

HOUSE No. 5455

The Commonwealth of Massachusetts



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE DEPARTMENT
STATE HOUSE • BOSTON 02133

WILLIAM F. WELD
GOVERNOR

MARCO PAUL CELLUCCI
LIEUTENANT GOVERNOR

April 12, 1991

To the Honorable Senate and House of Representatives:

I am filing for your consideration the legislation necessary for the implementation of the Weld-Cellucci Emergency Plan for Fiscal Recovery. This bill was previously filed as part of a larger bill that I filed in March.

This bill contains statutory changes necessary to allow us to complete the asset disposition components of that Plan for FY91 and FY92. The bill expands the powers of the legislatively created asset management board to enable it to make permanent disposition of state assets.

This bill also enables the Massachusetts Industrial Finance Authority to play a role in supporting certain elements of our plans to dispose of some Commonwealth properties, including the possible structuring of sale-leaseback transactions.

I urge your speedy and favorable action on this proposal.

Respectfully submitted,

A handwritten signature in cursive script that reads "William F. Weld".

William F. Weld
GOVERNOR

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-One.

AN ACT FACILITATING THE DISPOSITION OF ASSETS OF THE
COMMONWEALTH.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 1 of chapter 7B of the General Laws, as
2 enacted by section 220A of chapter 150 of the Acts of 1990, is
3 hereby amended by striking sub-section (c) and inserting in place
4 thereof the following: —

5 (c) "Asset management project" or "project", any project for
6 the management or disposition of assets that is proposed for the
7 consideration of the board by a state agency and approved by the
8 asset management board pursuant to the provisions of this
9 chapter;

1 SECTION 2. Section 8 of said chapter 7B, as enacted by
2 section 220A of chapter 150 of the acts of 1990, is hereby amended
3 by striking the second sentence and inserting in place thereof the
4 following: — Such trust or trusts shall be established to receive
5 not more than fifty percent of the proceeds accruing to an agency
6 as a result of revenues produced by one or more approved asset
7 management projects.

1 SECTION 3. Section 29 of chapter 23A of the General Laws,
2 as appearing in the 1988 Official Edition, is hereby amended by
3 inserting after the eleventh paragraph thereof the following
4 paragraph: —

5 Provision of additional and alternative programs, power and
6 means of financing for public bodies is crucial to the public
7 purposes of (i) stimulating economic growth and employment in
8 the commonwealth, (ii) reducing and helping to prevent deficits
9 in the budget of the government of the commonwealth,
10 (iii) increasing the availability of funds to the commonwealth for

11 the purposes of carrying out its public purposes, (iv) increasing
12 the efficiency and economy by which the commonwealth is able
13 to carry out its public purposes, (v) providing aid to public bodies
14 in the commonwealth to accomplish their important public
15 purposes and (vi) enabling the citizens of the commonwealth to
16 have sufficient education and a sufficient share of the necessities
17 of life to be gainfully employed and to be productive contributors
18 to the welfare of the commonwealth.

1 SECTION 4. Paragraph (b) of section 30 of chapter 23A of
2 the General Laws, as so appearing, is hereby amended by striking
3 out the definition of “Economic development project” and
4 inserting in place thereof the following definition: —

5 “Economic development project”, a project providing public
6 benefits through the establishment, expansion, securing, financing
7 or operating of any of the following enterprises or facilities, or
8 any parts or combinations thereof, located within or partially
9 within the commonwealth and including, but not limited to, all
10 facilities or other items necessary or desirable in connection
11 therewith or incidental thereto, including provision of working
12 capital: any enterprise engaged in, or any one or more facilities
13 used for or in connection with, industrial, recreational, research
14 and development, commercial, service, or governmental,
15 activities, or any enterprise carried out by or on behalf of, or any
16 one or more facilities for use by, any public body.

1 SECTION 5. Said paragraph (b) of said section 30 of said
2 chapter 23A, as so appearing, is hereby further amended by
3 striking out after the words “other than” in the first line of the
4 definition of “User” the words “a public body, a municipality, a
5 public district or”.

1 SECTION 6. Paragraph (f) of section 32 of said chapter 23A,
2 as so appearing, is hereby amended by striking out the words “to
3 acquire personal property, or any interest therein, on either a
4 temporary or long term basis in the name of the agency and to
5 acquire real property on a temporary basis,” and inserting in place
6 thereof the following: — to acquire real and personal property,
7 or any interest in real or personal property,.

