SPONSOR: Rep. D. Short & Rep. Dukes & Rep. Ramone & Rep. Shupe & Sen. Lopez
Reps. Briggs King, Gray, Postles, Michael Smith, Smyk, Spiegelman, Vanderwende, Yearick; Sens. Hocker, Lawson, Pettyjohn, Richardson, Wilson

HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 109

AN ACT PROPOSING AN AMENDMENT TO ARTICLE VIII, § 6 OF THE DELAWARE CONSTITUTION RELATING TO LIMITATIONS ON APPROPRIATIONS.

WHEREAS, the 149th Delaware General Assembly enacted and the Governor of Delaware signed House Joint Resolution 8 creating an Advisory Panel to the Delaware Economic and Financial Advisory Council on Potential Fiscal Controls and Budget Smoothing Mechanisms (Panel); and

WHEREAS, the Panel convened and recommended 1) redefining the State's appropriation method and building on current fiscal controls, 2) repurposing the Budget Reserve Account into a Budget Stabilization Fund, and 3) reforming the Personal Income Tax to broaden the tax base; and

WHEREAS, it is the intent of the General Assembly in adopting this Constitutional Amendment to redefine the State's appropriation method, build on current fiscal controls and repurpose the Budget Reserve Account into a Budget Stabilization Fund; and

WHEREAS, it is the intent of the General Assembly in the final adoption of this Constitutional Amendment that it be accompanied by legislation reforming the Personal Income Tax by broadening the tax base as detailed in the final report of the Panel.

NOW, THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend Article VIII, § 6 of the Delaware Constitution by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6. Procedure in withdrawal and payment of public moneys; annual publications of receipts and expenditures.

Section 6.(a) No money shall be drawn from the treasury but pursuant to an appropriation made by Act of the General Assembly; provided, however, that the compensation of the members of the General Assembly and all expenses connected with the session thereof may be paid out of the treasury pursuant to resolution in that behalf; a regular account of the receipts and expenditures of all public money shall be published annually.

(b) No appropriation, supplemental appropriation or budget act shall cause the aggregate State General Fund appropriations enacted for any given fiscal year to exceed the sum of 98 percent of the estimated State General Fund revenue for such fiscal year from all sources, including estimated unencumbered funds remaining at the end of the previous fiscal year (the "98 percent limit"), plus funds available for withdrawal from the Budget Stabilization Fund as determined in subsection (f) of this section . An act approved pursuant to § 3 of this article shall not be considered an appropriation for the purpose of this section. Estimated unencumbered funds are calculated by taking the estimated General Fund cash balance at the end of the fiscal year less estimated revenue anticipation bonds or notes, estimated encumbrances, estimated continuing appropriations and the amount of the ~~Budget Reserve Account~~ Budget Stabilization Fund as established in subsection (d) of this section at the end of said fiscal year. The amount of said revenue estimate , ~~and~~ estimated unencumbered funds remaining , and funds available for withdrawal from the Budget Stabilization Fund shall be determined by the most recent joint resolution approved from time to time by a majority of the members elected to each House of the General Assembly and signed by the Governor.

(c) Notwithstanding subsection (b) of this section, any portion of the amount between 98 and 100 percent of the estimated State General Fund revenue for any fiscal year as estimated in accordance with subsection (b) of this section may be appropriated in any given fiscal year in the event of an emergency ~~emergencies~~ involving the health, safety or welfare of the citizens of the State, such appropriations to be approved by three-fifths of the members elected to each House of the General Assembly.

(d) There is hereby established a ~~Budget Reserve Account~~ Budget Stabilization Fund within the General Fund. The Budget Stabilization Fund shall include the balance of funds existing in the predecessor Budget Reserve Account as of the effective date of this section. Deposits to and withdrawals from the Budget Stabilization Fund shall follow the rules established in subsection (f) of this section subject to the limitations set forth in subsection (g) of this section. ~~Within 45 days after the end of any fiscal year, the excess of any unencumbered funds remaining from the said fiscal year shall be paid into the Budget Reserve Account, provided, however, that no such payment will be made which would increase the total of the Budget Reserve Account to more than 5 percent of only the estimated State General Fund revenues as set by subsection (b) of this section. The excess of any unencumbered funds shall be determined by subtracting from the actual unencumbered funds at the end of any fiscal year an amount which together with the latest estimated revenues is necessary to fund the ensuing fiscal year's General Fund budget including the required estimated General Fund supplemental and automatic appropriations for said ensuing fiscal year less estimated reversions.~~ Notwithstanding subsections (f)(2), (f)(3), and (g)(2) of this section, the ~~The~~ General Assembly by a three-fifths vote of the members elected to each House, may appropriate from the ~~Budget Reserve Account~~ Budget Stabilization Fund such additional sums as may be necessary to ~~fund~~

