

# HOUSE . . . . . No. 2962

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## The Commonwealth of Massachusetts

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In the Year Two Thousand Nine  
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An Act relative to the development of underused state owned 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:*

1           SECTION 1. Chapter 7 of the General Laws is hereby amended by striking out section 1,  
2 as appearing in the 2006 Official Edition, and inserting in place thereof the following section:-

3           Section 1. As used in this chapter the following words shall, unless the context clearly  
4 requires otherwise, have the following meanings:-

5           "Commissioner", the commissioner of administration.

6           "Eligibility", written criteria established before a request for applications that are used to  
7 determine if an application for an award of grant program resources is acceptable.

8           "Finance committee", the committee of the executive council appointed to consider  
9 matters of finance.

10          "Grant program", financial or technical assistance provided by a state agency or state  
11 authority, as defined in section 1 of chapter 29, available to a city, town or other public or private  
12 entity otherwise eligible.

"Grant program fiscal statement", shall include: (1) a description of the substance of the application; (2) the average expected grant amount; (3) a listing of award recipients, including the award amount, if any, the fiscal year of the award and the date of award; (4) the estimated proportion of monies, in-kind match or other monies to be supplied by the award recipient and any other source from which such match will be required; (5) a description of the allocation formula and matching requirements, including whether the grant is distributed on the basis of a specified formula or at the grantor's discretion; (6) a description of any constraints placed on the use of the grant; and (7) contact information, including the telephone number, postal address and internet email address to facilitate the application process.

"Grant program reference", a description in electronic format that is retrievable and printable that shall include: (1) the grant program application; (2) the grant program eligibility criteria; (3) the application due date; and (4) the grant program fiscal statement.

For the purposes of sections 39B to 43J, inclusive, the following words shall, unless the context clearly requires otherwise, have the following meanings:-

"Affordable housing", housing that is affordable for rental or purchase by families or individuals whose income at initial occupancy is equal to or less than 100 per cent of the median area income as determined by the United States secretary of housing and urban development for federal housing programs.

"Agency", the Massachusetts Development Finance Agency, a body politic and corporate entity established by section 2 of chapter 23G.

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

“Committee”, the state surplus land coordinating committee established pursuant to section 40F.

“Direct public use”, use of real property by a governmental or quasi-governmental entity including, but not limited to, the commonwealth, any municipality within the commonwealth, or any authority or district within the commonwealth, or any instrumentality of any of the foregoing, and, with respect to any use of real property by a private non-profit organization, any use of the real property for affordable housing production, community economic development, historic preservation or for open space acquisition or preservation.

“Host municipality”, the municipality or municipalities within which state owned real property conveyed, leased or otherwise transferred pursuant to the provisions of this chapter is located.

“Net cash proceeds”, all payments paid to the commonwealth as and when paid, less any transaction-related expenses incurred by the division of capital asset management and maintenance, the Massachusetts Development Finance Agency and the regional planning agency for which it is not otherwise reimbursed, including, but not limited to, costs associated with the disposal or pre-development of the real property wherefrom the funds originated including, but not limited to, appraisals, surveys, site evaluation, site preparation, plans, recordings, smart growth review and feasibility and other marketing studies and any other expenses relating to the disposal or project management services in connection with any reuse or redevelopment of the real property pursuant to the provisions of this chapter, and less any amounts that may be owing to the federal government as a result of the disposition.

“Real property”, as defined in section 39A.

“State agency”, as defined in said section 39A.

“Surplus real property”, real property of the commonwealth: (1) previously determined to be surplus to current and foreseeable state needs pursuant to this chapter, but excluding real property for which there is an established local reuse plan; or (2) determined by the state surplus land coordinating committee to be surplus to current and foreseeable state needs pursuant to the provisions of this chapter.

SECTION 2. Said chapter 7 is hereby further amended by striking out section 40E, as so appearing, and inserting in place thereof the following section:-

Section 40E. Real property, record title to which is held in the name of a state agency or the board of trustees of a state agency or similar board of a state agency, shall be deemed to be the real property of the commonwealth. No deed or other instrument shall be required to effect the transfer to the commonwealth of title to such real property, but the land court department of the trial court shall, upon petition of the division of capital asset management and maintenance, issue in the name of the commonwealth a certificate of title to any real property, title to which is registered under chapter 185 in the name of a state agency or the board of trustees of a state agency or similar board of a state agency. Notwithstanding any general or special law to the contrary, no person shall acquire any rights by prescription or adverse possession in any lands or rights in lands held in the name of the commonwealth.

The commissioner and the committee shall exercise the powers stated in this chapter, notwithstanding the delegations which the general court has made pertaining to the acquisition, control, and disposition of real property, including section 19 of chapter 16; section 1 of chapter 19; section 7 of chapter 19A; sections 9A, 13, and 30 of chapter 21; sections 2 and 9 of chapter

21A; sections 8 and 26 of chapter 23A; section 7 of chapter 23B; section 3 of chapter 28A;  
section 41 of chapter 29; sections 4 and 5 of chapter 29A; sections 11, 12, 25, 26, and 27 of  
chapter 75; sections 7, 7A, 7C, 7D, 7E, 7G, 7H, 7L, 7M, 11, 13A, and 13B of chapter 81; section  
7 of chapter 82; section 4 of chapter 83; section 39B of chapter 90; sections 2, 3, 5, and 6 of  
chapter 91; sections 9A, 13, 33, 34, 77 to 85, inclusive, 87, and 88 of chapter 92; sections 62R,  
83, and 86 of chapter 111; section 5 of chapter 111B; section 8 of chapter 115A; sections 1 and 2  
of chapter 120; section 5 of chapter 122; section 10 of chapter 124; section 2 of chapter 147;  
sections 31 and 32 of chapter 184; provided, however, that the commissioner shall acquire,  
control and dispose of real property in accordance with the terms and purposes of the  
aforementioned provisions. The commissioner shall not make any acquisition of real property on  
behalf of a state agency by eminent domain or make any such delegation of power to acquire real  
property by eminent domain to any state agency unless such state agency is otherwise authorized  
by law to exercise the power of eminent domain. The commissioner may delegate to state  
agencies responsibility for the acquisition and control of real property as provided for in this  
chapter. When responsibility is delegated to a state agency, the written approval of the  
commissioner shall be required before the transaction is completed, and a copy of said written  
approval shall be sent to the joint committee on bonding, capital expenditures and state assets.

