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applied and be in such form as the commissioner may prescribe.

(j) If a purchaser who gives an exempt use certificate stores or makes any use of the property other than the one therein certified, the storage or use shall be deemed a retail sale by the purchaser as of the time the property is first so stored or used and the cost of the property to him shall be deemed the gross receipts from such retail sale.

(k) The commissioner may promulgate regulations determining which services shall be deemed purchased for resale under this section, containing provisions for the issuance of certificates to the effect that services are purchased for resale.

**SECTION 16.** The provisions of chapters sixty-four H and sixty-four I of the General Laws, as amended by the provisions of this act shall apply to the sale, use, storage or other consumption of tangible personal property and services in the commonwealth made or occurring on or after March sixth, nineteen hundred and ninety-one. Any vendor who collects any sales or use taxes upon transactions heretofore taxable and now exempt under this act shall make reasonable efforts to return such sales or use taxes to any purchasers of such services.

*Emergency Letter: March 8, 1991 @ 10:41A.M.*

Approved March 8, 1991.

## **Chapter 5. AN ACT AUTHORIZING CERTAIN EMERGENCY FISCAL MEASURES.**

*Be it enacted, etc., as follows:*

**SECTION 1.** Section 24 of chapter 275 of the acts of 1989 is hereby amended by striking out, in lines 11 and 12 the words "October first, nineteen hundred and eighty-eight" and inserting in place thereof the following words:- September twenty-fourth, nineteen hundred and seventy-nine.

**SECTION 2.** Section 2C of chapter 208 of the acts of 1988, as amended by section 8 of chapter 151 of the acts of 1990, is hereby further amended by striking out item 1599-7882 and inserting in place thereof the following item:-

1599-7882 For a reserve for the payment of certain court judgments, settlements and legal fees, in compliance with regulations promulgated by the comptroller, in certain actions pertaining to the taking of land, filed with the house and senate committees on ways and means, which were ordered to be paid in fiscal year nineteen hundred and ninety-one or a prior fiscal year and which derive from causes of action initiated in said fiscal year or a prior fiscal year; provided that the comptroller is hereby authorized to charge such payments to this item. \$33,200,000

**SECTION 3.** Section 18 of said chapter 208, as amended most recently by

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section 9 of said chapter 151, is hereby further amended by striking out the first sentence and inserting in place thereof the following sentence:- To meet the expenditures necessary in carrying out the provisions of section two C of this act the state treasurer shall, upon request of the governor, issue and sell bonds of the commonwealth to an amount to be specified by the governor from time to time, but not exceeding, in the aggregate, the sum of thirty-eight million eight hundred twenty-two thousand two hundred dollars.

**SECTION 4.** (1) Notwithstanding the provisions of subdivision (2) the state treasurer and receiver general of the commonwealth shall not exercise the authority to issue bonds or to substitute any such bonds for any appropriation pursuant to said subdivision (2) unless said treasurer determines that the exercise of such authority shall not threaten the commonwealth's pension plans as qualified plans pursuant to section four hundred and one of the Internal Revenue Code of the United States, and that the exercise of such authority is deemed to be the only feasible remaining course of action available to ensure that the amount of expenditures for the fiscal year ending June thirtieth, nineteen hundred and ninety-one shall not exceed the amount of total available revenues for said fiscal year as determined by the commissioner of administration pursuant to section five B of chapter twenty-nine of the General Laws. Prior to making such determination, said treasurer shall request from said commissioner of administration, and said commissioner shall within five days of said request, prepare and submit to said treasurer and to the house and senate committees on ways and means, a report setting forth the amount of total expenditure reductions made to date in such fiscal year pursuant to section nine C of said chapter twenty-nine and any other law authorizing the governor to reduce the expenditures of the commonwealth, and stating that no further reductions would be in the best interest of the people of the commonwealth. Such determination by said treasurer made pursuant to this subdivision shall include a decision, made with the advice of the finance advisory board established by section ninety-seven of chapter six of the General Laws, that any other borrowing mechanism, including, but not limited to, the issuance of deficit reduction bonds, would be more expensive to the commonwealth than the issuance of bonds in accordance with the provisions of said subdivision (2) of this section. Said treasurer shall submit a detailed report of such determination made pursuant to this subdivision to the members of the pension reserves investment management board, to the state employees' and teachers' retirement boards, to the house and senate committees on ways and means, and to the joint committee on public service prior to exercising the authority to issue bonds pursuant to the provisions of said subdivision (2).

