HOUSE DOCKET, NO. 790 FILED ON: 1/19/2011

HOUSE . . . . . No. 837

The Commonwealth of Massachusetts

PRESENTED BY:

Jeffrey Sánchez

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act further regulating the development of underused state owned real property and the disposition of state owned surplus real property.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Jeffrey Sánchez	*15th Suffolk*

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HOUSE . . . . . No. 837

By Mr. Sánchez of Boston, a petition (accompanied by bill, House, No. 837) of Jeffrey Sánchez relative to continuing the expedited disposal of surplus land. State Administration and Regulatory Oversight.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
HOUSE
, NO. *3025* OF 2009-2010.]

The Commonwealth of Massachusetts

An Act further regulating the development of underused state owned real property and the disposition of state owned surplus real property.

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

SECTION 1. Chapter 7 of the General Laws is hereby amended by striking out sections 40F and 40F1/2, as appearing in the 2004 Official Edition, and inserting in place thereof the following section:-

Section 40F. (a) For the purposes of this section, in addition to terms defined in section 39A, the following terms shall have the following meanings, unless the context clearly requires otherwise:

"Commissioner", the commissioner of capital asset management and maintenance.

"Division" the division of capital asset management and maintenance.

"Host municipality", the municipality or municipalities within which state-owned real property conveyed, leased or otherwise transferred pursuant to this chapter is located.

"Net cash proceeds", all payments paid to the commonwealth as and when paid, less any transaction-related expenses and expenses incurred in connection with the custody of the property by the division of capital asset management and maintenance, and the regional planning agency under subsection (f) for which it is not otherwise reimbursed, including, but not limited to, costs associated with the disposal or pre-development of the property from which the funds

16 originated including, but not limited to, appraisals, surveys, site evaluation, site preparation,
17 plans, recordings, smart growth review and feasibility and other marketing studies and any other
18 expenses relating to the disposal or project management services in connection with any reuse or
19 redevelopment of the surplus real property under this chapter, and less any amounts that may be
20 owing to the federal government as a result of the disposition.

21 “Property”, real property owned by the commonwealth.

22 “Secretary”, the secretary of administration and finance.

23 "Surplus land coordination committee” or “committee”, the committee established
24 by subsection (f).

25 "Surplus real property”, real property of the commonwealth:

26 (1) previously determined to be surplus to current and foreseeable state needs under
27 sections 40F or 40F½, but excluding real property for which there is an established local reuse
28 plan;

29 (2) determined to be surplus to current and foreseeable state needs under section 548
30 of chapter 26 of the acts of 2003; or

31 (3) declared to be surplus under this section. This term shall not include property subject
32 to Article 97 of the Amendments to the Constitution.

33 (b)(1) The commissioner shall be responsible for the acquisition, control and
34 disposition of real property in the manner and to the extent provided in this chapter. The
35 commissioner may delegate such responsibility to an administrator, who has 10 years of
36 experience in the management of commercial, industrial, institutional or public real property.
37 When responsibility is delegated to an administrator, the written approval of the secretary shall
38 be required before the transaction is finalized. The commissioner shall acquire interest in real
39 property on behalf of the commonwealth for the use of state agencies by gift, purchase, devise,
40 grant, eminent domain, rental, lease, rental-purchase or otherwise.

41 (2) In acquiring buildings for the use of state agencies, first consideration shall be
42 given to any structures that have been certified as historic landmarks as provided by sections 26
43 to 27C, inclusive, of chapter 9, that have been listed in the National Register of Historic Places as
44 provided by 16 U.S.C. section 470a or that have been designated historic landmarks by local
45 historic commissions, unless use of such buildings would not be feasible in terms of costs and
46 requirements when compared with other available properties.

47 (3) Notwithstanding any general or special law to the contrary, real property acquired
48 for the use of state agencies shall be held in the name of the commonwealth.