For the purposes of sections 40F to 40L, inclusive, the term "emergency" shall mean any  
situation caused by unforeseen circumstances which render currently used real property unusable  
or unavailable for the purposes intended and which creates an immediate need for other real  
property to preserve the health or safety of persons or real property.

SECTION 3. Said chapter 7 is hereby further amended by striking out section 40F, as so  
appearing, and inserting in place thereof the following section:-

Section 40F. (a) There shall be established a state surplus land coordinating committee, hereinafter the committee. The committee shall consist of 11 members, 1 of whom shall be the secretary of the executive office of administration and finance or his designee; 1 whom shall be the secretary of the executive office of transportation and construction or his designee; 1 of whom shall be the secretary of the executive office of economic development or his designee, provided his designee is the director of the Massachusetts office of business development; 1 of whom shall be the secretary of the executive office of environmental affairs or his designee; 1 of whom shall be the director of the department of housing and community development or his designee; 1 of whom shall be the commissioner of the division of capital asset management and maintenance or his designee; 1 of whom shall be the director of the Massachusetts municipal association or his designee; 1 of whom shall be chair of the commonwealth development coordinating council or his designee; and 1 of whom shall be the chief executive officer of the Massachusetts development finance authority or his designee; 1 of whom shall be the chair of the board of directors of the Massachusetts association of regional planning agencies or his designee; and 1 of whom shall be the president of the Massachusetts association of community development corporations or his designee.

The committee shall meet from time to time and shall advise and direct the commissioner on all real property being considered for surplus designation and on the appropriate disposition of such real property, including but not limited to, whether the real property should be declared surplus, the potential reuses for the real property, including, but not limited to, its suitability for housing development, economic development or preservation as open space, and what restrictions, if any, should be placed on its use and development.

The committee shall annually submit a written report of its activities not later than December 31. Said report shall be submitted to the president of the senate, the speaker of the house of representatives, the chairs of the joint committee on bonding, capital expenditures and state assets, the chairs of the joint committee on economic development and emerging technologies, and the clerks of the senate and the house of representatives.

(b) The commissioner, upon the approval of the committee, shall be responsible for the disposition of real property in the manner and to the extent provided in this chapter. The commissioner may delegate such responsibility to an administrator who has 10 years of experience in the management of commercial, industrial, institutional or public real property. When responsibility is delegated to an administrator the written approval of the commissioner shall be required before such transaction is finalized.

(c) The commissioner shall, pursuant to the provisions of this chapter, convey, lease for a term not to exceed 99 years, transfer or otherwise dispose of real property to the agency or the host municipality or, upon the approval of the committee, convey, lease for a term not to exceed 99 years, transfer or otherwise dispose of surplus real property as specified in this chapter.

The commissioner shall provide such administrative support to the committee as the committee may request.

SECTION 4. Said chapter 7, is hereby further amended by inserting after section 40F the following section:-

Section 40F<sup>1</sup>/<sub>4</sub>. (a) The commissioner shall recommend to the committee for surplus designation any real property owned by the commonwealth that is not required for use by any state agency or executive office and which in his judgment should be declared surplus real

property subject to disposition by the commonwealth in accordance with the provisions of this chapter; provided, however, that prior to recommending that a parcel of real property be declared surplus, the commissioner shall determine whether any state agency or executive office has a current or foreseeable need for the real property. In order to establish whether there exists a current or foreseeable need, the commissioner shall provide written notice and inquiry to the heads of state agencies and secretaries of the executive offices who shall have 30 days to submit a written response indicating that the real property is necessary for a specific current or foreseeable need of such agency or executive office. If no agency or executive office submits such a response within 30 days of receiving said notice, the commissioner shall recommend to the committee that the real property be declared surplus real property subject to disposal by the commonwealth in a manner consistent with the provisions of this chapter. In the event that a written response from a state agency or executive office is timely received specifying a current or foreseeable need for the real property, the commissioner shall, within 30 days and in consultation with the secretary of administration and finance and with any affirmatively responding state agency or executive office: (1) determine whether the real property shall be made available for the current use of a state agency or executive office; (2) determine whether the real property shall be retained on account of a foreseeable use by a state agency or executive office; provided, however, upon a determination that a parcel of real property is surplus to current state uses, but not to foreseeable state uses, the commissioner shall take such action as is necessary to ensure that any disposition of the real property is temporary and said action shall maintain the commissioner's ability to make such real property available to a state agency or executive office at such time as it may be needed; or (3) notwithstanding the current or foreseeable need of the responding state agency or executive office, recommend to the



committee that the real property should be declared surplus real property subject to disposal by the commonwealth in a manner consistent with the provisions of this chapter.

Within 10 days of providing written notice and inquiry to the heads of state agencies and secretaries of the executive offices as required by this section, the commissioner shall, for informational purposes, provide written notification to the host municipality that the real property may be declared surplus pursuant to the provisions of this chapter. Said notice shall be sent to the city manager in the case of a city under a Plan E form of government, the mayor and city council in the case of all other cities, the chairman of the board of selectmen in the case of a town, the county commissioners, the regional planning agency, and the representatives to the general court representing said host municipality. The commissioner shall set forth in such notice a description of the real property and a declaration that the real property is being considered for surplus designation.

(b) The commissioner shall file a report with the joint committee on bonding, capital expenditures and state assets which shall include the commissioner's recommendation as to the proposed designation of said real property as surplus. Within 30 days of said filing, the joint committee shall hold a public hearing on the commissioner's proposed designation. Thereafter, said joint committee shall report its findings to the general court together with legislation within 30 days of said public hearing, and shall provide a copy of said findings and legislation to the commissioner; provided, further, that prior to recommending to the committee that the real property be declared surplus to current and foreseeable state uses, there shall be an affirmative vote of the General Court enacting legislation.