(2) To meet a portion of the liability of the commonwealth to the Commonwealth's Pension Liability Fund for the fiscal year ending June thirtieth, nineteen hundred and ninety-one pursuant to the requirements of section twenty-two C of chapter

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thirty-two of the General Laws and the provisions of item 0612-1010 of section two of chapter one hundred and fifty of the acts of nineteen hundred and ninety, the state treasurer and receiver general shall, upon the request of the governor, issue and deliver bonds of the commonwealth to said Commonwealth's Pension Liability Fund, in an amount to be specified by the governor, but not exceeding in the aggregate the sum of one hundred and thirty-four million dollars. All bonds issued by the commonwealth as aforesaid shall be designated on their face Pension Funding Bond, Act of 1991 and shall be issued for such maximum term of years, not exceeding three years, as the governor may recommend to the general court pursuant to section 3 of Article LXII of the Amendments to the Constitution of the Commonwealth; provided, however, that all such bonds shall be payable not later than June thirtieth, nineteen hundred and ninety-four. All interest and payments on account of principal of such obligations shall be payable from the budgetary funds of the commonwealth in the allocations specified in said item 0612-1010 of said section two of said chapter one hundred and fifty of the acts of nineteen hundred and ninety. Bonds and interest thereon issued under the authority of this section shall be general obligations of the commonwealth.

Notwithstanding the provisions of any general or special law to the contrary, the treasurer shall negotiate with the members of the pension reserves investment management board the rate of interest to be paid by the commonwealth on bonds issued pursuant to this subdivision and the schedule of payment of principal and interest on any such bonds; provided, however, that the effective yield on such bonds shall be no less than the actuarial assumption of the rate of investment return in the most recent three-year valuation for the state employees' and teachers' retirement systems prepared pursuant to section twenty-one of said chapter thirty-two; and provided, further, that nothing in this section shall be deemed to relieve the members of said pension reserves investment management board from the fiduciary standards set forth by the provisions of subdivision (3) of section twenty-three of said chapter thirty-two.

Notwithstanding the provisions of any general or special law to the contrary, bonds issued under the authority of this section shall not be included in the computation of outstanding bonds for purposes of the limit imposed by the second paragraph of section sixty A of chapter twenty-nine of the General Laws, nor shall debt service with respect to such bonds be included in any computation of the limit imposed by section sixty B of said chapter twenty-nine.

Notwithstanding the provisions of any general or special law to the contrary, the appropriation for payments to the Commonwealth's Pension Liability Fund authorized by item 0612-1010 of section two of chapter one hundred and fifty of the acts of nineteen hundred and ninety pursuant to the requirements of section twenty-two C of chapter thirty-two of the General Laws shall be reduced by an amount equal to the principal amounts of all bonds issued pursuant to this section,

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and the delivery of said bonds shall be substituted for the payment of said portion of the appropriation for purposes of satisfying the commonwealth's obligations to said Commonwealth's Pension Liability Fund.