1 SECTION 7. Paragraph (b) of section 35 of chapter 23A, as
2 so appearing, is hereby amended by striking out the first two
3 sentences thereof and inserting in place thereof the following: —

4 (b) As an alternative to its authority under paragraph (a) of
5 this section, the agency may finance economic development
6 projects by the exercise of any of its powers, including without
7 limitation lease financing and the lending of money to one or more
8 users, and in connection with the financing of any economic
9 development project the agency may enter into financing or other
10 documents and may acquire or hold any duly authorized payment
11 obligation of users. The agency may issue its bonds for financing
12 economic development projects. The provisions of paragraph (a)
13 of this section shall not apply to economic development projects
14 or the financing thereof or the issuance of bonds by the agency
15 for such purpose.

1 SECTION 8. Said paragraph (b) of said section 35 of said
2 chapter 23A is hereby further amended by inserting after
3 clause (vii) of said paragraph (b) the following paragraph: —

4 Notwithstanding the foregoing sentence, with respect to any
5 financing for an economic development project consisting of any
6 enterprise engaged in, or any one or more facilities used for or
7 in connection with, governmental activities, or any enterprise
8 carried out by or on behalf of, or any one or more facilities for
9 use by, any public body, the agency shall be required to make only
10 the determinations set forth in clauses (iv) and (v) of this para-
11 graph if the agency determines that such economic development
12 project will result in a public benefit and that any private benefit
13 that may be derived from such project will be incidental to the
14 public benefit that results therefrom.

1 SECTION 9. Paragraph (c) of said section 35 of said
2 chapter 23A, as so appearing, is hereby amended by striking out
3 the semicolon after the word “terms” and inserting in place thereof
4 a period and striking out the words “provided, however, that the
5 provisions of this act shall not be construed to expand the power
6 or purpose of any public body except MIFA.”

1 SECTION 10. Paragraph (d) of said section 35 of said
2 chapter 23A, as so appearing, is hereby amended by inserting at
3 the end thereof the following: —

4 Bonds issued by the agency may or may not be accompanied
5 by a certificate or legal opinion to the effect that interest on the
6 bonds is excludable from gross income of the recipients for federal
7 income tax purposes. Bonds issued by the agency, and any interest
8 or other income derived therefrom, including any sale, exchange
9 or transfer of such bonds, (i) shall at all times be free from
10 taxation, including estate and inheritance taxes, corporation
11 excise taxes and franchise taxes, by the commonwealth or any
12 political subdivision thereof or any instrumentality of the
13 commonwealth or any political subdivision thereof and (ii) shall
14 not be included in the measure of estate and inheritance taxes,
15 corporation excise taxes, franchise taxes or any other taxes of the
16 commonwealth or any political subdivision thereof or any
17 instrumentality of the commonwealth or any political subdivision
18 thereof.

1 SECTION 11. Said section 35 of said chapter 23A, as so
2 appearing, is hereby further amended by inserting after
3 paragraph (k) thereof the following paragraph: —

4 (1) Notwithstanding section forty F $\frac{1}{2}$ of chapter seven of the
5 General Laws or any other general or special law, there is hereby
6 authorized the sale, lease or other disposition to the agency from
7 time to time of any real property owned by or deemed by
8 section forty E of chapter seven of the General Laws to be real
9 property of the commonwealth, any fixtures and any personal
10 property owned by the commonwealth or any state agency, and
11 any interest of the commonwealth or any state agency in or
12 pertaining to such real property, fixtures or personal property,
13 as the secretary of administration and finance may determine
14 pursuant to the following sentence, and upon such terms as the
15 secretary of administration and finance may determine pursuant
16 to the following sentence. No property shall be sold, leased or
17 otherwise disposed of to the agency pursuant to this para-
18 graph unless the secretary of administration and finance shall have
19 made the following findings:

20 (A) the sale, lease or other disposition of such property is for
21 a public purpose and will produce a benefit to the commonwealth
22 or the government thereof, and any benefit to any private party
23 will be incidental to the achievement of such public purpose and
24 benefit;

25 (B) the amount to be received by the commonwealth for such
26 sale, lease or other disposition is reasonable, in light of the benefit
27 to the commonwealth or the government thereof to be derived
28 from such transaction:

