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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER
H. CARL McCALL
STATE COMPTROLLER

No. 4

MEMORANDUM

RE

CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY

proposing amendments to sections 1, 2, 10, 11 and 16 of article 7 of the constitution, in relation to the submission of a capital program and financing plan, the contracting of debts for certain disasters; the prohibition of certain borrowing arrangements, the authorization for the contracting of debt secured by state revenues, and the manner in which principal and interest payments are appropriated and paid

PURPOSE:

This proposed resolution to amend the Constitution to reform the State's long term borrowing practices received first passage last year (A. 11860/S. 8596). It tightened up several of the provisions of the 1993 long term debt reform proposal (which also received first passage), including making many changes recommended by the Comptroller at the joint hearing on debt reform held by the Senate Finance and Assembly Ways and Means Committees on September 21, 1993.

SUMMARY OF PROVISIONS:

Section 1 of this proposal would amend section one of article VII of the State Constitution to require the Governor to hold hearings on the capital needs of the State at times and in the manner provided by the Legislature, and Section 2 would amend section two of article VII to require annual submission of a detailed multi-year capital program and financing plan by the Governor. Last session the Legislature passed Chapter 204 of the Laws of 1994 which would implement these two provisions if the amendment is ultimately adopted.

Section 3 of the proposal would amend section 10 of Article VII of the Constitution to expand the types of emergency circumstances under which the State would be authorized to contract general obligation debt without seeking voter approval. Currently such debt may be issued to repel invasions, suppress insurrection, defend the State in war, or to suppress forest fires. The proposed

amendment would also allow such debt to be used to aid victims of or repair damage caused by natural or other physical disasters, to pay judgments requiring payment in a single fiscal year of an amount in excess of one percent of total general fund disbursements for the prior fiscal year, and to address a prolonged and material impairment of the State's economic health. Numerous restrictions have been added to the economic emergency exception which were not included in the 1993 proposal. This revised proposal limits the amount of such debt which may be issued, narrowly defines a prolonged and material impairment of the State's economic health and requires that such debt be issued within two years of the certification of the economic emergency.

Section 4 of the resolution would amend section 11 of Article VII to restrict backdoor borrowing and authorize a new type of revenue debt that could be issued without voter approval in an amount not exceeding 4.4% of total personal income of the State as defined by and calculated in accordance with law. The amendment would phase in the cap by limiting total revenue debt to one percent of personal income for fiscal year 1996-97 and increasing the maximum by one-third of one percent in each of the nine subsequent years before authorizing the full 4.4% cap in fiscal year 2006-07 and thereafter. All revenue debt and all general obligation debt specifically would be required to be issued for capital works or purposes. Section 11 of Article VII would also be amended to eliminate the prohibition against submitting multiple bond acts for consideration by the voters in a single year.

The new provisions restricting backdoor financing would prohibit the State, except in certain restricted instances, from entering into any arrangement whereby revenues of the State would be appropriated to pay, whether or not on a contingent basis, either directly or indirectly, principal of or interest on indebtedness contracted by any municipality, individual, or public or private corporation for state capital or operating purposes. It also prohibits such arrangements whereby State revenues are appropriated directly or on a contingent basis for the purpose of paying debt service on debt contracted by the State or any municipality, individual, or public or private corporation for any purpose. The language of this prohibition would, except as noted below, clearly prohibit all backdoor borrowing for state purposes, while allowing state assistance programs to continue as long as the State does not enter into financing agreements committing the State to appropriate money on a regular basis to pay debt service.

Exceptions to the prohibition would exist to allow: (i) state payments to a municipality or (where not otherwise prohibited by the Constitution) to a private corporation which may be used by such entity to pay debt service on indebtedness contracted for its own purposes or court purposes; (ii) the intercept of State aid payments or the promise by the State to intercept such moneys on a contingent basis to make debt service payments on indebtedness of a municipality or private corporation, or a public corporation authorized to assist a municipality or private corporation, in conjunction with its own purposes or court purposes; (iii) financing or similar arrangements with a public benefit corporation for the purpose of providing assistance to distressed municipalities; and (iv) state payments for operating or capital assistance to a regional transportation authority created by State law for mass transportation purposes. The 1993 Proposal prohibited most forms of "backdoor" financing, but the prohibition was drafted in a way that did not prohibit the financing structure

