

NEW JERSEY CONSTITUTIONAL REFORM

BACKGROUND PAPER #4

**THE NEW JERSEY STATE
CONSTITUTION AND TAXING,
SPENDING, AND BORROWING**

Center for State Constitutional Studies
Rutgers, The State University of New Jersey, at Camden

411 Cooper St.
Camden, NJ 08102
856-225-6625 (phone)
856-225-6628 (fax)
cscs@camden.rutgers.edu

THE NEW JERSEY STATE CONSTITUTION AND TAXING, SPENDING, AND BORROWING

Robert F. Williams and G. Alan Tarr

This Background Paper reviews the existing provisions of the New Jersey State Constitution which have to do with taxing, spending, and borrowing. These may be referred to as the fiscal provisions of the state constitution and, taken together, they can be called the “New Jersey Fiscal Constitution.” After a very brief background, the paper outlines the provisions of the existing state constitution in each of these three areas. Understanding what is in the current constitution will be an important first step for a constitutional convention considering fiscal matters in New Jersey.

Background

The questions of public finance (taxing, spending, and borrowing) have been important, if not central, features of New Jersey state constitutional development at each of its important more recent stages. The 1776 constitution, however, essentially left the matters of taxing, spending and borrowing to the “omnipotent” legislature.¹

In the 1844 constitutional convention the questions of limiting the creation of state debt, or borrowing, was a very important topic of discussion. That constitution contained the precursors of today’s “debt limit” clauses. (New Jersey Constitution Article VIII, § II, ¶¶ 1 and 3).

In the major revisions to the state constitution that took place in 1875 fiscal matters and questions of tax policy, particularly the taxation of church property, were very important.²

Finally, in the 1947 Constitutional Convention, and during the years leading up to it, questions of taxation, government spending, and government borrowing were also extremely important matters that were dealt with in the state constitution.³ The current state constitution reflects many of the concerns of earlier generations about fiscal policy.

The New Jersey Fiscal Constitution

The current state constitution, as amended, contains a number of important provisions that must be taken into account by a constitutional convention.

¹CHARLES R. ERDMAN, JR., *THE NEW JERSEY CONSTITUTION OF 1776* (1929).

²Peter J. Mazzei and Robert F. Williams, “*Traces of Its Labors*”: *The Constitutional Commission, the Legislature, and their Influence on the New Jersey State Constitution, 1873-1875*, 33 RUTGERS L.J. 1059, 1090, 1091, 1118, 1130 (2002).

³RICHARD J. CONNORS, *THE PROCESS OF CONSTITUTIONAL REVISION IN NEW JERSEY: 1940-1947* 162-66, 178-82 (1970).

Taxation

An important limitation on the otherwise plenary or unrestricted power of taxation that Legislature possesses is contained in Article IV, § VII, ¶ 9 (6) which prohibits the Legislature from passing a private, special or local law “relating to taxation or exemption therefrom.” This provision was included in the state constitution in 1875. Therefore taxation policy must be treated as a statewide matter, and the Legislature may not make distinctions based on locality.

A number of provisions in the article dealing with Taxation and Finance, Article VIII, also operate as limitations on the Legislature’s plenary power. For example, the “Uniformity Clause,” Article VIII, § I, ¶ 1(a), requires that property “shall be assessed for taxation under general laws and by uniform rules” and that real property “shall be assessed according to the same standard of value... at the general tax rate of the taxing district in which the property is situated, for the use of such taxing district.” In 1962 the New Jersey Supreme Court ruled that a statute providing for the assessment of agricultural property at its value only for that use violated this paragraph’s mandate that property be assessed according to the same standard of value. Therefore, in 1963, an amendment added ¶ 1(b) permitting differential assessment for agricultural and horticultural property. Otherwise, this provision bars any system of classifying property for assessment purposes.

The state constitution also has a provision dealing with exemption from taxation, Article VIII, § I, ¶ 2. It provides that tax exemptions must be by general law, and protects the exemption of property used exclusively for religious, educational, charitable, and sanitary purposes from legislative repeal. Other provisions in the same section of the constitution mandate tax deductions for veterans and their surviving spouses (¶ 3), tax deductions for senior citizens living in cooperative or mutual housing corporations (¶ 4), tax rebates to homeowners, residential tenants and net lease residential tenants, etc. (¶5). Tax exemptions or abatements are authorized in areas of municipalities which have been declared in need of rehabilitation (¶ 6).

Article VIII, § I, ¶ 7, adopted in 1976, requires that the “entire net receipts” from the personal income tax must be utilized “for the purpose of reducing or offsetting property taxes.”

