

**SENATE . . . . . No. 1416**

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**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Nine**  
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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:*

1           SECTION 1. Chapter 7 of the General Laws is hereby amended by striking out sections  
2   40F and 40F1/2, as appearing in the 2006 Official Edition, and inserting in place thereof the  
3   following section:-

4           Section 40F. (a) For the purposes of this section, in addition to terms defined in section  
5   39A, the following terms shall have the following meanings, unless the context clearly requires  
6   otherwise:

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

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

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

11          "Net cash proceeds", all payments paid to the commonwealth as and when paid, less any  
12   transaction-related expenses and expenses incurred in connection with the custody of the

13 property by the division of capital asset management and maintenance, and the regional planning  
14 agency under subsection (f) for which it is not otherwise reimbursed, including, but not limited  
15 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 by  
24 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; (2) determined to be surplus to current and foreseeable state needs under section 548 of  
29 chapter 26 of the acts of 2003; or (3) declared to be surplus under this section. This term shall not  
30 include property subject to Article 97 of the Amendments to the Constitution and shall not  
31 include any parcel of real property which exceeds 25 acres as existing on May 1, 2005.

32 (b) (1) The commissioner shall be responsible for the acquisition, control and disposition  
33 of real property in the manner and to the extent provided in this chapter. The commissioner may

34 delegate such responsibility to an administrator, who has 10 years of experience in the  
35 management of commercial, industrial, institutional or public real property. When responsibility  
36 is delegated to an administrator, the written approval of the secretary shall be required before the  
37 transaction is finalized. The commissioner shall acquire interest in real property on behalf of the  
38 commonwealth for the use of state agencies by gift, purchase, devise, grant, eminent domain,  
39 rental, lease, rental-purchase or otherwise.

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

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

48 (4) The commissioner shall assist in the preparation and shall approve of plans for the  
49 organization of all space within and around buildings and appurtenant structures used by state  
50 agencies, and shall assign the use of space within and around the state house, subject to rules that  
51 the committee on rules of the two branches acting concurrently may adopt, in accordance with  
52 sections 10, 16A and 17 of chapter 8; the John W. McCormack State Office Building; 100  
53 Cambridge Street formerly known as the Leverett Saltonstall State Office Building; the  
54 Springfield Office Building; the Pittsfield Office Building; the Erich Lindemann Building; the  
55 Charles F. Hurley Building; any real property acquired for the use of state agencies, the greater

56 part of which is not needed by any 1 state agency; and any other real property assigned by law to  
57 the division of capital asset management and maintenance.

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

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

82           (c) In order to determine whether specified real property is surplus to the current and  
83 foreseeable needs of the commonwealth, the commissioner shall provide written notice and  
84 inquiry to the executive heads of state agencies and secretaries of the executive offices, who shall  
85 have 30 days to submit a written response stating that the property is necessary for a specific  
86 current or foreseeable need of the agency. If no agency or executive office submits such a  
87 response within 30 days of the notice, the commissioner, in consultation with the surplus land  
88 coordination committee, may declare the property as surplus and dispose of it under this section.  
89 Alternatively, if a written response is timely received specifying a current or foreseeable need for  
90 the property or any part thereof, the commissioner shall, in consultation with the secretary, the  
91 surplus land coordination committee and with those responding affirmatively and the written  
92 approval of the secretary, determine whether the real property or part thereof, shall: (1) be  
93 retained and made available on account of a current or foreseeable use by a state agency, or (2)  
94 be recommended for disposal as surplus property on a temporary or permanent basis.

95           If the commissioner recommends that property be disposed as surplus, the authority of  
96 the commissioner to proceed with the disposition shall be subject to the written affirmation of the  
97 governor.

98           Preference shall be given to ensuring that real property is made available for state needs  
99 and not permanently disposed, where a state agency has submitted a timely written response

100 specifying a current or foreseeable need for the property. An agency shall not be required to  
101 purchase or make payment, whether directly or indirectly, by a reduction in a capital or  
102 budgetary account or by any other means, to acquire property or part thereof, which is made  
103 available for that agency's use. As a condition of the transfer of property to a state agency, the  
104 commissioner may require that the agency be financially responsible for any outstanding lease,  
105 contractual or debt obligations previously incurred by the commonwealth to acquire or improve  
106 the property and for any future maintenance, security and improvement costs for the property.