190           The commissioner shall establish the value of real property using customarily accepted  
191   appraisal methodologies. The value shall be calculated both for (i) the highest and best use of the  
192   real property as currently zoned, and (ii) subject to uses, restrictions and encumbrances as may  
193   be defined by the general court and the committee. Appraisals under this paragraph shall be  
194   conducted by an independent licensed appraiser. In no instance in which the commonwealth  
195   retains responsibility for maintaining the real property shall the terms provide for payment of less  
196   than the annual maintenance costs.

197           (c) Prior to recommending to the committee that the real property be declared surplus to  
198   current and foreseeable state uses the commissioner shall, within 10 days of the general court's  
199   action as required by subsection (b), provide simultaneous written notification to the host  
200   municipality, the agency and the regional planning agency for the region where the real property  
201   is located indicating that the real property is available. For parcels of real property larger than 2  
202   acres or valued at more than \$1,000,000 the commissioner shall commission the regional  
203   planning agency for the region where the real property is located to conduct a smart growth reuse  
204   review. Said review shall consider a need for a variety of housing options, economic  
205   development and open space; current and prospective zoning of the site; the need for municipal  
206   capital facilities and public uses; impact of traffic and transit; impact on the environment and  
207   natural resources and on agricultural lands; existence of historically significant structures;  
208   availability of infrastructure, including water supply, waste water and storm water run-off; fiscal  
209   impact of the development on the host municipality; remediation of contamination; and other  
210   smart growth implications. The regional planning agency shall complete the review within 60  
211   days.

(d) Upon receipt of the notification pursuant to subsection (c) the host municipality shall have a right of first refusal to purchase the real property pursuant to the conditions established in this section. The host municipality shall have the right of first refusal to purchase the real property for a direct public use at 85 per cent of the fair market value of the real property as established pursuant to this chapter. The host municipality shall have the right of first refusal to purchase the real property for a purpose other than a direct public use at fair market value as established pursuant to this chapter. Such right of first refusal must be exercised, if at all, by the host municipality within 210 days of receipt of such notice by providing written notification to the commissioner of the host municipality's intent to purchase the real property. The host municipality shall then have an additional 180 days from its exercise of its right of first refusal to close on the purchase of the real property. In the event that a host municipality fails to close on the purchase of the real property within such time, the sole remedy of the commonwealth against the host municipality for such failure is to proceed with the disposition of the real property without further right of purchase by the host municipality; provided, however, that if said failure to close on the purchase of the real property was in bad faith, the commonwealth shall not be required to share proceeds of the sale of said real property with the host municipality as required by section 2ZZZ of chapter 29. The commissioner, at his discretion, may negotiate with a host municipality exercising its right of first refusal flexible financing arrangements to facilitate the purchase of the real property under this section; provided, however, that no such arrangements shall provide for a period of more than 5 years for all payments due under this section. A host municipality exercising a right of first refusal as provided herein may engage the services of the agency to perform planning, feasibility, marketing, and other studies or to provide project management services in connection with any reuse or redevelopment of the real property.

A host municipality shall be permitted to assign its right of first refusal to purchase the real property for a direct public use at 85 per cent of the fair market value of the real property as established pursuant to this chapter to a non-profit organization for a direct public use of said organization. Such assignment must be made by the host municipality, if at all, within 210 days of receipt of notification pursuant to subsection (c), the assignee non-profit organization must exercise said right, if at all, within 90 days of assignment of such right by the host municipality by providing written notification to the commissioner of the assignee non-profit organization's intent to purchase the real property. The assignee non-profit organization shall then have an additional 90 days from its exercise of said assignment by the host municipality to close on the purchase of the real property. In the event that the assignee non-profit organization fails to close on the purchase of the real property within such time, the sole remedy of the commonwealth against the host municipality for such failure is to proceed with the disposition of the real property without further right of purchase by the host municipality; provided, however, that if said failure to close on the purchase of the real property was in bad faith, the commonwealth shall not be required to share proceeds of the sale of said real property with the host municipality as required by section 2ZZZ of chapter 29.

If the host municipality or its assignee acquires any portion of the real property for open space purposes, or if any of the real property is restricted for open space purposes, a conservation restriction pursuant to chapter 184 of the general laws shall be retained by the commonwealth on such parcels.

(e) Upon receipt of the notification required pursuant to subsection (c) the agency shall have 180 days to determine whether the agency will acquire title to, or another interest in, said real property and to provide such notice to the commissioner; provided, however, that the agency

shall send preliminary notification to the commissioner within 30 days of its receipt of such notice stating its intention to decline title to, or other interest in, said real property or to undertake a due diligence review within such 180 day period. The preliminary notification shall not be binding upon the agency. The agency's determination whether to accept title to, or an interest in, said real property shall be based on an analysis as to the feasibility and need for the development, operation or maintenance of the real property, in whole or in part, substantially for institutional, governmental, industrial, or commercial uses which will prevent or eliminate blight, economic dislocation, economic distress, or unemployment, or for such other public purposes as the agency may determine. The agency shall, within 21 days of receipt of a request from the host municipality or the regional planning agency, provide said host municipality and the regional planning agency any information acquired from its analysis of the real property, including but not limited to, appraisals, surveys, site evaluations, site preparation, plans, recordings, smart growth review and any other work product relating to pre-development or development of the real property pursuant to the provisions of this chapter.

If the agency elects to acquire title to, or another interest in, the real property through a conveyance, a lease not to exceed 99 years, a rental or transfer, the agency shall so notify the commissioner within said 180 day time period by providing an offer to acquire such real property. The offer shall include a proposed redevelopment plan and a purchase or lease price for the real property determined by using customarily accepted appraisal methodologies and subject to uses, restrictions and encumbrances as may be determined by the general court and the commissioner. The agency shall also send its proposed redevelopment plan to the host municipality and the regional planning agency serving the area where the real property is located.

