SENATE CONCURRENT RESOLUTION No. 88

STATE OF NEW JERSEY

216th LEGISLATURE

INTRODUCED MARCH 17, 2014

Sponsored by:
Senator JEFF VAN DREW
District 1 (Atlantic, Cape May and Cumberland)

SYNOPSIS
Amends State Constitution to create surplus revenue funds in the State general fund and the Property Tax Relief Fund and to change the State revenue estimating process.

CURRENT VERSION OF TEXT
As introduced.
A CONCURRENT RESOLUTION proposing to amend Article VIII, Section I, paragraph 7 and Article VIII, Section II of the Constitution of the State of New Jersey.

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

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

PROPOSED AMENDMENT

a. Amend Article VIII, Section I, paragraph 7 to read as follows:

7. a. No tax shall be levied on personal incomes of individuals, estates and trusts of this State unless the entire net receipts therefrom shall be received into the treasury, placed in a perpetual fund designated the Property Tax Relief Fund and be annually appropriated, pursuant to formulas established from time to time by the Legislature, to the several counties, municipalities and school districts of this State exclusively for the purpose of reducing or offsetting property taxes. In no event, however, shall a tax so levied on personal incomes be levied on payments received under the federal Social Security Act, the federal Railroad Retirement Act, or any federal law which substantially reenacts the provisions of either of those laws.

b. There shall be annually credited from the General Fund and placed in a special account in the perpetual Property Tax Relief Fund established pursuant to this paragraph, which account shall be designated the Property Tax Reform Account, an amount equal to the annual revenue derived from a tax rate of 0.5% imposed under the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.), as amended and supplemented, or any other subsequent law of similar effect, which amount shall be appropriated annually by the Legislature exclusively for the purpose of property tax reform.

c. There shall be credited annually to a special restricted reserve account in the perpetual fund, on or before the last day of the sixth month of the State fiscal year, and in addition to any sums appropriated to the special restricted reserve account, an amount equal to the greater of:

(1) 50% of the excess, if any, of the amount of income tax revenue actually deposited in the perpetual fund for the fiscal year immediately preceding the fiscal year in which a credit is to be made under this paragraph over the amount of anticipated income tax revenue for the perpetual fund certified by the Governor upon

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

Matter underlined thus is new matter.
approval of the annual appropriation act for the fiscal year immediately preceding the fiscal year in which a credit is required; or

(2) the amount, if any, by which the amount of income tax revenue actually deposited in the perpetual fund for the fiscal year immediately preceding the fiscal year in which a credit is to be made under this paragraph exceeds the product of the amount of income tax revenue actually deposited in the perpetual fund for the fiscal year next immediately preceding the fiscal year in which a credit is to be made, and 1.0 plus two times the annual inflation index rate for that immediately preceding fiscal year, which index rate shall mean the rate of annual percentage increase, if any, rounded to the nearest half-percent, in a federally published national measure of inflation, as shall be established by law.

If in the fiscal year preceding a fiscal year in which a credit is required, there is a law enacted which will increase the income tax revenue to the perpetual fund, the yield from that increase for that preceding fiscal year in which the increase is in effect shall be disregarded in determining the amount to be credited to the special restricted reserve account.

d. The Governor shall include in the annual budget message to the Legislature an estimate of the credit to be made to the special restricted reserve account as a reduction of the estimated undesignated fund balance in the perpetual fund as of July 1 of the fiscal year for which the Governor is making the budget recommendations. The Governor shall provide a report of the status of the special restricted reserve account to the Legislature periodically, but not less often than annually in the annual budget message to the Legislature.

e. Balances in the special restricted reserve account shall not be available for appropriation except as provided in this paragraph. Balances in the special restricted reserve account may be appropriated by the Legislature only: (1) upon separate certification by the Governor that anticipated income tax revenues in the perpetual fund are estimated to be less than those certified by the Governor upon approval of the annual appropriation act; or (2) upon a finding by the Legislature, based on its research, that to offset income tax revenue declines anticipated in the perpetual fund an appropriation from the special restricted reserve account is a more prudent fiscal policy than imposing new taxes or increasing any rate of tax or otherwise modifying the tax structure, including elimination or modification of deductions, exclusions or exemptions.

f. If in any fiscal year there is enacted an appropriation from the special restricted reserve account pursuant to subparagraph e. of this paragraph, there shall not be enacted any imposition of new taxes or increases in existing tax rates or tax structure modifications having the effect of increasing income tax revenues of the perpetual
fund; provided however, that there may be such a tax enactment in any such fiscal year if there is a shortfall in income tax revenue collections in the perpetual fund that is greater than 2% of the total available resources in the perpetual fund as certified by the Governor upon approval of the annual appropriation act for the fiscal year in which that income tax revenue decline is anticipated and if the appropriation is found to be in the best interest of the fiscal condition of the perpetual fund.