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

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

117         (e) When notice is required under subsection (c) before declaring specified property  
118 surplus, the commissioner shall provide the following written notice to all parties under clause  
119 (1) of subsection (h): (1) a statement that the property is currently being considered by the  
120 commissioner for disposal on a temporary or permanent basis as surplus; (2) a brief description  
121 of the surplus process and the right of first refusal by a municipality to acquire the property

122 should the commonwealth seek to dispose of the property whether on a temporary or permanent  
123 basis; (3) a general description of the property under consideration for disposal including as  
124 applicable, a description of the land, buildings, appurtenant structures and equipment and the  
125 current use and square footage of such property; and (4) a legal description of the property  
126 including approximate metes and bounds and other information identifying any existing  
127 easements, restrictions or other conditions.(f) There shall be a surplus land coordination  
128 committee. The committee shall consist of 1 representative appointed by each of the following:  
129 the commissioner, the secretary of the executive office of environmental affairs, the chairman of  
130 the commonwealth development coordinating council, the director of the department of housing  
131 and community development, the executive director of the Massachusetts Association of  
132 Regional Planning Agencies, the president of the Massachusetts Association of Community  
133 Development Corporations, and the executive director of the Massachusetts Municipal  
134 Association. The secretary of transportation and or his designee shall serve as a non-voting  
135 member of the committee and advise the committee. At any committee meeting, a majority of  
136 the members of the board entitled to vote must be present to constitute a quorum. The committee  
137 shall meet at such times as the committee chairman shall set, but no less than once every 3  
138 months to consider the future re-uses of any surplus property. The committee shall provide a  
139 written recommendation to the commissioner on the appropriate future re-use of surplus  
140 property.

141 No member of the committee shall be in violation of section 6 of chapter 268A for  
142 conduct which involves his participation, as a member of the committee, in a particular matter  
143 before the committee which may affect the financial interest of a business organization with  
144 which the member is affiliated, if the member, his immediate family and partner have no

145 personal and direct financial interest in the particular matter and if the member discloses in  
146 writing his affiliation and financial interest to the committee and it is recorded in the minutes of  
147 the meeting of the committee.

148 (g) For each specific surplus property greater than 2 acres in size or initially valued by the  
149 commissioner at \$1,000,000 or more, or when the committee considers it otherwise necessary,  
150 the commissioner shall, as provided in clause (3) of subsection (h), request that the regional  
151 planning agency serving the community in which the surplus property is located conduct a smart  
152 growth review regarding the local and regional implications of disposing of the parcel for a  
153 variety of prospective uses. If the surplus property is located in more than 1 municipality served  
154 by more than 1 regional planning agency, the commissioner shall select 1 regional planning  
155 agency to conduct the smart growth review for the entire property. In each smart growth review,  
156 the regional planning agency shall consider the need for a variety of housing options, jobs, and  
157 open space; current and prospective zoning of the site; need for municipal capital facilities and  
158 public uses; impacts on traffic and transit; impacts on the environment and natural resources, and  
159 on agricultural lands; existence of historically significant structures; availability of infrastructure,  
160 including water supply, waste water and storm water run-off; fiscal impacts of development on  
161 the municipality where the parcel is located; remediation of contamination; and other smart  
162 growth implications. Within 90 days after the request by the commissioner for a smart growth  
163 review, the regional planning agency shall complete and submit the review in writing to the  
164 commissioner, the surplus land coordination committee, and the house and senate chairs of the  
165 joint committee on bonding, capital expenditures and state assets, and make the review available  
166 to all parties listed under clause (1) of subsection (h). Reasonable costs incurred by the regional  
167 planning agency shall be considered part of the disposition expenses paid for by the division, and



168 reimbursed from the total proceeds of the sale or lease of surplus property received by the  
169 commonwealth not to exceed \$6,000 per parcel reviewed. If the smart growth review is not  
170 completed within 90 days after the commissioner's request for the review, the commissioner may  
171 dispose of the surplus property in accordance with this section.