49 (4) The commissioner shall assist in the preparation and shall approve of plans for the
50 organization of all space within and around buildings and appurtenant structures used by state
51 agencies, and shall assign the use of space within and around the state house, subject to rules that
52 the committee on rules of the two branches acting concurrently may adopt, in accordance with
53 sections 10, 16A and 17 of chapter 8; the John W. McCormack State Office Building; 100
54 Cambridge Street formerly known as the Leverett Saltonstall State Office Building; the
55 Springfield Office Building; the Pittsfield Office Building; the Erich Lindemann Building; the
56 Charles F. Hurley Building; any real property acquired for the use of state agencies, the greater
57 part of which is not needed by any 1 state agency; and any other real property assigned by law to
58 the division of capital asset management and maintenance.

59 (5) The commissioner, with the written approval of the secretary, may transfer use of,
60 and responsibility for maintenance of, real property within or between state agencies. No
61 transfer within or between state agencies that involves: (i) a substantial change in the purposes
62 for which such property is currently used, or (ii) a change in the purposes for which a building is
63 currently used; or (iii) a change in use of more than 50 per cent of a building's usable floor
64 space, shall be made without the additional prior approval of the general court, except any
65 transfer of surplus property to the division for disposal. Subject to subsection (c), such a transfer
66 shall be based on a determination, made by the commissioner with the advice of the executive
67 heads of affected agencies and secretaries of the executive offices in which such agencies are
68 located, that such property or any part thereof, is not needed or not being put to optimum use
69 under current conditions. The commissioner shall notify the house and senate committees on
70 ways and means and the members of the general court representing the city or town in which
71 such property is located not less than 30 days before the final authorization of any transfer that
72 does not require the approval of the general court. The transfer shall only be made when the
73 general court is in session except as provided in this section. A transfer may be made when the
74 general court is not in session, and the 30 day notification requirement may be waived, only if
75 the commissioner certifies in writing that an emergency exists; but any such transfer may be
76 authorized for a period not to exceed 6 months, and the commissioner shall submit his
77 certification to and notify the house and senate ways and means committees of such transfer at
78 the earliest possible opportunity.

79 (6) Notwithstanding any other general or special law to the contrary, the
80 commissioner, in conjunction with the surplus land coordination committee, may sell, lease for a
81 term not to exceed 99 years, transfer or otherwise dispose of surplus real property of the
82 commonwealth, as specified in this section.

83 (c) In order to determine whether specified real property is surplus to the current and
84 foreseeable needs of the commonwealth, the commissioner shall provide written notice and
85 inquiry to the executive heads of state agencies and secretaries of the executive offices, who shall
86 have 30 days to submit a written response stating that the property is necessary for a specific
87 current or foreseeable need of the agency. If no agency or executive office submits such a

88 response within 30 days of the notice, the commissioner, in consultation with the surplus land
89 coordination committee, may declare the property as surplus and dispose of it under this section.
90 Alternatively, if a written response is timely received specifying a current or foreseeable need for
91 the property or any part thereof, the commissioner shall, in consultation with the secretary, the
92 surplus land coordination committee and with those responding affirmatively and the written
93 approval of the secretary, determine whether the real property or part thereof, shall: (1) be
94 retained and made available on account of a current or foreseeable use by a state agency, or (2)
95 be recommended for disposal as surplus property on a temporary or permanent basis.

96 Preference shall be given to ensuring that real property is made available for state needs
97 and not permanently disposed, where a state agency has submitted a timely written response
98 specifying a current or foreseeable need for the property. An agency shall not be required to
99 purchase or make payment, whether directly or indirectly, by a reduction in a capital or
100 budgetary account or by any other means, to acquire property or part thereof, which is made
101 available for that agency's use. As a condition of the transfer of property to a state agency, the
102 commissioner may require that the agency be financially responsible for any outstanding lease,
103 contractual or debt obligations previously incurred by the commonwealth to acquire or improve
104 the property and for any future maintenance, security and improvement costs for the property.