under Chapter 56 of the Laws of 1992 applicable to the MTA, pursuant to which the MTA is expected to issue bonds backed by appropriations of the Petroleum Business Tax ("PBT"). The exception was general and implied, not specific and express, and thus similar financing structures for other purposes, including State purposes, would have been permitted -- through the back-door. This proposal makes a specific and express exception, limited to the types of facilities currently authorized to be financed by regional transportation authorities or other mass transportation purposes. Thus this revised proposal tightens the general prohibition against back-door financing, particularly with respect to State capital or operating purposes.

Section 5 of this proposal would amend section 16 of Article VII to extend the requirement that the Legislature appropriate monies to pay debt service on general obligation bonds, and the State Comptroller pay such debt service when no appropriation is made, to the new class of revenue debt to the extent of pledged revenues.

STATEMENT IN SUPPORT:

Debt reform is one of the most urgent issues facing New York State. The future of the State's economy depends in large measure on its ability to manage debt in a way that is disciplined, effective and open to public scrutiny. Comptroller McCall in his testimony on September 21, 1993, at a joint hearing of the Senate Finance and Assembly Ways and Means Committee on State debt reform proposals, commended the Legislature for recognizing the urgency of this issue and giving first passage to the 1993 proposed Constitutional Amendment to reform the State's debt practices. He also stated that the fact a joint hearing was held demonstrated a commitment to develop an amendment that was more credible and responsive to public concerns and interests. The Comptroller stressed that while the language of the proposed Constitutional Amendment which the Legislature passed in 1993 included several features which are fundamental to successful reform, it did not go far enough.

The Legislature's first passage of this revised proposal in 1994 further demonstrates its serious commitment to long term debt reform. While the revised proposal did not include all of the Comptroller's recommendations, it improved upon the 1993 Proposal by:

- Tightening the prohibition against back-door financing to preclude any possibility of back-door financing for State purposes, such as current programs to finance correctional facilities, highways, the State University, Mental Hygiene facilities, youth facilities, State housing programs and State park facility improvements, among others. State service contract arrangements for other types of programs, such as financing contributions to the Water Pollution Control Revolving Fund for local sewage treatment projects, local highways, the higher education applied technology assistance program and similar programs, would also be prohibited. While most of these programs would have been prohibited under the 1993 Proposal, the revised proposal would preclude more types of arrangements in the future.

- Lowering the ultimate cap on the amount of the newly created State dedicated tax revenue debt from 5% of total personal income of the State to 4.4%. Instead of authorizing all of the new debt to be issued at any time after the amendment passed, as provided in the 1993 Proposal, the revised proposal would initially set the cap at a level of 1% and then phase in the remainder in increments of 1/3% for nine years and .4% in the final year of the phase in. This should help ensure the judicious use of the cap and impose some discipline on the debt issuance process.

- Requiring public hearings on the State's capital needs. A responsible State debt policy can only be fashioned when the public has sufficient information available about proposed capital projects and the sources from which they will be funded.

- Narrowing the proposed authorization contained in the 1993 Proposal for general obligation debt to fund an economic emergency. Rather than simply allowing the Governor and the Legislature to determine what is an economic emergency, the revised proposal defines an economic emergency to include a 3% drop in employment in the State in one year, an occurrence which has happened only twice since 1940. In addition, any debt issued pursuant to an economic emergency would have to be issued within two years of declaration of the emergency.

- Increasing to one percent (from three quarters of one percent) of total general fund disbursements for the prior fiscal year, the threshold amount required to be paid in a single year before debt could be contracted for the purpose of paying judgments rendered against the State.

This proposal also includes numerous reforms that were also in the 1993 proposal, such as:

- (1) Requiring that bond proceeds may be spent only for capital works or purposes -- no more long term financing of operating expenses;
- (2) Authorizing more than one bond issue to be submitted to the voters per election, thereby allowing voters to pick and choose those types of projects to which they think the allocation of general tax revenues is most important; and
- (3) Requiring submission of an annual detailed multi-year capital program and financing plan by the Governor.