281           The agency and commissioner shall execute a mutually acceptable land disposition  
282 agreement not sooner than 35 days after the expiration of its 180 day option to purchase as  
283 provided for in this section or not sooner than 10 days and not later than 90 days, unless  
284 extended by a mutual agreement of the parties, after the host municipality declines to exercise or  
285 assign its right of first refusal to purchase the real property. Such land disposition agreement  
286 shall be subject to the agency securing all necessary state and local permits and approvals, and  
287 subject to a satisfactory environmental review. If the agency and the commissioner do not  
288 execute a mutually acceptable land disposition agreement in such time period, or at the  
289 conclusion of an arbitrator's review, as applicable, the commissioner may dispose of the real  
290 property in a manner consistent with the provisions of this chapter; provided, however, that the  
291 commissioner shall not unreasonably withhold his acceptance of a bona fide offer from the  
292 agency. If the agency is aggrieved by a decision of the commissioner, it may appeal to the  
293 committee within 15 days. The committee shall, within 15 days appoint an independent arbitrator  
294 to review the proposal. The arbitrator shall have 30 days to conduct said review. The decision of  
295 the arbitrator shall be binding upon the commissioner and the agency.

296           The agency may acquire an interest in real property only after approval of a  
297 redevelopment plan for such real property by the board of directors of the agency; provided,  
298 however, that prior to the submission of said redevelopment plan to the board for approval, the  
299 agency shall conduct a public hearing in the host municipality to allow for local input on the  
300 redevelopment plan and as to the potential reuses for the real property, including, but not limited  
301 to, its suitability for economic development, job creation, or preservation as open space, and  
302 what reuse restrictions, if any, should be imposed on its use and development. The agency shall  
303 publish notice of the hearing in the central register published by the state secretary pursuant to

section 20A of chapter 9 within 30 days of the date of the hearing. Notification of the public hearing shall also be sent to the host municipality. Said notice shall be sent to the city manager in the case of a city under a Plan E form of government, the mayor and city council in the case of all other cities, the chairman of the board of selectmen in the case of a town, the county commissioners, the regional planning agency, and the representatives to the general court representing said host municipality. The agency shall set forth in such notice a description of the real property, a copy of the proposed redevelopment plan and the date of the public hearing. A notice of the public hearing shall also be placed, at least once each week for the 4 consecutive weeks preceding the hearing, in newspapers with sufficient circulation to inform the people of the host municipality. The hearing shall be held in the host municipality not sooner than 30 days and not later than 35 days after the notice is published in the central register.

Notwithstanding any other general or special law to the contrary, any real property transferred to the agency through either a conveyance or lease shall be designated by the economic assistance coordinating council as an economic target area, an economic opportunity area, and a certified project, as those terms are defined in section 3A of chapter 23A, and such real property shall be eligible for all the incentives and benefits provided by the economic development incentive program.

(f) Notwithstanding any other general or special law to the contrary, the agency is authorized to employ alternative methods of procurement relative to the planning, design, demolition, construction, reconstruction, improvement, renovation, enlargement, expansion, remodeling, repair or build-out of any and all facilities, as may be useful or necessary from time to time in connection with the redevelopment of such real property by the agency in furtherance

of this chapter, including, without limitation, turnkey, design-build, lease, lease purchase or utilization of modular buildings.

The acquisition, procurement, planning, design, construction, reconstruction, improvement, renovation, enlargement, expansion, remodeling, alteration, repair, build-out, development, financing, management, maintenance, operation or leasing of all or any portion of a redevelopment project undertaken by the agency in furtherance of this chapter and any contract for construction and design or other consulting services for or relating to, the construction, reconstruction, improvement, renovation, enlargement, expansion, remodeling, alteration, repair, build-out, development, financing, management, maintenance, operation or leasing of all or any portion of real property by the agency pursuant to this chapter shall be exempt from the provisions of section 38A½ to 38O, inclusive, of this chapter, section 44A to 44J, inclusive, of chapter 149, and section 39M of chapter 30 or any other general or special law or rule or regulation providing for the advertising or bidding of construction, development, financing, management, leasing or improvements to, or the acquisition or disposition of interests in real or personal property, but the provisions of sections 26 to 27F, inclusive, and section 29, of said chapter 149 shall apply to those elements of redevelopment project undertaken by the agency in furtherance of this chapter that, but for the exemptions provided herein, would be subject to such sections.

Notwithstanding such exemptions, the procedures to be followed and the terms and conditions of such procurement processes, including written procedures for the selection of construction, design, and other professionals for the redevelopment of real property by the agency pursuant to this chapter, shall be determined by the agency in consultation with, and subject to review by, the inspector general of the commonwealth as set forth in this section, and



349 the procedures shall also be approved by the board of directors of the agency. The inspector  
350 general shall comment in writing on such procurement process and shall submit such comments  
351 to the agency, the chairs of the joint committee on bonding, capital expenditures and state assets,  
352 the chairs of the joint committees on economic development and emerging technologies, the  
353 clerk of the senate and the clerk of the house of representatives not less than 30 days before the  
354 agency begins the procurement of design and construction services.

355         In order to effectuate an open, competitive and fair procurement and an effective  
356 contracting process, the agency shall, not less than 45 days prior to the advertisement of the  
357 invitation for competitive bids using the procurement process, submit to the inspector general all  
358 procedures and criteria developed for the implementation of the alternative method, including a  
359 description of the project, the construction bid package, and evaluation criteria. The inspector  
360 general shall submit written comments on the procedures to the agency not less than 30 days  
361 prior to the advertisement. The agency shall submit the procedures and criteria and the comments  
362 of the inspector general to the chairs of the joint committee on bonding, capital expenditures and  
363 state assets, the chairs of the joint committees on economic development and emerging  
364 technologies, the clerk of the senate and the clerk of the house of representatives at least 15 days  
365 prior to the advertisement for any contract to be awarded on the basis of an alternative method.  
366 Such procedures and criteria shall be approved by a vote of the board of directors of the agency.  
367 The agency shall submit to the chairs of said joint committees a report of the results of such  
368 procurement. If the agency awards the contract to other than the lowest responsive bidder, the  
369 agency shall submit to said committees and to the inspector general a written justification  
370 describing in detail why such award is in the best interests of the agency.