105 The commissioner shall specify in writing whether to retain or dispose of the property
106 and the reasons therefore and, if the commissioner recommends temporary disposal of the
107 property, the length of the temporary disposal shall be specified. Within 10 days of any
108 determination made by the commissioner to retain property under this subsection, the
109 commissioner shall provide written notice to the parties listed in clause (1) of subsection (h)
110 specifically identifying the property so retained.

111 (d) When real property is determined to be surplus to current state needs but not to
112 foreseeable state needs, the commissioner shall take all necessary action to ensure that any
113 disposition of the real property is temporary and maintains the commissioner's ability to make
114 such real property available to a state agency as needed.

115 (e) When notice is required under subsection (c) before declaring specified property
116 surplus, the commissioner shall provide the following written notice to all parties under clause
117 (1) of subsection (h): (1) a statement that the property is currently being considered by the
118 commissioner for disposal on a temporary or permanent basis as surplus; (2) a brief description
119 of the surplus process and the right of first refusal by a municipality to acquire the property
120 should the commonwealth seek to dispose of the property whether on a temporary or permanent
121 basis; (3) a general description of the property under consideration for disposal including as
122 applicable, a description of the land, buildings, appurtenant structures and equipment and the
123 current use and square footage of such property; and (4) a legal description of the property
124 including approximate metes and bounds and other information identifying any existing
125 easements, restrictions or other conditions.

126 (f) There shall be a surplus land coordination committee. The committee shall consist
127 of 1 representative appointed by each of the following: the commissioner, the secretary of the
128 executive office of environmental affairs, the chairman of the commonwealth development
129 coordinating council, the secretary of the executive office of transportation, the director of the
130 department of housing and community development, the secretary of the executive office of
131 economic development, the executive director of the Massachusetts Association of Regional
132 Planning Agencies, the president of the Massachusetts Association of Community Development
133 Corporations, and the executive director of the Massachusetts Municipal Association. At any
134 committee meeting, a majority of the members of the board entitled to vote must be present to
135 constitute a quorum. The committee shall meet at such times as the committee chairman shall
136 set, but no less than once every 3 months to consider the future re-uses of any surplus property.
137 The committee shall provide a written recommendation to the commissioner on the appropriate
138 future re-use of surplus property.

139 No member of the committee shall be in violation of section 6 of chapter 268A for
140 conduct which involves his participation, as a member of the committee, in a particular matter
141 before the committee which may affect the financial interest of a business organization with
142 which the member is affiliated, if the member, his immediate family and partner have no
143 personal and direct financial interest in the particular matter and if the member discloses in
144 writing his affiliation and financial interest to the committee and it is recorded in the minutes of
145 the meeting of the committee.

146 (g) For each specific surplus property greater than 2 acres in size or initially valued by
147 the commissioner at $1,000,000 or more, or when the committee considers it otherwise
148 necessary, the commissioner shall, as provided in clause (3) of subsection (h), request that the
149 regional planning agency serving the community in which the surplus property is located
150 conduct a smart growth review regarding the local and regional implications of disposing of the
151 parcel for a variety of prospective uses. If the surplus property is located in more than 1
152 municipality served by more than 1 regional planning agency, the commissioner shall select 1
153 regional planning agency to conduct the smart growth review for the entire property. In each
154 smart growth review, the regional planning agency shall consider the need for a variety of
155 housing options, jobs, and open space; current and prospective zoning of the site; need for
156 municipal capital facilities and public uses; impacts on traffic and transit; impacts on the
157 environment and natural resources, and on agricultural lands; existence of historically significant
158 structures; availability of infrastructure, including water supply, waste water and storm water
159 run-off; fiscal impacts of development on the municipality where the parcel is located;
160 remediation of contamination; and other smart growth implications. Within 75 days after the
161 request by the commissioner for a smart growth review, the regional planning agency shall
162 complete and submit the review in writing to the commissioner, the members of the surplus land
163 coordination committee, and the house and senate chairs of the joint committee on bonding,
164 capital expenditures and state assets, and make the review available to all parties listed under