172 (h) If the commissioner determines that the property is surplus, the commissioner shall:  
173 (1) within 10 days of such declaration, provide written notice for each city or town in which the  
174 property is located to the city manager of a city under Plan E form of government, the mayor and  
175 city council of all other cities, the chairman of the board of selectmen of a town, the county  
176 commissioners, the regional planning agency and the members of the general court representing  
177 the city or town in which the property is located as well as surrounding cities or towns that the  
178 property has been declared surplus and provide a specific description of the property as required  
179 in clauses (3) and (4) of subsection (e); (2) if the surplus property exceeds 2 acre or is initially  
180 valued by the commissioner at \$1,000,000 or more, or the municipality in which the property is  
181 located requests a hearing within 30 days of the surplus declaration, or the commissioner so  
182 decides in his discretion, provide reasonable public notice and written notice of the hearing to all  
183 parties listed under clause (1) of subsection (h) not less than 10 days before such hearing, and  
184 conduct the public hearing in each municipality in which the surplus property is located for the  
185 purpose of receiving public comment on the potential re-uses and appropriate restrictions upon  
186 the use of the property. All oral testimony received at a public hearing shall be recorded, and  
187 the commissioner shall provide to the committee any oral or written testimony received at such  
188 hearing; (3) declare it available for disposition and identify any restrictions or conditions on  
189 such property's re-use and development necessary to comply with the recommendation of the  
190 surplus land coordination committee and the policies and principles established by the

191 commonwealth development coordinating council and take into consideration established state,  
192 regional and local plans and policies, and any recommendations or comments from a city or town  
193 in which the surplus property is located and from any member of the general court representing  
194 the city or town where the property is located; and (4) ensure that any deed, lease or other  
195 disposition agreement sets forth all such re-use restrictions, provides for effective remedies on  
196 behalf of the commonwealth and provides, in the event of a failure to comply with the re-use  
197 restrictions by the grantee, lessee or other recipient, that the title or lesser interest conveyed shall  
198 revert to the commonwealth upon the recording of a notice in the appropriate registry of deeds.

199 (i) Upon declaration of a parcel of property as surplus and available for disposition, and  
200 after any required public hearing and smart growth review, the committee shall consider all  
201 available information, and shall provide a written recommendation to the commissioner on the  
202 appropriate disposition, for such parcel, including the smart growth review and information  
203 derived from the public hearing when available, and recommend a variety of appropriate uses,  
204 restrictions, and future obligations for the disposition of each surplus parcel including, but not  
205 limited to, its suitability for housing, economic development or preservation as open space, the  
206 parcel's historical significance, a community's master plan, and what restrictions, if any, should  
207 be imposed on its use and development. The committee in making recommendations to the  
208 commissioner on the re-uses, restrictions and development of the surplus property shall consider  
209 any: (1) testimony received at a public hearing held under clause (2) of subsection (h); (2)  
210 testimony, recommendations or comments, from a city or town in which the property is located  
211 including any recommendation or comment from a local re-use committee established by such  
212 city or town to advise on the future reuse of land, buildings or structures; (3) testimony,  
213 recommendations or comments from immediate surrounding communities and from any member

214 of the general court representing the city or town where the surplus property is located; (4) smart  
215 growth review conducted under subsection (g); (5) comments and recommendations by the  
216 commissioner; (6) applicable policies and principles established by the commonwealth  
217 development coordinating council under section 8B of chapter 6A and (7) established state and  
218 local plans and policies. The committee may also consider any other testimony and necessary  
219 and relevant information received with respect to the surplus property.