Notwithstanding any other general or special law to the contrary, each state agency or executive office responsible for the permitting, development or financing of economic development projects in the commonwealth is hereby authorized and directed to develop a coordinated one-stop program for businesses, institutions and private parties that may intend to locate on the real property in order to enable development activities on such real property to be more effectively promoted by the commonwealth.

Notwithstanding any other general or special law to the contrary, real property, and any personal property located thereon, acquired by the agency, or of real property so acquired by the agency and leased by it, shall be subject to local taxation to the same extent and in the same manner as other lands are taxed; provided, however, that if said agency or other individual, person, firm, corporation, or other entity creates a minimum of 100 new jobs on the real property they shall not incur said tax liability for a period of 5 years; provided, further, that nothing in this section shall prohibit the municipality from entering into an agreement with said lessee relative to providing incentives and benefits pursuant to section 3A of chapter 23A.

Notwithstanding any other general or special law to the contrary, if the agency acquires title to, or another interest in, real property formerly used as a department of mental health state hospital or department of mental retardation in-patient care facility, the agency shall ensure that at least 15 per cent of any housing units developed on the real property be affordable supported housing for individuals who are clients, or former clients of the respective department; provided, however, that such housing shall be made affordable and available to such individuals with incomes of 15 per cent of the average median income or below; and provided, further, that said restriction shall be recorded in the registry of deeds or the registry district of the land court of the county in which the effected real property is located, as running with the land, and that said real

property shall not be released from such restriction until after the expiration of 99 years from the date of initial occupancy by such eligible individuals.

(g) If the host municipality and the agency decline to accept title to, or another interest in, the real property within the time prescribed by this section, the commissioner shall, within 30 days of being notified of said rejection by the host municipality and the agency, formally recommend to the committee that said real property be officially declared surplus to state uses. Upon receipt of the commissioner's official recommendation that the real property should be declared surplus, the committee shall:

(i) within 10 days provide written notice, for each city or town in which the real property is located, to the city manager in the case of a city under Plan E form of government, the mayor and city council in the case of all other cities, the chairman of the board of selectmen in the case of a town, the county commissioners, the regional planning agency, and the representatives to the general court representing the host municipality. The committee shall set forth in such notice a description of the real property and a declaration that the real property is being considered for surplus designation. The committee shall also inform the municipality that it may elect to adopt the provisions of chapter 43D and designate the real property a priority development site pursuant to said chapter 43D;

(ii) within 45 days conduct a public hearing in the host municipality to allow for local input as to whether the real property should be officially declared surplus, the potential reuses for the real property if it is officially declared surplus, including, but not limited to, its suitability for housing development, economic development, job creation, or preservation as open space, and what reuse restrictions, if any, should be imposed on its use and development; provided,

416 however, that in the case of real property formerly used as a department of mental health state  
417 hospital or department of mental retardation in-patient care facility, the committee shall place a  
418 reuse restriction on the land ensuring that at least 15 per cent of any housing units developed on  
419 the real property be affordable supported housing for individuals who are clients, or former  
420 clients, of the respective department; provided, further, that such housing shall be made  
421 affordable and available to such individuals with incomes of 15 per cent of average median  
422 income or below; and provided, further that said restriction shall be recorded in the registry of  
423 deeds or the registry district of the land court of the county in which the affected real property is  
424 located, as running with the land, and that said real property shall not be released from such  
425 restriction until after the expiration of 99 years from the date of initial occupancy by such  
426 eligible individuals. The committee shall publish notice of the hearing in the central register  
427 published by the state secretary pursuant to section 20A of chapter 9 within 30 days of the date  
428 of the hearing. A notice of the public hearing shall also be placed, at least once each week for the  
429 4 consecutive weeks preceding the hearing, in newspapers with sufficient circulation to inform  
430 the people of the effected locality. The hearing shall be held in the host municipality no sooner  
431 than 30 days and no later than 35 days after the notice is published in the central register.

432 (iii) within 120 days report in writing to the commissioner on the real property being  
433 considered for surplus designation on the appropriate disposition for such real property. Said  
434 report shall include a determination of whether the real property should be declared surplus, the  
435 potential reuses for the real property if it is declared by the committee to be surplus, including its  
436 suitability for housing development, economic development or preservation as open space, and  
437 what restrictions, if any, should be imposed on its use and development. The report shall also

include the recommendation of the host municipality, if any, and the smart growth report of the regional planning council, if applicable.

The determination of the committee shall be binding upon the commissioner.

SECTION 5. Said chapter 7 is hereby further amended by striking out section 40F½, as appearing in the 2006 Official Edition, and inserting in place thereof the following section:-

Section 40F½. (a) If, pursuant to section 40F¼, the committee determines that a parcel of real property is surplus to both current and foreseeable state uses the commissioner shall proceed with the disposition of the real property in accordance with this section. Notwithstanding any other general or special law to the contrary, any real property officially declared surplus by the committee shall be designated by the economic assistance coordinating council as an economic target area, an economic opportunity area, and a certified project, as those terms are defined in section 3A of chapter 23A, and such real property shall be eligible for all the incentives and benefits provided by the economic development incentive program; provided, further, that any real property officially declared surplus by the committee shall, upon local approval, automatically qualify as a priority development site for the purposes of chapter 43D.

The commissioner shall establish the value of surplus real property using customarily accepted appraisal methodologies. The value shall be calculated both for (i) the highest and best use of the real property as currently zoned, and (ii) subject to uses, restrictions and encumbrances as may be defined by the general court and the committee. Appraisals under this paragraph shall be conducted by an independent licensed appraiser. In no instance in which the commonwealth retains responsibility for maintaining the real property shall the terms provide for payment of less than the annual maintenance costs.