This revised proposal which was passed last year is a significant improvement over the 1993 Proposal. The Comptroller believes that the Legislature was responsive to the comments on the 1993 Proposal and passed a proposed amendment that, if approved, will provide meaningful and lasting reform to New York's long term borrowing processes. It should also result in significant interest and administrative cost savings to the State.

The significance of these reforms has been reinforced since this proposal received first passage. On June 30, 1994 the Court of Appeals handed down its decision in *Schulz v. State of New York*, 84 NY2d 231, cert. den., __ U.S. __ (Jan. 23, 1995), upholding, among others, the provisions

of Chapter 56 of the Laws of 1993 that authorize the Thruway Authority to borrow money to finance improvements to State highways. Repayment of the Thruway Authority bonds is to be made, subject only to annual appropriation by the Legislature, from receipts from certain State taxes. While all State parties assumed that the challenged provisions of Chapter 56 were Constitutional when they were passed, the Court of Appeals has reinforced the broad powers of the Legislature, without voter approval, to authorize long term financing programs for State facilities so long as any State payments to be used for debt service are subject to annual appropriation. There is no current limitation in the Constitution on the amount of debt that can be incurred in this manner. This proposal would for the first time place a limit on the total amount of debt that could be incurred to finance State programs without voter approval. In addition, the new type of revenue debt that would replace backdoor financing would almost certainly carry a lower interest cost than most forms of appropriation backed debt currently issued by State authorities to finance State programs.

The Comptroller strongly urges second passage of this Concurrent Resolution.

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(h) The legislature may, at any time [after the approval of such law by the people], if no debt shall have been contracted in pursuance [thereof] of a particular law authorized under subdivision (a), (c) or (d) of this section, repeal [the same] such law authorizing the issuance of such debt; and may at any time, by law, forbid the contracting of any further debt or liability under such law.

(i) No debt shall be contracted pursuant to subdivision (a), (c) or (d) of this section, except to finance capital works or purposes.

(j) The state may contract debt to refund debt contracted pursuant to subdivision (a), (c) or (d) of this section or obligations of public corporations contracted for capital works or purposes, provided such refundings are conducted in accordance with the provisions of section 13 of this article.

(k) The provisions of subdivision (b) of this section shall not prohibit the state from providing monies for payment of principal, interest, or related payments on obligations which were contracted prior to the effective date of this subdivision or on obligations issued to refund such obligations, provided such refundings are conducted in accordance with the provisions of section 13 of this article.

§5. Resolved (if the senate concur), That section 16 of article 7 of the constitution be amended to read as follows:

§16. The legislature shall annually provide by appropriation for the payment of the interest upon and installments of principal of all debts or refunding debts created on behalf of the state except those contracted under section 9 of this article, as the same shall fall due, and for the contribution to all of the sinking funds created by law, of the amounts annually to be contributed under the provisions of section 12, 13 or 15 of this article. [If] With respect to debt contracted other than pursuant to subdivision (c) or (d) of section 11 of this article, if at any time the legislature shall fail to make any such appropriation, the comptroller shall set apart from the first revenues thereafter received,

STATE OF NEW YORK

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1995-1996 Regular Sessions

IN SENATE

March 22, 1995

Introduced by Sens. STAFFORD, LACK -- (at request of the State Comptroller) -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

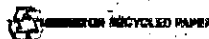
CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY

proposing amendments to sections 1, 2, 10, 11 and 16 of article 7 of the constitution, in relation to the submission of a capital program and financing plan, the contracting of debts for certain disasters, the prohibition of certain borrowing arrangements, the authorization for the contracting of debt secured by state revenues, and the manner in which principal and interest payments are appropriated and paid