Article VIII, § II ¶ 4 earmarks a certain portion of the motor fuels and petroleum products taxes to a “special account” to be “appropriated from time to time by the Legislature, only for the purposes of paying or financing the cost of planning, acquisition, engineering, construction, reconstruction, repair and rehabilitation of the transportation system in this State...” Interestingly, this provision was originally to expire (or was subject to “sunset”) seventeen years after the date of its adoption in 1984, but it was made permanent by a 1995 amendment.

Article VIII, § 2, ¶ 6 requires a portion of the Corporation Business Tax revenues to be credited to a special account to be appropriated only for “the remediation of discharges of hazardous substances,” and dealing with underground storage tanks. This is a long and complex provision.

Article VIII, § 2, ¶ 7 requires a portion of the Sales and Use Tax to be credited to a special account to be appropriated for “the acquisition and development of lands for recreation and conservation purposes” and for farmland and historic preservation.

Article IV, § VII, ¶ 2.C legalizes a state lottery, and provides that “the entire net proceeds of any such lottery shall be for State institutions and State aid for education.” A 1999

amendment prohibited the Legislature “to borrow, appropriate or use, under any pretense whatsoever” such proceeds for adult criminal offenders or juveniles adjudged delinquent.

In 1976 the New Jersey constitution was amended to permit, subject to state regulation, casino gambling in Atlantic City. Article IV, § VII, ¶ 2. D provides that tax revenue derived from such casinos must “be applied solely for the purpose of providing funding for reduction in property taxes, rental, telephone, gas, electric, and municipal utilities charges of, eligible senior citizens and disabled residents of the state, and for additional or expanded health services or benefits or transportation services or benefits to eligible senior citizens and disabled residents, in accordance with such formulae as the Legislature shall by law prescribe.”

In 1990 an amendment added a new subparagraph E. to this paragraph. It authorized the use of wagering on simulcast horse races at Atlantic City casinos and required that the “State’s share of revenues derived therefrom shall be applied for services to benefit eligible senior citizens as shall be provided by law.”

In 1998 an amendment added a new subparagraph F. to this paragraph, expanding the Legislature’s authority to authorize wagering on simulcast horse racing and providing that the “State’s share of revenues derived therefrom shall be used for such purposes as shall be provided by law.” It is not immediately clear if this modifies the earmarking of revenues provided in subparagraph E.

Spending

Several of the provisions mentioned above deal with the imposition of taxes but also dictate rules for spending that revenue. They will not be covered here.

Article IV, § VI, ¶ 1 provides that “all bills for raising revenue shall originate in the General Assembly; but the Senate may propose or concur with amendments, as on other bills.” This provision, which has been enforced by the courts, sets forth the basic rule that tax legislation must originate in the “popular” branch of the Legislature.

Article VIII, § II, ¶ 2 provides that “no money shall be drawn from the State treasury but for appropriations made by law,” and that “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” and that “the appropriation contained therein... shall [not] exceed the total amount of revenue on hand and anticipated...” This provision, the so called “balanced budget” requirement, was recently enforced by the Supreme Court when it refused to permit, after the current fiscal year, borrowed funds to be considered “revenue” in balancing the budget.

Article V, § I, ¶ 15 provides for the Governor’s “item veto” power. Thus, where a bill includes “one or more items of appropriation of money” the governor may veto “in whole or in part... any such item or items while approving the other portions of the bill.” This is a very important part of the state constitution’s provisions on spending.

Article VIII, § IV, ¶ 1 requires the Legislature to “provide for the maintenance and support of a thorough and efficient system of free public schools...” ¶ 2 of this section requires that the “fund for the support of free public schools” is a “perpetual fund” and to be used for securing debts incurred for school purposes.

Borrowing

Article VIII, § II, ¶ 1 provides that the “credit of the State shall not be directly or indirectly loaned in any case.” This provision bans the state from embarking on joint ventures with, or subsidizing projects of, private individuals or corporations. Article VIII, § III, ¶¶ 2 and 3 impose similar limitations upon local governments.

Article VIII, § II, ¶ 3, the “debt limit” clause, limits the Legislature from creating any debts of the state exceeding one percent of the amount of the general appropriations law for that year, unless approved by a majority of the voters for “some single object or work distinctly specified therein.” The New Jersey Supreme Court has ruled that contract debt (also called appropriation debt) incurred without a vote of the people is not “state debt” and therefore does not violate this provision. Still, as a practical matter, payments on such debts from annual appropriation must be considered the same as contractually-obligated appropriations to pay for state debt.

Conclusion

The origins, general purpose, and significant judicial interpretations of these New Jersey state constitutional provisions through 1997, are provided in ROBERT F. WILLIAMS, *THE NEW JERSEY STATE CONSTITUTION: A REFERENCE GUIDE* (Rev. ed. 1997).