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

230 The commissioner shall send to the house and senate chairs of the committee on bonding,  
231 capital expenditures and state assets and the house and senate committees on ways and means a  
232 detailed list of all property being considered for surplus by the surplus land coordination  
233 committee and recommendations for disposition of each parcel of property and its potential uses  
234 and restrictions; the list and recommendations shall be sent by the commissioner on a quarterly  
235 basis and within 14 days after any advisory meeting with the committee. The commissioner  
236 shall dispose of all surplus real property in a manner substantially consistent with the

237 recommendations of the committee. If the committee does not recommend appropriate uses for  
238 the property after (1) the parcel has been declared surplus, (2) the committee has had two  
239 subsequent meetings, and (3) 14 days have elapsed after the second meeting, the commissioner  
240 may dispose of the property without a recommendation from the committee in a manner  
241 consistent with this chapter.

242 (j) The commissioner shall establish the value of surplus real property using customarily  
243 accepted appraisal methodologies, including without limitation, a written appraisal by an  
244 independent professional real estate appraiser, licensed by the commonwealth, with 5 or more  
245 years of experience in the appraisal of commercial or industrial real estate. The value shall be  
246 calculated both: (1) for the highest and best use of the surplus real property as may be  
247 encumbered, and (2) subject to uses, restrictions, encumbrances and other conditions and terms  
248 for the type of disposition, whether by sale or lease, as defined previously in writing by the  
249 commissioner. In no instance in which the commonwealth retains responsibility for maintaining  
250 the property shall the terms provide for payment of less than the annual maintenance costs.

251 (k) Before disposing of the surplus real property, the commissioner shall provide to each  
252 city or town in which the property is located a written right of first refusal to acquire the surplus  
253 real property located within such municipality, on the terms and conditions as offered by the  
254 commissioner whether by sale or lease, and on the restrictions established in clause (4) of  
255 subsection (h) and at 80 per cent of the value established in subsection (j); but, if the surplus real  
256 property is restricted for use as open space, affordable housing or both, then the municipality  
257 shall have the right of first refusal to acquire such property at 75 per cent of the established value  
258 except, a municipality shall have the right to acquire such property at 50 per cent of the  
259 established value with an additional restriction that the municipality retain the parcel for its own

260 use for a term of not less than 25 years. Section 14 of chapter 40 shall apply to the purchase of  
261 surplus real property by a city or town under this section; excepting any applicable restriction  
262 based on average assessed valuation. The commissioner may accept flexible payment schedule at  
263 his discretion. A host municipality exercising a right of first refusal as provided in this subsection  
264 may engage the services of the Massachusetts Development Finance Agency to perform  
265 planning, feasibility, marketing, and other studies or to provide project management services in  
266 connection with any re-use or redevelopment of the real property. This right of first refusal must  
267 be exercised, if at all, by the town or city or its assignee within 120 days after this notice by  
268 giving written notification to the commissioner. Upon exercise of the right of first refusal, the  
269 city or town shall have an additional 180 days to close on the purchase or lease of the property  
270 on such terms, conditions and restrictions as previously offered by the commissioner. The  
271 commissioner may grant a city or town additional time to close on the purchase or lease of the  
272 property. If a city or town has held a vote for debt exclusion under section 21C of chapter 59 to  
273 finance the surplus real property purchase, the date by which the host municipality shall exercise  
274 its option to purchase shall be extended until 7 days after the vote, but the vote shall take place at  
275 the next municipal election after the city or town voted to put the debt exclusion on the ballot. If  
276 the city or town fails to close the purchase of the property within the allowed time, the sole  
277 remedy of the commonwealth against the host municipality for such failure is to proceed with the  
278 disposition of the property without further right of purchase by the host municipality; but, if the  
279 failure to close on the purchase of the property was in bad faith as determined by the  
280 commissioner, the commonwealth shall not be required to share proceeds of the sale of the real  
281 property with the host municipality as required by subsection (q).

282 (l) A municipality that exercises the right of first refusal set forth in subsection (k) and  
283 purchases the surplus real property shall not transfer the property to a for-profit organization for  
284 5 years unless the transfer is for not less than the current fair market value of the property and the  
285 municipality has used an amount equal to 15 per cent of the value of the parcel established in  
286 subsection (j) for smart growth purposes.

