EVERY YEAR TO MATURITY AS A RESULT OF THE ISSUANCE OF THE REFUNDING DEBT.

9. AFTER THE EFFECTIVE DATE OF THIS SECTION, THE STATE SHALL NOT, EXCEPT AS SPECIFICALLY AUTHORIZED IN ANOTHER SECTION OF THIS CONSTITUTION, AGREE TO MAKE PAYMENTS, DIRECTLY OR INDIRECTLY, WHETHER OR NOT SUBJECT TO APPROPRIATION, THAT ARE TO BE AVAILABLE TO PAY DEBT SERVICE ON ANY DEBT INCURRED BY A MUNICIPALITY, INDIVIDUAL, PUBLIC AUTHORITY OR OTHER PUBLIC OR PRIVATE CORPORATION OR ANY OTHER ENTITY, FOR ANY PURPOSE, IF SUCH PAYMENTS ARE EXPECTED TO BE USED TO PAY DEBT SERVICE ONLY IF OTHER SOURCES AVAILABLE FOR THE PAYMENT OF DEBT SERVICE ARE INADEQUATE. ANY PROVISION REQUIRING THE STATE TO REPLACE MONIES USED TO PAY DEBT SERVICE SHALL BE INCLUDED IN THE PROHIBITION SET FORTH IN THIS SUBDIVISION. OUTSTANDING DEBT THAT WOULD BE PROHIBITED BY THIS SUBDIVISION IF SUCH DEBT HAD BEEN INCURRED AFTER THE EFFECTIVE DATE OF THIS SUBDIVISION MAY BE REFUNDED BY THE ENTITY THAT INCURRED THE OUTSTANDING DEBT PROVIDED THAT THE PROVISIONS OF SUBDIVISIONS 7 AND 8 OF THIS

SECTION ARE COMPLIED WITH EXCEPT THE REQUIREMENT THAT SUCH REFUNDING DEBT OBLIGATIONS BE ISSUED BY THE COMPTROLLER.

10. THE LEGISLATURE MAY, AT ANY TIME AFTER THE ENACTMENT OR APPROVAL OF LAW AUTHORIZING THE STATE TO CONTRACT DEBT PURSUANT TO THIS SECTION, IF NO DEBT SHALL HAVE BEEN CONTRACTED IN PURSUANCE THEREOF, REPEAL THE SAME; AND MAY AT ANY TIME, BY LAW, FORBID THE CONTRACTING OF ANY FURTHER DEBT OR LIABILITY UNDER SUCH LAW.

S 3. Resolved (if the Assembly 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 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 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 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 4. 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.