

**ASSEMBLY CONCURRENT
RESOLUTION No. 168**

**STATE OF NEW JERSEY
213th LEGISLATURE**

INTRODUCED MAY 5, 2008

Sponsored by:

Assemblywoman ALISON LITTELL MCHOSE

District 24 (Sussex, Hunterdon and Morris)

Assemblywoman MARCIA A. KARROW

District 23 (Warren and Hunterdon)

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District 23 (Warren and Hunterdon)

Assemblyman RONALD S. DANCER

District 30 (Burlington, Mercer, Monmouth and Ocean)

Co-Sponsored by:

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Assemblymen Ribble, Rudder, Assemblywomen Addiego, Coyle,
Assemblymen Chiusano, Rumpf, Van Pelt, Biondi, Russo,
Assemblywoman Casagrande, Assemblymen Holzapfel, Carroll, Merkt,
O'Scanlon, Assemblywoman Vandervalk, Assemblymen Rooney, Rumana,
DeCroce, Malone, Webber, Amodeo, Polistina, Wolfe, Bramnick and
Munoz**

SYNOPSIS

Proposes constitutional amendment to require voter approval when the State borrows money by issuing State independent authority debt backed by annual appropriations.

CURRENT VERSION OF TEXT

As introduced.

1 A **CONCURRENT RESOLUTION** proposing to amend Article VIII,
2 Section II, paragraph 3 of the Constitution of the State of New
3 Jersey.

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5 **BE IT RESOLVED** by the General Assembly of the State of New
6 Jersey (the Senate concurring):

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8 1. The following proposed amendment to the Constitution of
9 the State of New Jersey is agreed to:

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11 PROPOSED AMENDMENT

12
13 Amend Article VIII, Section II, paragraph 3 to read as follows:

14 3. a. The Legislature shall not, in any manner, create in any
15 fiscal year a debt or debts, liability or liabilities of the State, which
16 together with any previous debts or liabilities shall exceed at any
17 time one per centum of the total amount appropriated by the general
18 appropriation law for that fiscal year, unless the same shall be
19 authorized by a law for some single object or work distinctly
20 specified therein. Regardless of any limitation relating to taxation in
21 this Constitution, such law shall provide the ways and means,
22 exclusive of loans, to pay the interest of such debt or liability as it
23 falls due, and also to pay and discharge the principal thereof within
24 thirty-five years from the time it is contracted; and the law shall not
25 be repealed until such debt or liability and the interest thereon are
26 fully paid and discharged. Except as hereinafter provided, no such
27 law shall take effect until it shall have been submitted to the people
28 at a general election and approved by a majority of the legally
29 qualified voters of the State voting thereon.

30 b. On and after the date on which this subparagraph b. becomes
31 part of the Constitution, the Legislature shall not enact any law that,
32 in any manner, creates or authorizes the creation of a debt or
33 liability of an autonomous public corporate entity, established either
34 as an instrumentality of the State or otherwise exercising public and
35 essential governmental functions, which debt or liability has a
36 pledge of an annual appropriation as the ways and means to pay the
37 interest of such debt or liability as it falls due and pay and
38 discharge the principal of such debt, unless a law authorizing the
39 creation of that debt for some single object or work distinctly
40 specified therein shall have been submitted to the people at a
41 general election and approved by a majority of the legally qualified
42 voters of the State voting thereon. Voter approval shall not be
43 required for any such law providing that the ways and means to pay
44 the interest of and to pay and discharge the principal of such debt or
45 liability shall be subject to appropriations of an independent non-

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 State source of revenue paid by third persons for the use of the
2 single object or work thereof financed thereby, or appropriations of
3 a source of State revenue otherwise specifically authorized by the
4 voters pursuant to another paragraph of this Constitution to be
5 appropriated for debt financing purposes. No other paragraph of
6 this Constitution for any other purpose whatsoever shall be
7 construed as providing any other exception for voter approval of
8 any law described in this subparagraph.

9 c. No voter approval shall be required for any such law:

10 (1) under subparagraph a. of this paragraph authorizing the
11 creation of a State debt or debts in a specified amount or an amount
12 to be determined in accordance with such law for the refinancing of
13 all or a portion of any outstanding debts or liabilities of the State,
14 heretofore or hereafter created, or

15 (2) under subparagraph b. of this paragraph authorizing the
16 creation of debt or debts in a specified amount or an amount to be
17 determined in accordance with such law of an autonomous public
18 corporate entity, established either as an instrumentality of the State
19 or otherwise exercising public and essential governmental
20 functions, for the refinancing of all or a portion of any outstanding
21 debts or liabilities of that entity, heretofore or hereafter created,

22 so long as such law shall require that the refinancing provide a
23 debt service savings determined in a manner to be provided in such
24 law and that the proceeds of such debt or debts and any investment
25 income therefrom shall be applied to the payment of the principal
26 of, any redemption premium on, and interest due and to become due
27 on such debts or liabilities being refinanced on or prior to the
28 redemption date or maturity date thereof, together with the costs
29 associated with such refinancing.

30 d. All money to be raised by the authority of such law shall be
31 applied only to the specific object stated therein, and to the payment
32 of the debt thereby created.