165 clause (1) of subsection (h). Reasonable costs incurred by the regional planning agency shall be
166 considered part of the disposition expenses paid for by the division, and reimbursed from the
167 total proceeds of the sale or lease of surplus property received by the commonwealth not to
168 exceed $6,000 per parcel reviewed. If the smart growth review is not completed within 75 days
169 after the commissioner's request for the review, the commissioner may dispose of the surplus
170 property in accordance with this section.

171 (h) If the commissioner determines that the property is surplus, the commissioner shall:
172 (1) within 10 days of such declaration, provide written notice for each city or town in which the
173 property is located to the city manager of a city under Plan E form of government, the mayor and
174 city council of all other cities, the chairman of the board of selectmen of a town, the county
175 commissioners, the regional planning agency and the members of the general court representing
176 the city or town in which the property is located as well as surrounding cities or towns that the
177 property has been declared surplus and provide a specific description of the property as required
178 in clauses (3) and (4) of subsection (e); (2) if the surplus property exceeds 2 acre or is initially
179 valued by the commissioner at $1,000,000 or more, or the municipality in which the property is
180 located requests a hearing within 30 days of the surplus declaration, or the commissioner so
181 decides in his discretion, provide reasonable public notice and written notice of the hearing to all
182 parties listed under clause (1) of subsection (h) not less than 10 days before such hearing, and
183 conduct the public hearing in each municipality in which the surplus property is located for the
184 purpose of receiving public comment on the potential re-uses and appropriate restrictions upon
185 the use of the property. All oral testimony received at a public hearing shall be recorded, and
186 the commissioner shall provide to the committee any oral or written testimony received at such
187 hearing; (3) declare it available for disposition and identify any restrictions or conditions on such
188 property's re-use and development necessary to comply with the recommendation of the surplus
189 land coordination committee and the policies and principles established by the commonwealth
190 development coordinating council and take into consideration established state, regional and
191 local plans and policies, and any recommendations or comments from a city or town in which the
192 surplus property is located and from any member of the general court representing the city or
193 town where the property is located; and (4) ensure that any deed, lease or other disposition
194 agreement sets forth all such re-use restrictions, provides for effective remedies on behalf of the
195 commonwealth and provides, in the event of a failure to comply with the re-use restrictions by
196 the grantee, lessee or other recipient, that the title or lesser interest conveyed shall revert to the
197 commonwealth upon the recording of a notice in the appropriate registry of deeds.

198 (i) Upon declaration of a parcel of property as surplus and available for disposition, and
199 after any required public hearing and smart growth review, the committee shall consider all
200 available information, and shall provide a written recommendation to the commissioner on the
201 appropriate disposition, for such parcel, including the smart growth review and information
202 derived from the public hearing when available, and recommend a variety of appropriate uses,
203 restrictions, and future obligations for the disposition of each surplus parcel including, but not

204 limited to, its suitability for housing, economic development or preservation as open space, the
205 parcel's historical significance, a community's master plan, and what restrictions, if any, should
206 be imposed on its use and development. The committee in making recommendations to the
207 commissioner on the re-uses, restrictions and development of the surplus property shall consider
208 any: (1) testimony received at a public hearing held under clause (2) of subsection (h); (2)
209 testimony, recommendations or comments, from a city or town in which the property is located
210 including any recommendation or comment from a local re-use committee established by such
211 city or town to advise on the future reuse of land, buildings or structures; (3) testimony,
212 recommendations or comments from immediate surrounding communities and from any member
213 of the general court representing the city or town where the surplus property is located; (4) smart
214 growth review conducted under subsection (g); (5) comments and recommendations by the
215 commissioner; (6) applicable policies and principles established by the commonwealth
216 development coordinating council under section 8B of chapter 6A and (7) established state and
217 local plans and policies. The committee may also consider any other testimony and necessary
218 and relevant information received with respect to the surplus property.