- 1 Section 1. Resolved (if the Assembly concur), That section 1 of arti-
2 cle 7 of the constitution be amended to read as follows:
3 Section 1. For the preparation of the budget, the head of each
4 department of state government, except the legislature and judiciary,
5 shall furnish the governor such estimates and information in such form
6 and at such times as he may require, copies of which shall forthwith be
7 furnished to the appropriate committees of the legislature. The gover-
8 nor shall hold hearings thereon at which he may require the attendance
9 of heads of departments and their subordinates. Designated represen-
10 tatives of such committees shall be entitled to attend the hearings
11 thereon and to make inquiry concerning any part thereof. The governor
12 also shall hold hearings, in a manner prescribed by law, on the capital
13 needs of the state, and submit to the legislature an assessment of capi-
14 tal assets and needs, at such times and in the manner prescribed by law.
15 Itemized estimates of the financial needs of the legislature, certi-
16 fied by the presiding officer of each house, and of the judiciary,
17 approved by the court of appeals and certified by the chief judge of the
18 court of appeals, shall be transmitted to the governor not later than
19 the first day of December in each year for inclusion in the budget with-
20 out revision but with such recommendations as he may deem proper.
21 Copies of the itemized estimates of the financial needs of the judiciary
22 also shall forthwith be transmitted to the appropriate committees of the
23 legislature.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 § 2. Resolved (if the Assembly concur), That section 2 of article 7 of
2 the constitution be amended to read as follows:

3 § 2. Annually, on or before the first day of February in each year
4 following the year fixed by the constitution for the election of gover-
5 nor and lieutenant governor, and on or before the second Tuesday follow-
6 ing the first day of the annual meeting of the legislature, in all other
7 years, the governor shall submit to the legislature a budget containing
8 a complete plan of expenditures proposed to be made before the close of
9 the ensuing fiscal year and all moneys and revenues estimated to be
10 available therefor, together with an explanation of the basis of such
11 estimates and recommendations as to proposed legislation, if any, which
12 he may deem necessary to provide moneys and revenues sufficient to meet
13 such proposed expenditures. It shall also contain such other recommen-
14 dations and information as he may deem proper and such additional infor-
15 mation as may be required by law.

16 Annually, as provided by law, the governor shall submit to the legis-
17 lature a detailed multi-year capital program and financing plan which
18 shall include but not be limited to a description of each capital
19 program, and include for each such capital program, recommended appro-
20 priations, an estimate of planned expenditures, a projection of revenues
21 to finance such program, planned debt issuances as authorized by subdivi-
22 sions (a), (c) and (d) of section 11 of this article, and related debt
23 service costs associated with such debt issuances. Such plan shall be
24 updated and submitted to the legislature as provided by law.

25 § 3. Resolved (if the Assembly concur), That section 10 of article 7
26 of the constitution be amended to read as follows:

27 § 10. [In addition to the above limited power to contract debts]
28 Notwithstanding any other provision of this article, the state may
29 contract debts, other than pursuant to subdivision (c) or (d) of section
30 11 of this article, to repel invasion, suppress insurrection, or defend
31 the state in war, or to suppress forest fires, or to pay judgments
32 requiring the payment in any single fiscal year of moneys in excess of
33 one per centum of the total general fund disbursements for the prior
34 fiscal year, or to aid victims of or repair damage caused by natural or
35 other physical disasters or to address a prolonged and material impair-
36 ment of the state's economic health, as described below; but the money
37 arising from the contracting of such debts shall be applied for the
38 purpose for which it was raised, or to repay such debts, and to no other
39 purpose whatever. In the event of an emergency which is deemed to
40 represent a prolonged and material impairment of the state's economic
41 health, such debt shall be for capital works or purposes only, and shall
42 be contracted only after the execution of a certificate of emergency
43 signed by the governor and the passage of a concurrent resolution by
44 both houses of the legislature, setting forth the finding that the aver-
45 age number of employed persons in the state for the most recent twelve
46 month period for which data is available has declined by at least three
47 percent from the average number of employed persons in the state for the
48 preceding twelve month period and such other findings as shall be speci-
49 fied by law. The amount of such debt authorized pursuant to any one
50 certificate may not exceed five percent of the maximum amount of debt
51 authorized to be outstanding at the commencement of the fiscal year in
52 which the certificate is issued pursuant to subdivision (f) of section
53 11 of this article, and such debt shall be issued within two years of
54 the issuance of the certificate. No certificate may be issued less than
55 twelve months after the date on which a certificate has been issued.

