STATE OF NEW YORK

2950

2021-2022 Regular Sessions

IN SENATE

January 26, 2021

Introduced by Sen. KAVANAGH -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY

proposing an amendment to article 7 of the constitution, in relation to the diversion of dedicated funds

Section 1. Resolved (if the Assembly concur), That article 7 of the constitution be amended by adding a new section 20 to read as follows:

§ 20. Restrictions on diversion of dedicated funds; declaration of fiscal emergency. 1. The legislature shall not divert revenues derived from taxes and fees paid by the public into any dedicated fund for purposes other than those for which that fund was intended. Prohibited diversions shall include, without limitation:

(a) budgetary transfers of dedicated fund revenues into the general fund of the state or into any other fund maintained for the support of another governmental purpose;

(b) administrative acts by the executive that would transfer dedicated fund revenues into the general fund of the state or into any other fund maintained for the support of another governmental purpose;

(c) addition, by statute or administrative action, of new purposes for which appropriation shall be made available for use of dedicated fund revenues, including addition of new purposes into dedicated fund enacting legislation; and

(d) removal, by statute or administrative action, of sources of revenue created by statute, unless replaced with a greater source of dedicated revenue.

2. The only instance in which dedicated revenues may be diverted shall be upon declaration of a fiscal emergency by the governor, which shall be accompanied by a diversion impact statement.

(a) A fiscal emergency may be declared by the governor and diversion of funds may be authorized if the governor needs the revenues to repel invasion, suppress insurrection, defend the state after a declaration of war, respond to an act of terrorism, or respond to a natural disaster.

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

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Prior to diverting revenues, the governor shall notify the majority and minority leadership of the legislature. The diversion impact statement may be provided retroactively under these circumstances.

(b) No other diversions shall be authorized until the governor declares a state of fiscal emergency to the majority and minority leadership of the legislature, which shall, by concurrent resolution, ratify this fiscal emergency declaration. The assent of two-thirds of the members elected to the legislature shall be requisite to pass such resolution and any legislative appropriations that authorize the diversion of funds.

(c) If any diversion of funds occurs upon declaration of fiscal emergency during a regular or extraordinary session of the legislature, the budget or legislation diverting funds shall include a diversion impact statement which includes the following information:

(i) The amount diverted from each fund;

(ii) The cumulative amount diverted from each of the funds subject to diversion during the preceding five years, which shall also be categorized by fund type;

(iii) The date or dates when the diversion or diversions are to occur;

(iv) A detailed estimate of the impact of diversion from each fund; and

(v) The purpose for which the funds will be diverted.

(d) The diversion impact statement may be provided retroactively upon declaration of a fiscal emergency under the circumstances of paragraph (a) of this subdivision. The diversion impact statement shall be provided concurrently with the governor's fiscal emergency declaration and prior to introduction of the concurrent legislative resolution if the fiscal emergency is declared pursuant to paragraph (b) of this subdivision.

(e) Notwithstanding paragraph (a) of this subdivision, a fiscal emergency may only be declared if certain economic conditions are met. These indicators and the process for briefing the legislature and public shall be established by statute. If the fiscal emergency declaration is made before passage of the aforementioned statute, the governor shall use the composite index of business cycle indicators established pursuant to section 14 of chapter 1 of the laws of 2007.

§ 2. Resolved (if the Assembly concur), That the foregoing 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.