29 (C) the agency and the commonwealth have entered into a lease
30 or sublease of such property from the agency to the common-
31 wealth providing for such rent from the commonwealth and
32 containing such other terms and conditions as the secretary of
33 administration and finance determines to be reasonable, which
34 terms and conditions may include, without limitation, the
35 reversion of such property to the commonwealth upon
36 termination or expiration of the lease or sublease or any renewal
37 of such lease or sublease in return for such consideration as the
38 secretary of administration and finance determines to be
39 reasonable in light of the benefit to the commonwealth or the
40 government thereof to be derived from such lease or sublease;

41 (D) the sale, lease or other disposition to and lease or sublease
42 from the agency of such property will not affect the use of such
43 property by the commonwealth in any way that is adverse to the
44 interests of the commonwealth, taking into account the benefit
45 to the commonwealth or the government thereof to be derived
46 from such transaction; and

47 (E) the property either (i) does not constitute property
48 described in Article XCVII of the Amendments to the Massachu-
49 setts Constitution, or (ii) the requirements of said Article XCVII
50 with respect to the use or disposition of such property have been
51 complied with.

52 This paragraph (1) does and shall be construed to provide a
53 complete, additional and alternative method for the doing of the
54 things authorized thereby, and the doing of the things authorized
55 thereby need not comply with the requirements of any other state
56 law applicable to the sale, lease, sublease or other disposition of
57 property by or to the commonwealth, including without limitation
58 section forty F $\frac{1}{2}$ of chapter seven of the General Laws,

59 section forty J of chapter seven of the General Laws and
60 chapter seven B of the General Laws. All actions necessary or
61 desirable to carry out the sale, lease or other disposition of any
62 property to be transferred to the agency pursuant to this
63 paragraph, including without limitation the execution, delivery
64 and recording of deeds, leases and notice of leases, are hereby
65 authorized. Notwithstanding any general or special law to the
66 contrary, no person shall acquire any rights by prescription or
67 adverse possession in any real property or rights in real property
68 held by the agency pursuant to this paragraph (1). As used in this
69 paragraph (1) the term "state agency" shall mean a state agency,
70 board, bureau, department, division, section, or commission of
71 the commonwealth.

72 (m) Notwithstanding section forty G of chapter seven of the
73 General Laws or any other general or special law, the common-
74 wealth may lease or sublease from the agency, and a state agency
75 may sublease from the commonwealth, any property sold, leased
76 or otherwise disposed of to the agency pursuant to paragraph (1)
77 of this section, provided that the secretary of administration and
78 finance has made the findings set forth in subparagraphs (C), (D),
79 and (E) of said paragraph (1) with regard to the applicable lease
80 or sublease, and provided further that any lease or sublease in
81 which the commonwealth or a state agency is lessee shall contain
82 a provision to the effect that such lease or sublease shall terminate
83 if for any fiscal year funds are not made available for the purpose
84 of and sufficient for the payment when due of all amounts payable
85 by the commonwealth or such state agency under such lease or
86 sublease in such fiscal year. Any such lease or sublease may
87 contain, among other provisions, indemnities from the common-
88 wealth or such state agency to the agency determined to be
89 reasonable by the secretary of administration and finance
90 pursuant to clause (c) of paragraph (1) of this section. This para-
91 graph (m) does and shall be construed to provide a complete,
92 additional, and alternative method for the doing of the things
93 authorized thereby, and the doing of the things authorized thereby
94 need not comply with the requirements of any other state law
95 applicable to the sale, lease, sublease or other disposition of
96 property by or to the commonwealth or a state agency, including
97 without limitation section forty F $\frac{1}{2}$ of chapter seven of the

98 General Laws, section forty J of chapter seven of the General Laws
99 and chapter seven B of the General Laws. All actions necessary
100 or desirable to carry out the leasing or subleasing of any property
101 from the agency or the commonwealth pursuant to this section,
102 including without limitation the execution of leases and subleases
103 and the recording of notice of leases and subleases, are hereby
104 authorized. As used in this paragraph (m) the term “state agency”
105 shall mean a state agency, board, bureau, department, division,
106 section, or commission of the commonwealth.

1 SECTION 12. This act shall be liberally construed to
2 effectuate its purposes. The provisions of this act are severable,
3 and if any provision or any application thereof shall be held
4 unconstitutional by any court of competent jurisdiction, the
5 decision of such court shall not affect or impair any other provi-
6 sion of this act or any other application of any provision of this
7 act.