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1 § 4. Resolved (if the Assembly concur), That section 11 of article 7
2 of the constitution be amended to read as follows:
3 § 11. Except the debts or refunding debts specified in sections 9, 10
4 and 13 of this article, [no] or as expressly provided for elsewhere in
5 this constitution:
6 (a) No debt shall be hereafter contracted by or in behalf of the
7 state, unless: (i) such debt shall be authorized by law, for some single
8 work or purpose, to be distinctly specified therein; [No]; provided that
9 no such law shall take effect until it shall, at a general election,
10 have been submitted to the people, and have received a majority of all
11 the votes cast for and against it at such election nor shall it be
12 submitted to be voted on within three months after its passage [nor at
13 any general election when any other law or any bill shall be submitted
14 to be voted for or against], or (ii) such debt shall be authorized by
15 law to be contracted pursuant to subdivision (c) or (d) of this section.
16 (b) Except as authorized in subdivision (a), (c) or (d) of this
17 section, the state shall not: (i) enter into any financing or other
18 similar arrangement, including by statute, contract, lease or other
19 similar agreement, whereby revenues of the state are appropriated
20 directly, indirectly, or on a contingent basis for the purpose of making
21 payments of principal, interest, or related payments on indebtedness
22 contracted by a municipality, individual, or public or private corpo-
23 ration for state capital or operating purposes; or (ii) enter into any
24 financing or other similar arrangement, including by contract, lease or
25 other similar agreement, under which revenues of the state are appropri-
26 ated, directly or on a contingent basis, for the purpose of making
27 payments of principal or interest on indebtedness of the state or any
28 municipality, individual, or public or private corporation. Notwith-
29 standing the foregoing, and subject to the provisions of section 8 of
30 this article, nothing herein shall preclude the state, as authorized by
31 law, from: (i) providing monies to a municipality or private corpo-
32 ration, which such municipality or private corporation may use or, if
33 permitted by law, pledge for the payment of principal, interest, or
34 related payments on its indebtedness contracted for its purposes or for
35 court purposes; (ii) intercepting monies otherwise payable to a muni-
36 cipality or private corporation to make payments of principal, interest,
37 or related payments on indebtedness contracted by such municipality or
38 private corporation or by a public corporation authorized to assist such
39 municipality or private corporation in conjunction with its purposes or
40 court purposes; (iii) entering into any financing or other similar
41 arrangement with a public benefit corporation for the purpose of provid-
42 ing financing assistance to distressed municipalities; or (iv) providing
43 monies for operating or capital assistance to a public corporation
44 constituting a regional transportation or transit authority, which
45 monies are used or pledged to pay principal, interest, or related
46 payments on indebtedness contracted by such public corporation, for its
47 statutory purposes as of January first, nineteen hundred ninety-four, or
48 for other mass transportation purposes thereafter authorized by law. For
49 the purposes of this subdivision, the term municipality shall include
50 counties, cities, towns, villages and school districts.
51 (c) The state may contract debt secured by a pledge of revenues of the
52 state authorized by law to be deposited in a dedicated trust fund or
53 funds created for transportation capital works or purposes. The legis-
54 lature shall in appropriations identify the transportation capital works
55 or purposes to be financed with such debt. Revenues in excess of the
56 required payments of debt service and related payments on such debt

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1 shall be available for other transportation purposes, as provided by
2 law.

3 (d) The state may contract debt secured by a pledge of revenues of the
4 state authorized by law for non-transportation capital works or
5 purposes. The legislature shall in appropriations identify the capital
6 works or purposes to be financed with such debt. Revenues in excess of
7 the required payments of debt service and related payments on such debt
8 shall be available for other non-transportation purposes, as provided by
9 law.

10 (e) Notwithstanding the provisions of section 8 of this article, the
11 state may contract debt in accordance with subdivision (a) or (d) of
12 this section for: (i) facilities owned by private not-for-profit insti-
13 tutions of higher education; or (ii) housing facilities owned by public
14 or private corporations and municipalities.

15 (f) The state may not in any fiscal year contract debt pursuant to
16 subdivision (c) or (d) of this section unless at the commencement of
17 such fiscal year, the total outstanding principal amount of debt is less
18 than the designated percentage of the total personal income of the
19 state, where such personal income is defined by and calculated in
20 accordance with law. The total outstanding principal amount of debt
21 shall include all debt or other obligations contracted pursuant to
22 subdivisions (c) and (d) of this section. The outstanding principal
23 amount of debt, with regard to the inclusion of either refunded and
24 refunding obligations, shall be defined by law. The designated percent-
25 age shall be one percent for fiscal year nineteen hundred ninety-eight-
26 nineteen hundred ninety-nine, and shall increase by one-third of one
27 percent in each of the nine subsequent fiscal years. The designated
28 percentage for fiscal year two thousand eight-two thousand nine and for
29 each fiscal year thereafter shall be four and four-tenths percent.