287 The municipality may assign its right of first refusal to a not-for-profit organization,  
288 which shall be a community development corporation as defined in section 1 of chapter 40F,  
289 affordable housing non-profit or a non-profit conservation organization. The assignee shall be  
290 entitled to acquire the property for the same price and according to the same terms which would  
291 apply to a sale to a municipality under this section. An assignment shall not be valid unless the  
292 municipality provides the commissioner with identity of the assignee and date of assignment  
293 within 10 days from the date of transfer. No further assignment of the right of first refusal shall  
294 be permitted unless the assignee is a not-for-profit community development corporation as  
295 defined in section 1 of chapter 40F or affordable housing non-profit or a non-profit conservation  
296 organization. A lease or rental agreement that provides for periodic future payments to the  
297 commonwealth may require the municipality to be a guarantor or the assignee to provide surety  
298 for any such payments and, further, may restrict the assignment, sublease or other transfer of the  
299 property interest without the written approval of the commissioner. If the municipality or its  
300 assignee acquires any portion of the surplus real property for open space purposes, or if any  
301 portion of the property is restricted for open space purposes, a conservation restriction under  
302 chapter 184 shall be retained by the commonwealth on that parcel. A city or town that has  
303 exercised its right of first refusal or otherwise has a right to close on the property, at its own  
304 expense, may enter upon the property and any of its agents or contractors may enter upon the

305 property, to conduct inspections, surveys, or tests customarily performed in real estate  
306 transactions for the type and nature of the property specified as surplus as long as the  
307 commissioner is notified and consents to the inspection, survey or test, which consent shall not  
308 be unreasonably withheld. A city or town shall be responsible to the commonwealth for any  
309 damage to the property, and shall hold harmless the commonwealth from all losses arising out of  
310 a claim of any nature from a third party, which resulted from conducting any such inspection,  
311 survey or test.

312 (m) If the city or town has not exercised or assigned its right of first refusal, or has failed  
313 to close in a timely manner if such right was exercised, the commissioner shall dispose of surplus  
314 real property using appropriate competitive processes and procedures, subject to the notification  
315 and advertising provisions of section 40H, and further, the terms restrictions, conditions and type  
316 of disposition for such re-use previously established by the commissioner under clause (4) of  
317 subsection (h) . These competitive processes may include, but are not limited to, auction,  
318 sealed bids and requests for price and development proposals. All auctions, sealed bids or other  
319 competitive process shall be with reserve, and the commissioner shall retain the right to  
320 withdraw any surplus property offered for sale or lease by such competitive process before  
321 accepting any bid, proposal, offer or contract. The commissioner shall not accept any offer, bid  
322 or contract which is less than 75 percent of the value of the surplus real property originally  
323 established in subsection (j). At least 30 days before the date of an auction or the date on which  
324 bids, proposals or other offers to purchase or lease surplus real property are due, the  
325 commissioner shall place a notice in the central register published by the state secretary under  
326 section 20A of chapter 9 stating the availability of such property, the nature of the competitive

327 process and other information deemed relevant, including the time and location of the auction,  
328 the submission of bids or proposals and the opening thereof.

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

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

338 "I certify under penalties of perjury that I have fully complied with section 40F of chapter  
339 7 of the General Laws in connection with the property described in this document."

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

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

346 (q) The division shall distribute funds from the net cash proceeds of the sale or lease of  
347 surplus real property on at least a quarterly basis in the following order of priority each year, and



348 the division shall annually report to the house and senate committees on ways and means  
349 detailing the total amount and distribution of these funds:-

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

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

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

366 50 per cent of the monies deposited in the Smart Growth Housing Trust Fund under  
367 clause (ii), but not more than \$2,800,000 in any fiscal year, shall be used by the department of  
368 housing and community development to provide grants to regional planning agencies for  
369 technical assistance to municipalities. The department shall grant each regional planning district