(b) The commissioner, within 60 days of receipt of notice from the committee, shall:-

(i) publicly declare the real property available for disposition and identify any restrictions on its use and development imposed by the general court or the committee; and

(ii) place a notice in the central register published by the state secretary pursuant to section 20A of chapter 9 stating the availability of the real property and requesting proposals from any public or private entity, agency, individual partnership, or joint venture regarding the use, reuse, rehabilitation, renovation, reconstruction, purchase, ownership, lease, construction, or development of the real property. Said notice shall also include the time and location for submission of bids and proposals and the opening thereof, and other information the commissioner may deem relevant; provided, however, that said notice shall simultaneously be filed with the chairs of the joint committee on bonding, capital expenditures and state assets and the chairs of the joint committee on economic development and emerging technologies.

All responses to the request for proposals issued pursuant to this section shall be submitted to the commissioner within 60 days after the publishing of the notice in the central register. The commissioner shall, within 30 days of receiving said proposals, review all the proposals received and recommend to the committee what he deems to be the 3 proposals which represent the highest and best use of the real property. The commissioner shall simultaneously send notice to each city or town in which the real property is located, to the city manager in the case of a city under Plan E form of government, the mayor and city council in the case of all other cities, the chairman of the board of selectmen in the case of a town, the county commissioners, the regional planning agency, and the representatives to the general court representing the host municipality of the proposals selected by the commissioner and

recommended to the committee. The committee shall, within 21 days of receiving a recommendation from the commissioner, conduct a public hearing in the host municipality on the proposals recommended by the commissioner. The committee by a majority vote shall, within 60 days of the public hearing in the host municipality, select the proposal which it deems represents the highest and best use of the real property. In determining the highest and best use of the real property as required by this section, the commissioner and the committee shall pay due consideration to the impact upon the host municipality, including, but not limited to, impact to housing, infrastructure, natural resources, open space and economic development.

If no proposals are received by the commissioner pursuant to the request for proposals issued pursuant to this section, or if the committee determines that the proposals received and recommended by the commissioner do not represent the highest and best use of the real property, or if the committee fails to secure a majority vote within 60 days of the public hearing in the host municipality required by this section, the commissioner shall dispose of the real property using appropriate alternative competitive processes and procedures. Such alternative competitive processes and procedures may include, but shall not be limited to, absolute auction, sealed bids and requests for price and development proposals. The commissioner shall dispose of the real property within 90 days of receiving notification from the committee; provided, further, that the commissioner shall, 30 days prior to disposition of the real property pursuant to an alternative competitive process, notify the host municipality and the committee of the alternative competitive process to be used. The commissioner shall, at least 30 days prior to the disposition of the surplus real property using an alternative competitive process, place notice in the central register published by the state secretary pursuant to section 20A of chapter 9 stating the availability of such real property, the nature of the competitive process and other information

505 deemed relevant, including the time and location of the auction, the submission of bids or  
506 proposals and the opening thereof.

507 (c) The commissioner shall place a notice in the central register, and provide written  
508 notice to the host municipality; provided said notice shall be sent to the city manager in the case  
509 of a city under Plan E form of government, the mayor and city council in the case of all other  
510 cities, the chairman of the board of selectmen in the case of a town, the county commissioners,  
511 the regional planning agency, and the representatives to the general court representing said host  
512 municipality. Said notice shall identify the individual or firm selected as party to such real  
513 property transaction, along with the amount of such transaction. If the commissioner accepts an  
514 amount below the value calculated pursuant to this section he shall include the justification  
515 therefore, specifying the difference between the calculated value and the price received.

516 The commissioner shall ensure that any rental agreement, and in the case of a  
517 conveyance, a deed or separate disposition agreement as deemed appropriate by the  
518 commissioner, shall set forth all such reuse restrictions; shall provide for effective remedies on  
519 behalf of the commonwealth, including that title to the real property, or such lesser interest as is  
520 the subject of the disposition agreement, shall revert to the commonwealth in the event of a  
521 violation of any such reuse restrictions; and shall provide, in the case of a disposition to the host  
522 municipality or a non-profit organization for a direct public use, that the title to the real property,  
523 or such lesser interest as is the subject of the disposition agreement, shall revert to the  
524 commonwealth in the event the real property is no longer utilized for such direct public use.

525 No agreement for the conveyance, lease or rental or other disposition of state-owned real  
526 property pursuant to this chapter, and no deed, executed by or on behalf of the commonwealth



pursuant to this chapter, shall be valid unless such agreement or deed contains the following declaration, signed by the commissioner:

The undersigned certifies under penalties of perjury that I have fully complied with the provisions of sections 40F, 40F<sup>1/4</sup>, 40F<sup>1/2</sup>, 40F<sup>3/4</sup>, 40H, and 40J of chapter 7 in connection with the real property described herein.

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Commissioner, DCAMM

Date: \_\_\_\_\_

The commissioner shall maintain, for a period of at least 6 years, a file containing a copy of each document necessary to establish fulfillment of the requirements of this chapter as it relates to the disposition of surplus real property. Such file shall be open to public inspection.

(d) All net cash proceeds from the conveyance, lease or other transfer of real property pursuant to this chapter shall be deposited by the commissioner, upon receipt, in the Surplus Real Property Proceeds Fund established pursuant to section 2ZZZ of chapter 29.

SECTION 6. Said chapter 7 is hereby further amended by inserting after section 40F<sup>1/2</sup> the following section:-

Section 40F<sup>3/4</sup>. The commissioner shall be responsible for the acquisition and control of real property in the manner and to the extent provided in this chapter. The commissioner may delegate such responsibility to an administrator who has 10 years of experience in the management of commercial, industrial, institutional or public real property. When responsibility

547 is delegated to an administrator the written approval of the commissioner shall be required before  
548 such transaction is finalized.

549 The commissioner shall acquire an interest in real property on behalf of the  
550 commonwealth for the use of state agencies and executive offices by gift, purchase, devise,  
551 grant, eminent domain, rental, lease, rental-purchase or otherwise.

552 In acquiring buildings for the use of state agencies or executive offices, first  
553 consideration shall be given to any structures that have been certified as historic landmarks as  
554 provided by sections 26 to 27C, inclusive, of chapter 9, that have been listed in the National  
555 Register of Historic Places as provided by 16 U.S.C. section 470a (1974) or that have been  
556 designated historic landmarks by local historic commissions, unless use of such buildings would  
557 not be feasible in terms of costs and requirements when compared with other available  
558 properties.