30 (g) The legislature shall provide by law for the manner by which debt
31 authorized by this section shall be contracted, provided that neither
32 house of the legislature shall consider any such bill unless it shall
33 have been printed and upon the desks of the members, in its final form,
34 at least fourteen calendar legislative days prior to its final passage.

35 (h) The legislature may, at any time (after the approval of such law
36 by the people), if no debt shall have been contracted in pursuance
37 (thereof) of a particular law authorized under subdivision (a), (c) or
38 (d) of this section, repeal (the same) such law authorizing the issuance
39 of such debt; and may at any time, by law, forbid the contracting of any
40 further debt or liability under such law.

41 (i) No debt shall be contracted pursuant to subdivision (a), (c) or
42 (d) of this section, except to finance capital works or purposes.

43 (j) The state may contract debt to refund debt contracted pursuant to
44 subdivision (a), (c) or (d) of this section or obligations of public
45 corporations contracted for capital works or purposes, provided such
46 refundings are conducted in accordance with the provisions of section 13
47 of this article.

48 (k) The provisions of subdivision (b) of this section shall not
49 prohibit the state from providing monies for payment of principal,
50 interest, or related payments on obligations which were contracted prior
51 to the effective date of this subdivision or on obligations issued to
52 refund such obligations, provided such refundings are conducted in
53 accordance with the provisions of section 13 of this article.

54 § 5. Resolved (if the Assembly concur), That section 15 of article 7
55 of the constitution be amended to read as follows:

1 § 16. The legislature shall annually provide by appropriation for
2 the payment of the interest upon and installments of principal of all
3 debts or refunding debts created on behalf of the state except those
4 contracted under section 9 of this article, as the same shall fall due,
5 and for the contribution to all of the sinking funds created by law, of
6 the amounts annually to be contributed under the provisions of section
7 12, 13 or 15 of this article. [If] With respect to debt contracted
8 other than pursuant to subdivision (c) or (d) of section 11 of this
9 article, if at any time the legislature shall fail to make any such
10 appropriation, the comptroller shall set apart from the first revenues
11 thereafter received, applicable to the general fund of the state, a sum
12 sufficient to pay such interest, installments of principal, or contribu-
13 tions to such sinking fund, as the case may be, and shall so apply the
14 moneys thus set apart. If at any time the legislature shall fail to make
15 an appropriation for the payment of interest or installments of princi-
16 pal or sinking fund payments or related payments on any debt contracted
17 pursuant to subdivision (c) or (d) of section 11 of this article, the
18 comptroller shall set apart from the first revenues received and pledged
19 to such payments, a sum sufficient to pay such interest or installment
20 of principal or contributions to such sinking fund payments or related
21 payments, and shall so apply the moneys thus set apart, provided however
22 that such revenues must be set aside and applied in a manner which
23 ensures that pledged revenues are applied only to payments on debt for
24 which such revenues were pledged pursuant to subdivision (c) or (d) of
25 section 11 of this article. The comptroller may be required to set aside
26 and apply such revenues as aforesaid, at the suit of any holder of such
27 bonds.

28 Notwithstanding the foregoing provisions of this section, the comp-
29 troller may covenant with the purchasers of any state obligations that
30 they shall have no further rights against the state for payment of such
31 obligations or any interest thereon after an amount or amounts deter-
32 mined in accordance with the provisions of such covenant is deposited in
33 a described fund or with a named or described agency or trustee. In such
34 case, this section shall have no further application with respect to
35 payment of such obligations or any interest thereon after the comp-
36 troller has complied with the prescribed conditions of such covenant.

37 § 6. Resolved (if the Assembly concur), That the foregoing amendments
38 be submitted to the people for approval at the general election to be
39 held in the year 1995 in accordance with the provisions of the election
40 law.