**SECTION 5.** Notwithstanding any provision to the contrary of section fifty-three A of chapter twenty-nine of the General Laws, the state treasurer is hereby authorized, upon the request of the governor, to issue and sell refunding bonds of the commonwealth pursuant to said section fifty-three A of said chapter twenty-nine in an amount up to five hundred million dollars without a finding by the state treasurer that such refunding will result in present value savings to the commonwealth; provided, however, that such refunding shall occur not later than June thirtieth, nineteen hundred and ninety-two; provided, further, that such refunding shall be accomplished in a manner cost efficient to the commonwealth to the extent reasonably possible; provided, further, that a report containing statements of (1) the net present cost or savings of such refunding, (2) the costs of issuance incurred by the commonwealth pursuant to such refunding, including, but not limited to costs for legal counsel, payments, discounts and other incentives provided to investment bankers, underwriters and others, and costs related to credit or liquidity enhancements, and (3) projected principal and interest debt service costs, shall be filed within fifteen days of such refunding sale with the finance advisory board and the house and senate committees on ways and means; provided, further, that the finance advisory board shall hold a public hearing relative to the refunding authorized by this section no later than forty-five days after the issuance of such refunding bonds; provided, further, that such public hearing shall in no way affect the validity of such bond sale and shall in no way impair the rights of any purchasers of such refunding bonds. Such costs of issuance shall be, if appropriate, paid out of the proceeds of the refunding; and, provided, further, that the governor shall identify the portion of the debt service attributable to such costs of issuance of the refunding as part of any request for an appropriation for debt service payments resulting from such refunding issue. Any refunding bonds issued pursuant to this section shall not be counted as part of "issued indebtedness" for the purposes of the debt ceiling calculation.

**SECTION 6.** In anticipation of the proceeds from the sale or other disposition of specifically identified real property of the commonwealth, the state treasurer shall, upon the request of the governor, issue and sell notes or bonds of the commonwealth, in an amount to be specified by the governor from time to time, but not exceeding in the aggregate the sum of ninety million dollars. All bonds or notes issued by the commonwealth, as aforesaid, shall be designated on their face Asset Disposition Anticipation Loan, Act of 1991, and shall be issued for such maximum term of years, not exceeding five years, as the governor may recommend to the general court pursuant to Section 3 of Article LXII of the Amendments to the Constitution of the Commonwealth; provided, however, that all such bonds or

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notes shall be payable not later than June thirtieth, nineteen hundred and ninety-six. All interest and payments on account of principal of such obligations shall be payable from the General Fund. Bonds and interest thereon and notes and interest thereon issued under the authority of this section shall be general obligations of the commonwealth.

No bonds or notes shall be issued pursuant to this section unless the secretary of administration and finance has identified specific real properties of the commonwealth and has certified to the treasurer that said properties are under agreement for sale or other disposition on or before June thirtieth, nineteen hundred and ninety-two. The total amount of bonds and notes outstanding pursuant to this section shall at no time exceed the appraised value, as certified by said secretary, of the properties so identified by said secretary.

Notwithstanding the provisions of any general or special law to the contrary, bonds issued under the authority of this section shall not be included in the computation of outstanding bonds for purposes of the limit imposed by the second paragraph of section sixty A of chapter twenty-nine of the General Laws, nor shall debt service with respect to such bonds or notes be included in any computation of the limit imposed by section sixty B of said chapter twenty-nine.

The operation of this section shall be in full compliance with the provisions of the Constitution of the United States, the Constitution of the Commonwealth of Massachusetts, and the articles of amendment thereof and, the opinions of any court and the opinion of the attorney general, 1973 Op.Atty.Gen. 139, interpreting the provisions thereof.

**SECTION 7.** Notwithstanding the provisions of the sixth paragraph of section forty F of chapter seven of the General Laws to the contrary, beginning with the effective date of this section and ending on June thirtieth, nineteen hundred and ninety-two, any transfers made pursuant to said paragraph shall be deemed to have received legislative approval and shall take effect if, within ninety calendar days after the commissioner of capital planning and operations, with the written approval of the secretary of administration and finance, has filed a request in the form of legislation by filing such request with the clerks of the house and the senate, with copies to the house and senate committees on ways and means, and the general court neither approves nor disapproves such request. No such request for transfer by the commissioner of capital planning and operations or any other person, office or board may be made to the general court when the general court has prorogued and, if a request has been made prior to prorogation, said ninety day period shall be tolled during prorogation. The ninety day time period allowed for approval or disapproval of such requests shall not commence until the clerks have assigned said requests to the committee of the general court having jurisdiction over such matter. No such transfer shall be made under the provisions of this act in contravention of Article XCVII of the Amendments or any other

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provisions of the Constitution of the Commonwealth. No transfer as provided for by this section shall take place until the commissioner of capital planning and operations has complied fully with the provisions of chapter seven of the General Laws and the commissioner certifies to said full compliance and said certification shall be deemed sufficient to convey clear and marketable title.