219 If space within a state-owned, building or structure, but not the land, has been declared
220 surplus, the commissioner may temporarily dispose of such space by lease or rental without a
221 public hearing, smart growth review or surplus land committee recommendation under clauses
222 (2), (3) and(4) of subsection (h), if: (i) the term of the lease or rental period, including any
223 extension or renewal, does not exceed a cumulative period of 5 years, except where a lease or
224 rental is entered into with a municipality that has exercised a right of first refusal under
225 subsection (k) then such cumulative period may not be greater than 10 years; and (ii) the rental
226 or lease shall not be for more than 10,000 square feet within such building or structure, and (iii),
227 notwithstanding any provision of this section to the contrary, the lease or rental agreement or
228 tenancy cannot be assigned or sublet.

229 The commissioner shall send to the house and senate chairs of the committee on bonding,
230 capital expenditures and state assets and the house and senate committees on ways and means a
231 detailed list of all property being considered for surplus by the surplus land coordination
232 committee and recommendations for disposition of each parcel of property and its potential uses
233 and restrictions; the list and recommendations shall be sent by the commissioner on a quarterly
234 basis and within 14 days after any advisory meeting with the committee. The commissioner
235 shall dispose of all surplus real property in a manner substantially consistent with the
236 recommendations of the committee. If the committee does not recommend appropriate uses for
237 the property after (1) the parcel has been declared surplus, (2) the committee has had two
238 subsequent meetings, and (3) 14 days have elapsed after the second meeting, the commissioner
239 may dispose of the property without a recommendation from the committee in a manner
240 consistent with this chapter.

241 (j) The commissioner shall establish the value of surplus real property using
242 customarily accepted appraisal methodologies, including without limitation, a written appraisal

243 by an independent professional real estate appraiser, licensed by the commonwealth, with 5 or
244 more years of experience in the appraisal of commercial or industrial real estate. The value shall
245 be calculated both: (1) for the highest and best use of the surplus real property as may be
246 encumbered, and (2) subject to uses, restrictions, encumbrances and other conditions and terms
247 for the type of disposition, whether by sale or lease, as defined previously in writing by the
248 commissioner. In no instance in which the commonwealth retains responsibility for maintaining
249 the property shall the terms provide for payment of less than the annual maintenance costs.

250 (k) Before disposing of the surplus real property, the commissioner shall provide to
251 each city or town in which the property is located a written right of first refusal to acquire the
252 surplus real property located within such municipality, on the terms and conditions as offered by
253 the commissioner whether by sale or lease, and on the restrictions established in clause (4) of
254 subsection (h) and at 80 per cent of the value established in subsection (j); but, if the surplus real
255 property is restricted for use as open space, affordable housing or both, then the municipality
256 shall have the right of first refusal to acquire such property at 75 per cent of the established
257 value. Section 14 of chapter 40 shall apply to the purchase of surplus real property by a city or
258 town under this section; excepting any applicable restriction based on average assessed
259 valuation. The commissioner may accept flexible payment schedule at his discretion. A host
260 municipality exercising a right of first refusal as provided in this subsection may engage the
261 services of the Massachusetts Development Finance Agency to perform planning, feasibility,
262 marketing, and other studies or to provide project management services in connection with any
263 re-use or redevelopment of the real property. This right of first refusal must be exercised, if at
264 all, by the town or city or its assignee within 120 days after this notice by giving written
265 notification to the commissioner. Upon exercise of the right of first refusal, the city or town shall
266 have an additional 180 days to close on the purchase or lease of the property on such terms,
267 conditions and restrictions as previously offered by the commissioner. The commissioner may
268 grant a city or town additional time to close on the purchase or lease of the property. If a city or
269 town has held a vote for debt exclusion under section 21C of chapter 59 to finance the surplus
270 real property purchase, the date by which the host municipality shall exercise its option to
271 purchase shall be extended until 7 days after the vote, but the vote shall take place at the next
272 municipal election after the city or town voted to put the debt exclusion on the ballot. If the city
273 or town fails to close the purchase of the property within the allowed time, the sole remedy of the
274 commonwealth against the host municipality for such failure is to proceed with the disposition of
275 the property without further right of purchase by the host municipality; but, if the failure to close
276 on the purchase of the property was in bad faith as determined by the commissioner, the
277 commonwealth shall not be required to share proceeds of the sale of the real property with the
278 host municipality as required by subsection (q).