~~any unanticipated deficit in any given fiscal year or to provide funds required as a result of any revenue reduction enacted by the General Assembly.~~ address a severe economic downturn or an emergency involving the health, safety or welfare of the citizens of the State.

(e) There is hereby established a Benchmark Appropriation, to be calculated for any given fiscal year as the sum of (1) the product of (x) the Benchmark Index for such fiscal year and (y) the sum of the previous fiscal year's budget act and appropriations for grants-in-aid, plus (2) an amount not to exceed 1 percent of the previous fiscal year's budget act, but only to the extent that such amount is directed as a supplemental appropriation to the bond and capital improvements act for such fiscal year. The Benchmark Index shall be comprised of relevant indicators of growth in the State's economy and may be periodically revised by statute approved by three-fifths of the members elected to each House of the General Assembly. Initially, the Benchmark Index for any given fiscal year shall be comprised of equal weightings of the three year average of:

(1) Delaware personal income growth and

(2) Delaware population growth plus the growth in the implicit price deflator for state and local government purchases.

(f) Deposits to and appropriations and withdrawals from the Budget Stabilization Fund are authorized as follows:

(1) Whenever the 98 percent limit for any given fiscal year is more than the Benchmark Appropriation for such fiscal year, 50 percent of such excess shall be deposited to the Budget Stabilization Fund and up to 50 percent of such excess may be appropriated for non-recurring expenditures and reductions in long-term liabilities.

(2) Whenever the 98 percent limit for any given fiscal year is less than the Benchmark Appropriation for such fiscal year, up to 50 percent of such difference may be appropriated from the Budget Stabilization Fund.

(3) Whenever General Fund expenditures for any given fiscal year are estimated to exceed revenues for such fiscal year by more than 2 percent of the estimated State General Fund revenue for such fiscal year from all sources, including estimated unencumbered funds remaining at the end of the previous fiscal year, up to 50 percent of such difference may be withdrawn from the Budget Stabilization Fund.

(g) Notwithstanding subsections (d) and (f) of this section, deposits to and appropriations and withdrawals from the Budget Stabilization Fund shall be limited as follows:

(1) No deposit shall be made that would increase the balance of the Budget Stabilization Fund to more than 10 percent of only the estimated State General Fund revenues as determined pursuant to subsection (b) of this section. Any deposit (or portion thereof) required by subsection (f)(1) that would exceed such level may be appropriated for any purpose.

(2) Appropriations and withdrawals from the Budget Stabilization Fund for any given fiscal year shall be limited to the extent that such amounts would either exceed 50 percent of the balance of the Budget Stabilization Fund or reduce

the balance of the Budget Stabilization Fund to less than 3 percent of only the estimated State General Fund revenues as determined pursuant to subsection (b).

SYNOPSIS

This Act is the first leg of a Constitutional Amendment reflecting the recommendations of the Advisory Panel to the Delaware Economic and Financial Advisory Council (DEFAC) on Potential Fiscal Controls and Budget Smoothing Mechanisms established as per House Joint Resolution 8 of the 149th General Assembly (Panel). This Act would build upon the State's existing appropriation limit methodology by moving the Budget Reserve Account into a newly defined Budget Stabilization Fund, defining rules for deposits to and withdrawals from said Budget Stabilization Fund, and adding a check of the appropriation limit against an index comprised of relevant indicators of growth of the State's economy. The Panel further recommended that any final adoption of the structural budget reforms included in this Act be accompanied by statutory enactment of structural reforms to the Personal Income Tax by broadening the tax base as initially recommended by the DEFAC Advisory Council of Revenues report dated May 2015 and further detailed in the Panel's report dated June 1, 2018.