

**HOUSE . . . . . No. 4092**

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**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Nine**  
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An Act clarifying surplusing of 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, as appearing in the 2006 Official Edition, is  
2 hereby amended by inserting after section 40F the following section:-

3 Section 40F 1/2. (a) Within 10 days of providing written notice and inquiry to the heads  
4 of state agencies and secretaries of the executive offices as required by this section, the  
5 commissioner shall, for informational purposes, provide written notification to the host  
6 municipality that the real property may be declared surplus pursuant to the provisions of this  
7 chapter. Said notice shall be sent to the city manager in the case of a city under a Plan B form of  
8 government, the mayor and city council in the case of all other cities, the chairman of the board  
9 of selectmen in the case of a town, the county commissioners, the regional planning agency, and  
10 the representatives to the general court representing said host municipality. The commissioner  
11 shall set forth in such notice a description of the real property and a declaration that the real  
12 property is being considered for surplus designation. In addition the commissioner shall provide  
13 notification of this to residents of the affected communities by advertising the timelines  
14 contained herein in a newspaper of general circulation in the affected community.

15           Upon receipt of the surplus notification the host municipality shall have a right of first  
16 refusal to purchase the real property pursuant to the conditions established in this section. The  
17 host municipality shall have the right of first refusal to purchase the real property for a direct  
18 public use at 50 per cent of the fair market value of the real property as established pursuant to  
19 this chapter. The host municipality shall have the right of first refusal to purchase the real  
20 property for a purpose other than a direct public use at fair market value as established pursuant  
21 to this chapter. Such right of first refusal must be exercised, if at all, by the host municipality  
22 within 210 days of receipt of such notice by providing written notification to the commissioner  
23 of the host municipality's intent to purchase the real property. The host municipality shall then  
24 have an additional 180 days from its exercise of its right of first refusal to close on the purchase  
25 of the real property. In the event that a host municipality fails to close on the purchase of the real  
26 property within such time, the sole remedy of the commonwealth against the host municipality  
27 for such failure is to proceed with the disposition of the real property without further right of  
28 purchase by the host municipality; provided, however, that if said failure to close on the purchase  
29 of the real property was in bad faith, the commonwealth shall not be required to share proceeds  
30 of the sale of said real property with the host municipality. The commissioner, at his discretion,  
31 may negotiate with a host municipality exercising its right of first refusal flexible financing  
32 arrangements to facilitate the purchase of the real property under this section; provided, however,  
33 that no such arrangements shall provide for a period of more than 5 years for all payments due  
34 under this section. A host municipality exercising a right of first refusal as provided herein may  
35 engage the services of the agency to perform planning, feasibility, marketing, and other studies  
36 or to provide project management services in connection with any reuse or redevelopment of the  
37 real property.

38           If a city or town has held a vote for debt exclusion pursuant to section 21C of chapter 59  
39 of the General Laws to finance the surplus real property purchase the date by which the host  
40 municipality shall exercise its option to purchase will be extended until 7 days after the vote.

41           A host municipality shall be permitted to assign its right of first refusal to purchase the  
42 real property for a direct public use at 50 per cent of the fair market value of the real property as  
43 established pursuant to this chapter to a non-profit organization for a direct public use of said  
44 organization. Such assignment must be made by the host municipality, if at all, within 210 days  
45 of receipt of notification pursuant to subsection (c), the assignee non-profit organization must  
46 exercise said right, if at all, within 90 days of assignment of such right by the host municipality  
47 by providing written notification to the commissioner of the assignee non-profit organization's  
48 intent to purchase the real property. The assignee non-profit organization shall then have an  
49 additional 90 days from its exercise of said assignment by the host municipality to close on the  
50 purchase of the real property. The commissioner shall consider finance acquisition plans that  
51 may take up to 5 years to conclude. In the event that the assignee non-profit organization fails to  
52 close on the purchase of the real property within such time, the sole remedy of the  
53 commonwealth against the host municipality for such failure is to proceed with the disposition of  
54 the real property without further right of purchase by the host municipality; provided, however,  
55 that if said failure to close on the purchase of the real property was in bad faith, the  
56 commonwealth shall not be required to share proceeds of the sale of said real property with the  
57 host municipality.

58           If the host municipality or its assignee acquires any portion of the real property for open  
59 space purposes, or if any of the real property is restricted for open space purposes, a conservation

60 restriction pursuant to chapter 184 of the general laws shall be retained by the commonwealth on  
61 such parcels.

62           Notwithstanding any other general or special law to the contrary, for any real property  
63 formerly used as a department of mental health state hospital or department of mental retardation  
64 in-patient care facility, at least 15 per cent of any housing units developed on the real property be  
65 affordable supported housing for individuals who are clients, or former clients of the respective  
66 department; provided, however, that such housing shall be made affordable and available to such  
67 individuals with incomes of 15 per cent of the average median income or below; and provided,  
68 further, that said restriction shall be recorded in the registry of deeds or the registry district of the  
69 land court of the county in which the effected real property is located, as running with the land,  
70 and that said real property shall not be released from such restriction until after the expiration of  
71 99 years from the date of initial occupancy by such eligible individuals. If there is no plan to  
72 develop housing on the real property formerly used as a department of mental health state  
73 hospital or department of mental retardation in-patient care facility, no less than 25% of the sale  
74 price shall support, the development of affordable and supportive housing at another location for  
75 individuals who are clients, or former clients of the department of mental health or the  
76 department of mental retardation.