279 (l) A municipality that exercises the right of first refusal set forth in subsection (k) and
280 purchases the surplus real property shall not transfer the property to a for-profit organization for
281 5 years unless the transfer is for not less than the current fair market value of the property and the

282 municipality has used an amount equal to 15 per cent of the value of the parcel established in
283 subsection (j) for smart growth purposes.

284 The municipality may assign its right of first refusal to a not-for-profit organization,
285 which shall be a community development corporation as defined in section 1 of chapter 40F,
286 affordable housing non-profit or a non-profit conservation organization. The assignee shall be
287 entitled to acquire the property for the same price and according to the same terms which would
288 apply to a sale to a municipality under this section, having 180 days to close on the purchase or
289 lease of the property on such terms, conditions and restrictions as previously offered by the
290 commissioner. An assignment shall not be valid unless the municipality provides the
291 commissioner with identity of the assignee and date of assignment within 10 days from the date
292 of transfer. No further assignment of the right of first refusal shall be permitted unless the
293 assignee is a not-for-profit community development corporation as defined in section 1 of
294 chapter 40F or affordable housing non-profit or a non-profit conservation organization. A lease
295 or rental agreement that provides for periodic future payments to the commonwealth may require
296 the municipality to be a guarantor or the assignee to provide surety for any such payments and,
297 further, may restrict the assignment, sublease or other transfer of the property interest without the
298 written approval of the commissioner. If the municipality or its assignee acquires any portion of
299 the surplus real property for open space purposes, or if any portion of the property is restricted
300 for open space purposes, a conservation restriction under chapter 184 shall be retained by the
301 commonwealth on that parcel. A city or town that has exercised its right of first refusal or
302 otherwise has a right to close on the property, at its own expense, may enter upon the property
303 and any of its agents or contractors may enter upon the property, to conduct inspections, surveys,
304 or tests customarily performed in real estate transactions for the type and nature of the property
305 specified as surplus as long as the commissioner is notified and consents to the inspection,
306 survey or test, which consent shall not be unreasonably withheld. A city or town shall be
307 responsible to the commonwealth for any damage to the property, and shall hold harmless the
308 commonwealth from all losses arising out of a claim of any nature from a third party, which
309 resulted from conducting any such inspection, survey or test.

310 (m) If the city or town has failed to exercise or assign its right of first refusal, or the city
311 or town or its assignee has failed to close in a timely manner if such right was exercised or
312 assigned, the commissioner shall file a report of the recommended disposition of the surplus
313 property with the joint committee on bonding, capital expenditures and state assets. For parcels
314 larger than five contiguous acres, and if the city or town has not successfully exercised or
315 assigned its right of first refusal, the commissioner shall be authorized to proceed with
316 disposition of the property only after the General Court has accepted and authorized the
317 recommended disposition of the surplus property as contained in the report to the joint
318 committee on bonding, capital expenditures and state assets through a vote of both chambers in
319 formal or informal session, provided that in instances where the General Court has failed to act
320 upon the recommended disposition within 120 days of the disposition having been recommended