33 e. This paragraph shall not be construed to refer to any money
34 that has been or may be deposited with this State by the government
35 of the United States. Nor shall anything in this paragraph contained
36 apply to the creation of any debts or liabilities for purposes of war,
37 or to repel invasion, or to suppress insurrection or to meet an
38 emergency caused by disaster or act of God.

39 (cf: Article VIII, Section II, paragraph 3 effective Dec. 8, 1983)

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41 2. When this proposed amendment to the Constitution is finally
42 agreed to pursuant to Article IX, paragraph 1 of the Constitution, it
43 shall be submitted to the people at the next general election
44 occurring more than three months after the final agreement and
45 shall be published at least once in at least one newspaper of each
46 county designated by the President of the Senate, the Speaker of the
47 General Assembly and the Secretary of State, not less than three
48 months prior to the general election.

1 3. This proposed amendment to the Constitution shall be
 2 submitted to the people at that election in the following manner and
 3 form:

4 There shall be printed on each official ballot to be used at the
 5 general election, the following:

6 a. In every municipality in which voting machines are not used,
 7 a legend which shall immediately precede the question as follows:

8 If you favor the proposition printed below make a cross (X), plus
 9 (+), or check (✓) in the square opposite the word "Yes." If you are
 10 opposed thereto make a cross (X), plus (+) or check (✓) in the
 11 square opposite the word "No."

12 b. In every municipality the following question:
 13

	<p>YES</p>	<p style="text-align: center;">VOTERS TO APPROVE STATE AUTHORITY DEBT PAYABLE FROM STATE APPROPRIATIONS</p> <p>Do you approve the proposed amendment to the State Constitution which provides that, after this amendment becomes part of the Constitution, a law enacted thereafter that authorizes State debt created by any autonomous public corporate entity, established either as an instrumentality of the State or otherwise exercising public and essential governmental functions, such as an independent State authority, which debt or liability has a pledge of an annual appropriation as the ways and means to pay the interest of such debt or liability as it falls due and pay and discharge the principal of such debt, will be subject to voter approval, except if the payment of the debt is made subject to appropriations of an independent non-State source of revenue paid by third persons for the use of the object or work financed thereby, or is from a source of State revenue otherwise specifically authorized by the voters pursuant to another paragraph of this Constitution to be appropriated for debt financing purposes, and for no other exception whatsoever as may be construed under any other paragraph of this Constitution for any other purpose?</p>
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	NO	<p style="text-align: center;">INTERPRETIVE STATEMENT</p> <p>This amendment to the State Constitution will require voter approval of new laws that allow the State to borrow money by incurring debt through any State agency or independent authority backed by a pledge of an annual appropriation to pay the principal and interest on the debt. New laws to allow the issuance of this type of State authority debt for State government purposes will be subject to voter approval. State courts have ruled that the State constitutional requirement that the Legislature and Governor must seek voter approval for long-term debt does not apply to such borrowing. That requirement is followed only for proposed State debts that contain a binding, non-repealable pledge to pay off the debt directly with State taxes. Most State authority debt can be issued without voter approval because the payment of the debt is backed only by a promise of the Legislature and the Governor that they will enact appropriations in the future to meet the debt payments. The courts have said this is a legal means of avoiding submitting the issuance of debt for voter approval. Laws to permit such debt that are enacted after this amendment becomes part of the Constitution will have to ask the voters for approval of such debts. Exceptions to voter approval for authority debt will be permitted if the debt is to be paid off from an appropriation of 1) a source of revenue dedicated by another paragraph of the State Constitution, which the voters have specifically authorized for debt financing purposes, or 2) an independent non-State government source of payments for use of projects built or obtained with the borrowed money, such as highway tolls or user fees. No other exception to voter approval may be construed under any other paragraph of the Constitution for any other purpose.</p>
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STATEMENT

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This concurrent resolution proposes to amend the State Constitution to require voter approval of new laws that allow the State to borrow money by incurring debt through any State agency or independent authority backed by a pledge of an annual appropriation to pay the principal and interest on the debt.

The Debt Limitation Clause of the New Jersey Constitution requires voter approval before the State can borrow money. However, State court decisions over the last 30 years have allowed State government to bypass referenda by using State public authorities and autonomous public corporate entities as a conduit for appropriations-backed State debt. State courts have ruled that the State constitutional requirement that the Legislature and Governor must seek voter approval for bonded debt does not apply to such State independent authority borrowing. The voter approval requirement exists currently only for proposed State debts that contain a binding, non-repealable pledge to pay off the debt directly with State taxes. Thus, State authority debt can be issued without voter approval if the payment of the debt is backed only by a promise of the Legislature and the Governor that they will enact appropriations in the future to meet the debt payments. Under this amendment, new laws to permit such debt will have to require Statewide voter referenda for approval.

Exceptions to voter approval for authority debt will be permitted if the debt is to be paid off from an appropriation of 1) a source of revenue dedicated by another paragraph of the State Constitution, which the voters have specifically authorized for debt financing purposes, or 2) an independent non-State government source of payments for use of projects built or obtained with the borrowed money, such as highway tolls or user fees. No other exception to voter approval may be construed under any other paragraph of the Constitution for any other purpose.