370 created under chapter 40B or by special act a fixed base allocation of \$150,000, except that the  
371 Metropolitan Area Planning Council shall receive a base allocation of \$200,000, the Martha's  
372 Vineyard commission shall receive a full annual allocation of \$100,000, and the Nantucket  
373 Planning and Economic Development Commission shall receive an annual allocation of  
374 \$50,000. One-half of the remainder of the annual disbursement of net cash proceeds to the  
375 department of housing and community development for technical assistance grants under this  
376 section shall be allocated among said entities based on the percentage of the commonwealth's  
377 population served by each entity, with the other half allocated based on the percentage of the  
378 commonwealth's communities served by each entity. Technical assistance services funded by  
379 these grants shall be provided at the request of a municipality in any subject within regional  
380 planning expertise, including but not limited to: zoning and permitting; economic development;  
381 land use planning, conservation planning, and water resources; municipal management; public  
382 safety planning and emergency response; transportation; data management, information  
383 technology, geographic information systems, statistical trends and modeling; and other land use  
384 and smart growth issues. Each regional planning agency receiving such funds shall annually file  
385 with the department of housing and community development, and with the house and senate  
386 committees on ways and means a report detailing the use of said funds.

387 The remaining 50 per cent, plus any funds in excess of \$2,800,000, shall be used by the  
388 Smart Growth Housing Trust Fund to pay for financial incentives and other payments to  
389 communities under chapter 40R.

390 (r) The commissioner, in consultation with the chairman of the commonwealth  
391 development coordinating council, shall adopt regulations governing the disposition of surplus  
392 property in accordance with this section. The commissioner shall include in these regulations

393 criteria that allow real property to be considered for disposition under this section. These criteria  
394 shall include an automatic notice and inquiry to the executive heads of state agencies and  
395 secretaries as specified under subsection (c) regarding any parcel that is left unused or abandoned  
396 for a specified period of time and shall include any applicable regulations required under section  
397 40L.

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

408 SECTION 2. Section 35AA of chapter 10 of the General Laws, as so appearing, is hereby  
409 amended by inserting after the word “section”, in line 11, the following words:- and in  
410 subsection (p) of section 40F of chapter 7.

411 SECTION 3. Chapter 40B of the General Laws is hereby amended by adding the  
412 following section:-

413 Section 30. There shall be within each regional planning district created under this  
414 chapter or by special act a technical assistance center for the delivery of coordinated,

415 comprehensive, and continuing technical services at the request of a municipality. Technical  
416 assistance services may be provided in any subject area within the capability of each technical  
417 assistance center including but not limited to: zoning and permitting; economic development;  
418 land use planning, conservation planning, and water resources; municipal management; public  
419 safety planning and emergency response; transportation; data management, information  
420 technology, geographic information systems, statistical trends, and modeling; and other land use  
421 and smart growth issues.

422 SECTION 4. Section 3A of chapter 143 of the General Laws, as appearing in the 2004  
423 Official Edition, is hereby amended by striking out the first paragraph and inserting in place  
424 thereof the following paragraph:-

425 Unless otherwise provided by the state building code, the local inspector shall enforce the  
426 state building code as to any building or structure within the city or town from which he is  
427 appointed, including any building or structure owned by any authority established by the general  
428 court but not owned in whole or in part by the commonwealth, and the state building code shall  
429 be the code for all buildings and structures within the city or town. In the event of a conflict  
430 between the code and a statute, ordinance or by-law regulating any historic district, regional  
431 historic district or architecturally controlled district, any such statute, ordinance or by-law  
432 regulating exterior architectural features within that district shall prevail. The inspector shall  
433 enforce the state building code as to any building or structure within any city or town that is  
434 owned in whole or in part by the commonwealth or any departments, commissions, agencies or  
435 authorities of the commonwealth. The inspector shall have all the powers of a local inspector  
436 under this chapter and under the state building code as to such buildings or structures that are

437 owned in whole or in part by the commonwealth or any of its departments, agencies,  
438 commissions or authorities.

439 SECTION 5. Notwithstanding any general or special law to the contrary, section 1 shall  
440 not apply to the disposition of real property that is the subject of a special act having an effective  
441 date before the effective date of this act.

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