321 to said committee, the commissioner shall be deemed authorized to proceed with the disposition
322 as recommended. For parcels equal to or less than five contiguous acres, or if the city or town
323 has successfully exercised or assigned its right of first refusal, the commissioner shall be deemed
324 authorized to proceed with the disposition as recommended. The commissioner shall dispose of
325 surplus real property using appropriate competitive processes and procedures, subject to the
326 notification and advertising provisions of section 40H, and further, the terms restrictions,
327 conditions and type of disposition for such re-use previously established by the commissioner
328 under clause (4) of subsection (h). These competitive processes may include, but are not limited
329 to, auction, sealed bids and requests for price and development proposals. All auctions, sealed
330 bids or other competitive process shall be with reserve, and the commissioner shall retain the
331 right to withdraw any surplus property offered for sale or lease by such competitive process
332 before accepting any bid, proposal, offer or contract. At least 30 days before the date of an
333 auction or the date on which bids, proposals or other offers to purchase or lease surplus real
334 property are due, the commissioner shall place a notice in the central register published by the
335 state secretary under section 20A of chapter 9 stating the availability of such property, the nature
336 of the competitive process and other information deemed relevant, including the time and
337 location of the auction, the submission of bids or proposals and the opening thereof.

338 (n) If there is no plan to develop housing on the real property formerly used as a
339 department of mental health state hospital or department of mental retardation facility for
340 individuals with mental retardation, not less than 15% of the sale price shall be placed within a
341 dedicated account under control of the department which operated the property to support the
342 development of affordable community-based supported housing at another location for
343 individuals who are clients, or former clients of the department of mental health or the
344 department of mental retardation.

345 (o)The commissioner shall place a notice in the central register and notify in writing all
346 parties listed under clause (1) of subsection (h), identifying the individual or firm selected as
347 party to the real property transaction, along with the amount of the transaction. If the
348 commissioner accepts an amount below the value calculated under subsection (i), he shall
349 include the justification for doing so, specifying the difference between the calculated value and
350 the price received.

351 No agreement for the sale, lease, transfer or other disposition of surplus real property, and
352 no deed executed by or on behalf of the commonwealth, shall be valid unless the agreement or
353 deed contains the following certification, signed by the commissioner:

354 "I certify under penalties of perjury that I have fully complied with section 40F of chapter
355 7 of the General Laws in connection with the property described in this document."

356 (p) No agreement for the sale, lease, transfer or other disposition of surplus real
357 property shall be valid unless the purchaser or lessee has executed and filed with the
358 commissioner the statement required by section 40J.

359 (q) The grantee or lessee of any surplus real property shall be responsible for all costs
360 including, but not limited to, appraisals, surveys, plans, recordings and any other expenses
361 relating to the transfer, as shall be considered necessary by the commissioner.

362 (r) The division shall distribute funds from the net cash proceeds of the sale or lease of
363 surplus real property on at least a quarterly basis in the following order of priority each year, and
364 the division shall annually report to the house and senate committees on ways and means
365 detailing the total amount and distribution of these funds:-

366 (i) Not more than 10 per cent of the net cash proceeds from the sale or lease of each
367 such property shall be paid to the host municipality where the real property is located; but if the
368 commissioner certifies that the municipality has expedited permitting, has adopted an approved
369 smart growth zoning district under chapter 40R, or has taken other affirmative actions to further
370 the commonwealth's objectives for the parcel consistent with the commonwealth development
371 coordinating council's smart growth principles, and the smart growth review when available,
372 then the host municipality shall be eligible for up to a total of 25 per cent of the net cash
373 proceeds from the sale or lease of the particular parcel under a schedule and regulations to be
374 promulgated by the commissioner. A municipality that exercises its right of first refusal shall not
375 receive a percentage of the net cash proceeds.

376 If a city or town fails to close on a surplus real property due solely to a failure to receive
377 an affirmative vote on a debt exclusion ballot question to raise funds to acquire a particular
378 parcel under section 21 C of chapter 59, the city or town shall remain eligible to receive its share
379 of the net cash proceeds.