**SECTION 8.** Notwithstanding the provisions of the fourteenth paragraph of section forty F of chapter seven of the General Laws to the contrary, for the period beginning with the effective date of this section and ending June thirtieth, nineteen hundred and ninety-two, any request for authorizations made pursuant to said paragraph shall take effect as if approved if, within ninety calendar days after the commissioner of capital planning has filed such request in the form of legislation with the clerks of the house and senate, with copies to the house and senate committees on ways and means, the general court has neither approved nor disapproved such request; provided, however, that the commissioner may, with the approval of the secretary of administration and finance, dispose of any such property without legislative approval if such surplus property is less than five acres in size and comprises under twenty-five thousand square feet of gross building area and possesses a market value under five hundred thousand dollars at highest and best use, based on two independent appraisals, and a review appraisal if determined to be necessary by said commissioner. No dispositions shall be made pursuant to this section of lands governed by Article XCVII of the Amendments or any other provisions of the Constitution of the Commonwealth, chapters ninety-one, ninety-two, section forty of chapter one hundred and thirty-one or chapter one hundred and thirty-two A of the General Laws. No request for authorization nor any other disposition by said commissioner of capital planning and operations or any other person, office or board may be made or transmitted to the general court when the general court has prorogued and if such authorization is made prior to prorogation, said ninety day time period shall be tolled during prorogation. The ninety day time period allowed for such requests filed with the clerks of the general court shall not begin until said clerks have assigned said request to the committee of the general court having jurisdiction over such matter. No disposition provided for in this section shall take place until the commissioner of capital planning and operations has complied fully with the provisions of chapter seven of the General Laws and the commissioner certifies to said full compliance and said certification shall be deemed sufficient to convey clear and marketable title.

**SECTION 9.** Notwithstanding the provisions of subparagraph (c) of section one of chapter seven B of the General Laws to the contrary, for the period beginning with the effective date of this section and ending on June thirtieth, nineteen hundred and ninety-two, the asset management board shall have the authority to sell or permanently dispose of assets, if, in the case of real property, such assets have been declared surplus to the current and foreseeable needs of any state

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agency pursuant to the provisions of section forty F 1/2 of chapter seven of the General Laws. No dispositions shall be made pursuant to this section of lands governed by Article XCVII of the Amendments or any other provisions of the Constitution of the Commonwealth, chapters ninety-one, ninety-two, section forty of chapter one hundred and thirty-one, or chapter one hundred and thirty-two A of the General Laws. Any disposition made pursuant to this section shall be presented to the general court in the form of legislation which shall be filed with the clerks of the house and the senate, with copies to the house and senate committees on ways and means, and to the representatives and senators representing the district wherein such property lies. Such disposition shall take effect within forty-five days, unless disapproved by a vote of both branches of the legislature; provided, however, that the forty-five day time period shall not commence until the clerks have assigned said requests to the committee of the general court having jurisdiction over such matter. No such request for disposition by the asset management board may be made to the general court when the general court has prorogued and if such request for disposition is made prior to prorogation, said forty-five day time period shall be tolled during prorogation. The division of capital planning and operations shall provide the board with technical support and advice in the disposition of such assets.

**SECTION 10.** Notwithstanding the provisions of section eight of chapter seven B of the General Laws, for the period beginning with the effective date of this section and ending June thirtieth, nineteen hundred and ninety-two, any asset management trust may be established to receive not more than fifty percent of the proceeds accruing to an agency as a result of revenues produced by one or more approved asset management projects.

**SECTION 11.** Section four shall take effect on June first, nineteen hundred and ninety-one. Except as otherwise provided herein, the provisions of this act shall take effect upon its passage.

\*Section 9 disapproved, the remainder Approved March 22, 1991.