g. Notwithstanding the restrictions on the appropriation of the balances in the special restricted reserve account imposed by subparagraph e. of this paragraph, if balances in the account exceed an amount equivalent to 2.5% of the amount certified by the Governor as total anticipated income tax revenues in the perpetual fund upon approval of the annual appropriation act, the Governor shall send written notice of the amount of that excess to the Legislature. The excess amount as identified in the notice from the Governor shall be available for appropriation by the Legislature in accordance with subparagraph a. of this paragraph.

h. The amendments set forth in subparagraphs c. through h. of this paragraph shall apply to the fiscal year beginning on July 1 next following its approval by the people pursuant to Article IX, paragraph 1 of the Constitution, and each fiscal year thereafter.

(cf: Art.VIII, Sec.I, par.7 effective December 7, 2006)

b. Amend Article VIII, Section II by adding the following paragraph:

8. a. There shall be credited annually to a restricted reserve fund created in the general fund of the State government to be known as the Surplus General Revenue Fund, on or before the last day of the sixth month of the State fiscal year, and in addition to any sums appropriated to the Surplus General Revenue Fund, an amount equal to the greater of:

1) 50% of the excess, if any, of the amount of revenue actually deposited in the general fund in the fiscal year immediately preceding the fiscal year in which a credit is to be made under this paragraph over the amount of anticipated revenue for the general fund certified by the Governor upon approval of the annual appropriation act for the fiscal year immediately preceding the fiscal year in which a credit is required. "Anticipated revenue" means the amount of revenue certified by the Governor as estimated to be realized in a fiscal year as general fund resources to support appropriations made, including taxes, license fees, other miscellaneous departmental revenue, and revenue transfers to the general fund from other funds in the State Treasury, but excluding any funds that are not certified as available to support appropriations, and excluding any fund balances, whether designated, undesignated or reserved; or

2) the amount, if any, by which the amount of revenue actually
deposited in the general fund for the fiscal year immediately preceding the fiscal year in which a credit is to be made under this paragraph exceeds the product of the amount of revenue actually deposited in the general fund for the fiscal year next immediately preceding the fiscal year in which a credit is to be made and 1.0 plus two times the annual inflation index rate for that immediately preceding fiscal year, which index rate shall mean the rate of annual percentage increase, if any, rounded to the nearest half-percent, in a federally published national measure of inflation, as shall be established by law.

If in the fiscal year preceding a fiscal year in which a credit is required there is a law enacted which will increase the revenue to the general fund, the yield from that increase for that preceding fiscal year in which the increase is in effect shall be disregarded in determining the amount to be credited to the Surplus General Revenue Fund.

b. The Governor shall include in the annual budget message to the Legislature an estimate of the credit to be made to the Surplus General Revenue Fund as a reduction of the estimated undesignated fund balance in the general fund as of July 1 of the fiscal year for which the Governor is making the budget recommendations. The Governor shall provide a report of the status of the Surplus General Revenue Fund to the Legislature periodically, but not less often than annually in the annual budget message to the Legislature.

c. Balances in the Surplus General Revenue Fund shall not be available for appropriation except as provided in this paragraph. Balances in the Surplus General Revenue Fund may be appropriated by the Legislature only: (1) upon separate certification by the Governor that anticipated revenues in the general fund are estimated to be less than those certified by the Governor upon approval of the annual appropriation act; or (2) upon a finding by the Legislature, based on its research, that to offset revenue declines anticipated in the general fund an appropriation from the Surplus General Revenue Fund is a more prudent fiscal policy than imposing new taxes or increasing any rate of tax or otherwise modifying the tax structure, including elimination or modification of deductions, exclusions or exemptions.

d. The provisions of this paragraph shall not be construed to render balances in the Surplus General Revenue Fund unavailable for meeting the costs of any emergency identified by the Governor. Balances in the Surplus General Revenue Fund are available for that purpose, provided however, that the Governor shall notify the Legislature of the Governor's determination that balances in the fund are required to meet an emergency, describing the nature of the emergency and the intended use of the funds in meeting the emergency. After notification of the Legislature, such expenditures shall be deemed approved by the Legislature and appropriated for such emergency use, if the Legislature does not disapprove such use.
within 10 days of receipt of the Governor's notification through the passage of a concurrent resolution rejecting the proposed emergency use. The termination of a second annual session of the Legislature pursuant to paragraph 3 of Section I of Article IV of this Constitution shall not preclude the next commencing Legislature during that 10 day period from disapproving of such emergency use. As used in this subparagraph, "emergency" means any condition or occurrence which requires an immediate response in the protection of the life, safety or well-being of the citizens of this State, or any of them, or in the protection or restoration of property, public or private, endangered, damaged, or destroyed as a result, actual or potential, of such condition or occurrence.