559 Notwithstanding any other general or special law to the contrary, real property acquired  
560 for the use of state agencies or executive offices shall be held in the name of the commonwealth.

561 The commissioner shall assist in the preparation and shall approve of plans for the  
562 organization of all space within and around buildings and appurtenant structures used by state  
563 agencies and executive offices, and shall assign the use of space within and around the state  
564 house, subject to such rules as the committee on rules of the 2 branches acting concurrently may  
565 adopt, in accordance with the provisions of sections 10, 16A and 17 of chapter 8; the John W.  
566 McCormack state office building; the Leverett Saltonstall state office building; the Springfield  
567 office building; the Pittsfield office building; the Erich Lindemann building; the Charles F.  
568 Hurley building; any real property acquired for the use of state agencies or executive offices, the

569 greater part of which is not needed by any one state agency or executive office; and any other  
570 real property assigned by law to the division of capital asset management and maintenance.

571         The commissioner, with the written approval of the commissioner of administration, may  
572 transfer use of, and responsibility for maintenance of, buildings, including equipment therein,  
573 within or between state agencies and executive offices. No such transfer within or between state  
574 agencies or executive offices which involves either a change in the purposes for which such  
575 building is currently used or a change in use in excess of 50 per cent of the usable floor space,  
576 shall be made without the prior approval of the general court. Any such transfer shall be based on  
577 a determination, made by the commissioner with the advice of the executive heads of effected  
578 agencies and secretaries of the executive offices in which such agencies are located, that such  
579 real property is not needed, is underutilized, or is not being put to optimum use under current  
580 conditions. The commissioner shall notify the chairs of house and senate committees on ways  
581 and means, the chairs of the joint committee on bonding, capital expenditures and state assets  
582 and the representatives to the general court from the city or town in which such real property is  
583 located not less than 30 days prior to the final authorization of any transfer which does not  
584 require the approval of the general court, and such transfer shall only be made when the general  
585 court is in session except as provided hereafter. Such transfer may be made when the general  
586 court is not in session, and the thirty day notification requirement may be waived, only if the  
587 commissioner certifies in writing that an emergency exists; provided, however, that any such  
588 transfer may be authorized for a period not to exceed 6 months; and provided, further, that the  
589 commissioner shall submit his certification to and notify the chairs of house and senate ways and  
590 means committees and the chairs of the joint committee on bonding, capital expenditures and

state assets, and the representatives to the general court from the city or town in which such real property is located of such transfer at the earliest possible opportunity.

SECTION 7. Section 40H of said chapter 7, as appearing in the 2006 Official Edition, is hereby amended by striking out, in lines 23 and 24, the words “state administration” and inserting in place thereof the following words:- bonding, capital expenditures and state assets.

SECTION 8. Said chapter 7 is hereby further amended by striking out section 40I, as so appearing, and inserting in place thereof the following section:-

Section 40I. The clerk of the house of representatives and the clerk of the senate shall, within 10 days of the filing of any legislation authorizing the conveyance, lease, transfer, or other disposition of any state-owned real property forward a copy of said bill to the commissioner. Within 90 days of the receipt of said copy, the commissioner shall submit in writing a report to the commissioner of administration, the legislative committee before which the bill is pending, and the joint committee on bonding, capital expenditures and state assets together with a recommendation for either the approval or the disapproval of the bill and his reasons therefor.

If the commissioner is recommending the approval of a bill proposing the disposition of a parcel exceeding 2 acres, said report shall include: (1) a description of the real property including its current use, structures, and approximate metes and bounds; (2) the value of the real property, determined through procedures customarily accepted by the appraising profession as valid for such purposes, calculated both for (a) the highest and best use of the real property as currently encumbered and (b) uses and encumbrances that would be imposed by the bill if enacted; (3) all current and foreseeable direct public uses identified by following the division's procedures for

such purposes as they apply to the real property to be disposed (4) other potential public and private uses of the real property; and (5) any other information the general court may require.

The commissioner shall expeditiously review and recommend approval or disapproval of any proposal to the general court for the sale, rental or other disposition of real property acquired on behalf of state agencies, and shall dispose of real property as mandated by the general court.

The provisions of this section shall not apply to recommendations filed by the commissioner with the joint committee on bonding, capital expenditures and state assets pursuant to the provisions of subsection (b) of section 40F¼.

SECTION 9. Chapter 29 of the General Laws is hereby amended by inserting after section 2YYY the following two sections:—

Section 2ZZZ. There shall be established and set upon the books of the commonwealth a separate fund to be known as the Surplus Real Property Proceeds Fund, hereinafter called the fund. The fund shall be administered by the department of housing and community development. All monies deposited into the fund shall, within 90 days of receipt, be distributed by the fund in the following order of priority:-

(i) to reimburse host municipalities for bona fide costs incurred by said municipalities for the maintenance and upkeep of the surplus real property wherefrom the funds originated;

(ii) a maximum of 10 per cent of the remaining net cash proceeds after funding the costs identified in clause (i) to the host municipality; provided, however, upon certification by the commissioner of the division of capital asset management and maintenance that a host municipality expedited permitting in accordance with part (i) of subsection (g) of section 40F¼

of chapter 7 or took other affirmative actions, which at the discretion of the commissioner, furthered the commonwealth's objectives for the parcel, shall be entitled to 20 per cent of the remaining net cash proceeds after funding the costs identified in clause (i). If said municipality exercises its right of first refusal as authorized pursuant to subsection (d) of section 40F¼ it shall not receive a percentage of the sale proceeds; provided, however, that if the host municipality assigns its right of first refusal pursuant to said subsection (d) of said section 40F¼ to a nonprofit organization for a direct public use, it shall receive a maximum of 10 per cent of the net cash proceeds remaining after funding the costs identified in clause (i);

(iii) after distribution of net cash proceeds pursuant to clauses (i) and (ii), not more than \$2,800,000 annually shall be deposited in the District Local Technical Assistance Fund established pursuant to section 2AAAA; and

(iv) after distribution of net cash proceeds pursuant to clauses (i), (ii), and (iii) the remaining net cash proceeds shall be deposited in Smart Growth Housing Trust fund established pursuant to section 35AA of chapter 10.