380 (ii) After distribution of net cash proceeds under clause (i), the remaining net cash
381 proceeds shall be deposited in the Smart Growth Housing Trust Fund.

382 50 per cent of the monies deposited in the Smart Growth Housing Trust Fund under
383 clause (ii), but not more than $2,800,000 in any fiscal year, shall be transferred pursuant to
384 Section 2XXX of Chapter 29 of the General Laws to be administered by the department of
385 housing and community development for regional planning agencies to provide technical
386 assistance to municipalities. The remaining 50 per cent, plus any funds in excess of $2,800,000,
387 shall be used by the Smart Growth Housing Trust Fund to pay for financial incentives and other
388 payments to communities under chapter 40R.

389 (s) The commissioner, in consultation with the secretary of the office of commonwealth
390 development, shall adopt regulations governing the disposition of surplus property in accordance
391 with this section. The commissioner shall include in these regulations criteria that allow real

392 property to be considered for disposition under this section. These criteria shall include an
393 automatic notice and inquiry to the executive heads of state agencies and secretaries as specified
394 under subsection (c) regarding any parcel that is left unused or abandoned for a specified period
395 of time and shall include any applicable regulations required under section 40L.

396 (t) Section 43I shall not apply to surplus real property disposed by the commissioner
397 under this section. Notwithstanding any provision of this section to the contrary, the
398 commissioner, in an emergency situation which poses a threat to the public safety or health and
399 upon request by a municipality, may permit, license, rent or otherwise allow occupancy to such
400 municipality of any surplus real property, not disposed, on a temporary and at-will basis and on
401 such other appropriate and consistent terms as established by the commissioner; but this
402 occupancy shall not exceed a period of 6 months, and the commissioner, within 10 days of any
403 permitted municipal use, shall certify in writing that an emergency exists and submits the
404 certification to the governor and the house and senate chairmen of the ways and means
405 committees.

406 SECTION 2. Section 35AA of chapter 10 of the General Laws, as so appearing, is hereby
407 amended by inserting after the word "section", in line 11, the following words:-

408 and in subsection (p) of section 40F of chapter 7.

409 SECTION 3. Section 3A of chapter 143 of the General Laws, as appearing in the 2004
410 Official Edition, is hereby amended by striking out the first paragraph and inserting in place
411 thereof the following paragraph:-

412 Unless otherwise provided by the state building code, the local inspector shall enforce the
413 state building code as to any building or structure within the city or town from which he is
414 appointed, including any building or structure owned by any authority established by the general
415 court but not owned in whole or in part by the commonwealth, and the state building code shall
416 be the code for all buildings and structures within the city or town. In the event of a conflict
417 between the code and a statute, ordinance or by-law regulating any historic district, regional
418 historic district or architecturally controlled district, any such statute, ordinance or by-law
419 regulating exterior architectural features within that district shall prevail. The inspector shall
420 enforce the state building code as to any building or structure within any city or town that is
421 owned in whole or in part by the commonwealth or any departments, commissions, agencies or
422 authorities of the commonwealth. The inspector shall have all the powers of a local inspector
423 under this chapter and under the state building code as to such buildings or structures that are
424 owned in whole or in part by the commonwealth or any of its departments, agencies,
425 commissions or authorities.

426 SECTION 4. Notwithstanding any general or special law to the contrary, section 1 shall
427 not apply to the disposition of real property that is the subject of a special act having an effective
428 date before the effective date of this act.

429 SECTION 5. The commissioner of capital asset management and maintenance shall
430 adopt the initial regulations under subsection (r) of section 40F of chapter 7 of the General Laws
431 within 6 months after the effective date of this act.

432 SECTION 6. The sum set forth in this section, subject to the conditions specified under
433 this act and previous appropriation acts, is hereby authorized for expenditure, subject to the laws
434 regulating the disbursement of public funds and approval thereof.