e. If in any fiscal year there is enacted an appropriation from the Surplus General Revenue Fund pursuant to subparagraph c. of this paragraph, there shall not be enacted any imposition of new taxes or increases in existing tax rates or tax structure modifications having the effect of increasing revenues of the general fund; provided however, that there may be such a tax enactment in any such fiscal year if there is a decline in revenue collections in the general fund that is greater than 2% of the total available resources in the general fund as certified by the Governor upon approval of the annual appropriation act for the fiscal year in which that revenue decline is anticipated and if the appropriation is found to be in the best interest of the fiscal condition of the general fund.

f. This paragraph shall apply to the fiscal year beginning on July 1 next following its approval by the people pursuant to Article IX, paragraph 1 of the Constitution, and each fiscal year thereafter.

c. Amend Article VIII, Section II paragraph 2 to read as follows:

2. a. No money shall be drawn from the State treasury but for appropriations made by law. All moneys for the support of the State government and for all other State purposes as far as can be ascertained or reasonably foreseen, shall be provided for in one general appropriation law covering one and the same fiscal year; except that when a change in the fiscal year is made, necessary provision may be made to effect the transition.

b. No general appropriation law or other law appropriating money for any State purpose shall be enacted if the appropriation contained therein, together with all prior appropriations made for the same fiscal period, shall exceed the total amount of revenue on hand and anticipated which will be available to meet such appropriations during such fiscal period, as certified by the Governor.

c. The bill passed by the Legislature and presented annually to the Governor as the general appropriation law covering the fiscal year shall include a display in the preamble of the bill of the several items of State revenue anticipated to be collected by the State to
support appropriations for that fiscal year that the Legislature has
determined shall be available to support those appropriations, and
which shall be thereby deemed recommended by the Legislature to
be certified by the Governor pursuant to the Governor's
responsibility under subsection b. of this paragraph.

d. To assist the Legislature in determining the several items of
State revenue that it shall determine shall be available to support
appropriations for the fiscal year, the State Treasurer shall provide
monthly public reports of itemized revenue collections which
reports shall compare accrued monthly revenues with projected
monthly revenue collection targets. The monthly revenue reports
shall itemize by revenue source the State's major tax collections of
accrued revenue by separate components of each major tax,
including but not limited to: withholding and estimated payments
by taxpayers of gross income tax; and sales and use tax collections
by industry sector codes; and by collection methods such as by
regular periodic taxpayer returns and through taxpayer compliance
programs and other special efforts; and tax refund payments made
from those taxes and refund applications pending. The monthly
revenue reports shall also report on any revisions to the most recent
projection or certification of revenues.

To further assist the Legislature in its revenue estimation
process, the State Treasurer shall publish an annual comprehensive
report of the data collected through gross income tax returns. The
annual report shall be published through the Internet in a directory
accessible by the public, in electronic or digital form, making
available statistics based on the most recent individual New Jersey
gross income tax data available from the Division of Taxation's
gross income tax files. This data shall be aggregated at the
municipal level for all data otherwise reported.

To better assist the Legislature in its evaluation of State
appropriation recommendations against prior expenditure patterns,
the Governor's Budget Recommendation Document shall include
line-by-line itemized displays of revenues and expenditure data for
two prior fiscal years.

e. To assist the Legislature in determining the several items of
State revenue that it shall determine shall be available to support
appropriations for the fiscal year, the Legislative Budget and
Finance Officer shall provide the budget and appropriations
committees of the Legislature with periodic written reports of an
estimate of State revenue to be collected under the "New Jersey
Sales and Use Tax Act, P.L.1966, c.30 (C.54:32B-1 et seq.), and the
Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1
et seq.), as amended and supplemented, or any other subsequent law
of similar effect, for the current and ensuing fiscal year.

f. If the certification of revenue made upon enactment of the
general appropriation law, exceeds by more than 2% the estimate
for total State revenue for that year as shall be made by the Legislative Budget and Finance Officer and provided to the Legislature within 15 days after such certification, the Governor shall, within 60 days after that estimate being made by the Legislative Budget and Finance Officer, transmit to the Legislature and publish through the Internet in a directory accessible to the public specific Governor’s recommendations of actions to be undertaken by the Governor or the Legislature to address the potential of a revenue shortfall that exceeds that 2% difference. These recommendations shall not include reductions in the year-end surplus of any State funds as proposed under the enactment of the general appropriation law.

g. An individual serving as Governor during a fiscal year during which the term of office for Governor will expire and a different individual will be inaugurated Governor shall make a recertification of revenue of the same scope and detail as was made upon enactment of the general appropriation law for that fiscal year, which recertification of revenue shall be delivered to the Legislature and made public on or before the first Tuesday in January of that fiscal year. If the recertification of revenue required by this subsection falls below the certification of revenue made upon enactment of the general appropriation law for that fiscal year by more than 2%, the individual serving as Governor shall transmit to the Legislature specific recommendations of the actions to be undertaken by the incoming Governor or the Legislature to address the potential of a revenue shortfall that exceeds such 2% difference. These recommendations shall not include reductions in the year-end surplus of any State funds as proposed under the enactment of the general appropriation law.