Section 2AAAA. There shall be established and set upon the books of the commonwealth a separate fund to be known as the District Local Technical Assistance Fund. Amounts credited to the fund shall be administered by the bureau of municipal assistance within the department of revenue which shall ensure that the funds are used for activities consistent with the purpose of this section and the Massachusetts management and accounting reporting system, so-called. Said amounts shall be used solely for the administration and implementation of the provisions of this section.

Recipients of said funds shall provide matching resources of not less than 10 per cent, no more than ½ of which may be in-kind services, and shall report such annually on their expenses and program activities to the commonwealth and local governments. Each regional planning district created under chapter 40B or by special act shall be granted a fixed annual base award of \$150,000 from said fund, with the exception of the Metropolitan Area Planning Council, which shall receive a base appropriation of \$200,000, the Martha's Vineyard commission which shall receive a full annual appropriation of \$100,000 and the Nantucket planning and economic development commission, which shall receive a full annual appropriation of \$50,000 as its full annual appropriation. One-half of the remainder of the annual appropriation to said fund shall be apportioned among said entities based on the percentage of the commonwealth's population served by each entity, with the other half apportioned based on the percentage of the commonwealth's communities served by each entity.

SECTION 10. Section 9 of chapter 40A of the General Laws, as so appearing, is hereby amended by striking out the fifteenth paragraph and inserting in place thereof the following paragraph:-

Zoning ordinances or by-laws shall also provide that research and development uses, whether or not such uses are currently permitted as a matter of right, may be permitted in any non-residential zoning district upon the issuance of a special permit; provided, however, that the granting authority finds that such uses do not substantially derogate from the public good. "Research and development uses" may include any 1 or more of the following: investigation; development; laboratory and similar research uses; any related office uses; limited manufacturing uses; and uses accessory to any of the foregoing in any field of science. "Limited manufacturing" shall, subject to the issuance of such special permit, be an allowed use provided

677 that the following requirements are satisfied: (1) such manufacturing activity is directly related to  
678 research and development uses; (2) no limited manufacturing activity occurs within 50 feet of a  
679 residential district; and (3) substantially all limited manufacturing activity occurs inside of  
680 buildings with any limited manufacturing activities occurring outside of buildings subject to such  
681 conditions as may be imposed by the granting authority.

682 SECTION 11. Chapter 40B of the General Laws is hereby amended by adding the  
683 following section:—

684 Section 31. There shall be established within each regional planning district created under  
685 this chapter or by special act a technical assistance center for the delivery of coordinated,  
686 comprehensive, and continuing technical services to and among local governments. Technical  
687 assistance services may be provided in any subject area within the capability of each technical  
688 assistance center that improves local government capacity, efficiency, knowledge and ability to  
689 respond to issues, opportunities, laws and requirements including, but not limited to: permitting;  
690 required municipal asset inventory and management; communication systems including  
691 broadband, wireless and related facilities; emergency and incident response systems; electronic  
692 government opportunities; remote image and data collection; digital data management and  
693 archiving; geographic information systems; geo-location of infrastructure; internet and internet-  
694 related technologies; data sharing and regional backup; computer system evaluation and  
695 networking; intelligent transportation systems; statistical trends and modeling; digital recordation  
696 of accidents, fires and crime; technical specifications relating to management of the sanitary  
697 code, water supplies, air quality, storm water and natural resource area; and other land use and  
698 smart growth zoning issues.



Said regional planning districts shall annually consult with each member city and town to ensure locally needed technical assistance services that: (i) aid communities in evaluating new technologies, equipment and systems; (ii) aid communities in improving the efficiency of local government; (iii) reduce costs incurred by local governments for performing duties required thereof; (iv) build capacity and provide needed skills; (v) aid communities in meeting new state or federal regulations or requirements; (vi) provide specific services or initiate demonstration projects; (vii) facilitate sharing of information or best practices among and between communities; (viii) facilitate inter-municipal cooperation or cost sharing; (ix) provide training and skill development of community employees; (x) aid in improvement of local standards, procedures and regulations; and (xi) promote smart growth zoning, regulations, or standards.

Said regional planning districts shall coordinate and focus their programs to augment the services of the local technical assistance centers. A core program of technical services shall be maintained in the fields of management and data, environment, transportation and community development. Other fields may be covered as appropriate and as resources allow. Agencies of the commonwealth initiating or following through on programs or regulations requiring outreach or technical assistance shall first consider utilizing the local technical assistance centers while seeking the services previously enumerated and may enter directly into contracts with the regional planning agencies or their technical assistance centers as they would with any city or town. This provision shall not limit the ability of state agencies to work directly with individual communities.

SECTION 12. Notwithstanding any general or special law to the contrary, for each parcel of real property acquired pursuant to the provisions of chapter 7 of the General Laws the Massachusetts Development Finance Agency shall file with the house and senate committees on

ways and means a written disclosure detailing any personal or professional relationships between any officer, director or employee of the Agency and any party involved with the development or redevelopment of the real property including, but not limited to, any outside legal counsel and other professional services. The Agency shall within 30 days of receiving a request by the house or senate committee on ways and means, provide the committee with a detailed summary of all fees and expenditures incurred relative to the development or redevelopment of real property acquired pursuant to the provisions of said chapter 7 including, but not limited to, any fees paid to any outside legal counsel and other professionals retained by, or on behalf of, the Agency.

SECTION 13. Sections 1 to 9, inclusive, shall not be effective as to the disposition of any real property designated surplus by the commissioner of the division of capital asset management and maintenance prior to the effective date of this act, or as to the disposition of any real property owned by the commonwealth and subject to a special act for the conveyance, lease or other disposition of such real property with an effective date prior to the effective date of this act.