(cf: Article VIII, Section II, paragraph 2, January 1, 1948)

d. Amend Article VIII, Section II by adding the following paragraph:

9. During the Governor’s examination and consideration of all requests for appropriations during the formulation of the Governor's budget recommendations, and also during the period of review of those recommendations by the Legislature, the Governor, with the assistance of the State Treasurer, shall review the most recent State revenue estimates of the Department of the Treasury and the Legislative Budget and Finance Officer. The State Treasurer shall also obtain and provide as part of such assistance professional consultant's advice concerning State revenue estimates for the current and ensuing fiscal year. Such professional consultant's advice shall be obtained from at least one academic professional or academic entity and at least one financial sector professional or entity that have knowledge and practical experience in the application of economic forecasting, analyzing business trends and cycles, tax accounting, the preparation and filing of State tax
returns, and state revenue forecasting, and that are qualified by education and experience to provide professional consultative advice thereon, which consultant's advice shall also promptly be transmitted to the Legislature and made public.

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

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

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

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

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

b. In every municipality the following question:

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<th>YES</th>
<th>ESTABLISHES STATE SURPLUS REVENUE RESERVE FUNDS AND MAKES CHANGES IN STATE REVENUE ESTIMATING PROCESS</th>
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<td>Do you approve amending the Constitution to reserve amounts of State taxes collected above certain levels? These reserves will come from the State's general fund taxes and the personal gross income tax if these sources are collected above certain growth rates. Reserves can be spent only when there are lower than expected tax collections. When reserve amounts are spent, no tax increase can be enacted in that year, except if tax collections decrease by more than two percent of total State revenues and fund balances. This amendment also makes changes in the State revenue estimating process to be used by the Governor and the Legislature in their budget making responsibilities.</td>
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**INTERPRETIVE STATEMENT**

This amendment will create two reserve funds in the State Treasury to reserve amounts of State taxes collected above certain growth rates. The reserves may be used in future years when State tax collections are lower than expected or to avoid raising taxes. In a year when reserve fund money is used, no tax increases will be allowed for that year, unless tax collections are in serious decline.

This amendment also makes changes in the State revenue estimating process.

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| STATEMENT |

This concurrent resolution proposes to amend the New Jersey Constitution to create two surplus revenue reserve funds, one in the State Treasury's general fund, into which most of the State's general tax revenue is deposited, and one in the Property Tax Relief Fund, into which the personal gross income tax revenue is deposited.

Each fund will be separately credited annually with surplus State revenue collections realized from the respective fund's taxes. The annual credit amounts will be based upon the greater of either: (1) one-half of taxes collected in excess of expected collections, or (2) all of the growth in actual taxes collected over the last year that exceeds twice the measure of inflation in government spending.

This will ensure that during years in which the growth in tax collections accelerates at rates that are not anticipated, or if the growth in tax collections outpaces double the rate of growth in government spending, that unanticipated State revenue growth will be set aside as a fiscal safety net for future State fiscal years.

The funds may be used in future years when State tax collections are lower than expected. The reserve funds may be used instead of raising taxes. Tax increases could still be enacted, but these reserve funds will be available to avoid tax increases. In a year when reserve fund money is used, no tax increases may be enacted for that year, unless tax collections are in serious decline, exceeding 2% of total State resources.

These revenue reserve funds are modeled upon the State's statutory "Surplus Revenue Fund" that exists only for general fund revenues. The Constitutional amendment will provide for a constitutionally established fund that will supersede that statutory fund and will also establish a reserve fund in the Property Tax Relief Fund for any unanticipated, excess, gross income tax
This constitutional amendment also makes changes in the State revenue estimating process to assist the Governor and the Legislature in their budget making responsibilities. The Legislature will include a display of anticipated revenue to support the appropriations for a fiscal year in the annual appropriation bill, which shall be deemed a recommendation for the Governor's revenue certification. The State Treasurer will be required to provide more detailed and regular, periodic public reporting of revenue collection data compared to revenue targets. The Governor and the State Treasurer will be required to obtain outside consultants' expert advice concerning State revenue estimates for the current and ensuing fiscal year. The Legislative Budget and Finance Officer will be required to provide periodic written estimates of State revenue to be collected for the New Jersey gross income tax, sales and use tax and corporation business tax. Lastly, the Governor will be required to submit contingency plans to the Legislature and the public if the Executive's revenue certification, upon enactment of the budget act, exceeds the revenue estimate of the Legislative Budget and Finance Officer for that fiscal year by more than two percent.