SENATE DOCKET, NO. 1812 FILED ON: 1/21/2011

SENATE . . . . . No. 1578

The Commonwealth of Massachusetts

PRESENTED BY:

Susan C. Fargo

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

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

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

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Susan C. Fargo	

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SENATE . . . . . No. 1578

By Ms. Fargo, a petition (accompanied by bill, Senate, No. 1578) of Susan C. Fargo for legislation to further regulate the development of underused state owned real property and the disposition of state owned surplus real property. State Administration and Regulatory Oversight.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. *1416* OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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

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

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

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

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

"Division" the division of capital asset management and maintenance

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
27 under sections 40F or 40F½, but excluding real property for which there is an established local
28 reuse plan;

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

31 (3) declared to be surplus under this section. This term shall not include property
32 subject to Article 97 of the Amendments to the Constitution and shall not include any parcel of
33 real property which exceeds 25 acres as existing on May 1, 2005.

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

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

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

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

60 (5) The commissioner, with the written approval of the secretary, may transfer use of, and
61 responsibility for maintenance of, real property within or between state agencies. No transfer
62 within or between state agencies that involves: (i) a substantial change in the purposes for which
63 such property is currently used, or (ii) a change in the purposes for which a building is currently
64 used; or (iii) a change in use of more than 50 per cent of a building's usable floor space, shall be
65 made without the additional prior approval of the general court, except any transfer of surplus
66 property to the division for disposal. Subject to subsection (c), such a transfer shall be based on
67 a determination, made by the commissioner with the advice of the executive heads of affected
68 agencies and secretaries of the executive offices in which such agencies are located, that such
69 property or any part thereof, is not needed or not being put to optimum use under current
70 conditions. The commissioner shall notify the house and senate committees on ways and means
71 and the members of the general court representing the city or town in which such property is
72 located not less than 30 days before the final authorization of any transfer that does not require

73 the approval of the general court. The transfer shall only be made when the general court is in
74 session except as provided in this section. A transfer may be made when the general court is not
75 in session, and the 30 day notification requirement may be waived, only if the commissioner
76 certifies in writing that an emergency exists; but any such transfer may be authorized for a period
77 not to exceed 6 months, and the commissioner shall submit his certification to and notify the
78 house and senate ways and means committees of such transfer at the earliest possible
79 opportunity.

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

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

95 retained and made available on account of a current or foreseeable use by a state agency, or (2)
96 be recommended for disposal as surplus property on a temporary or permanent basis.

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

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

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

115 (d) When real property is determined to be surplus to current state needs but not to
116 foreseeable state needs, the commissioner shall take all necessary action to ensure that any

117 disposition of the real property is temporary and maintains the commissioner's ability to make
118 such real property available to a state agency as needed.

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

130 (f) There shall be a surplus land coordination committee. The committee shall consist of
131 1 representative appointed by each of the following: the commissioner, the secretary of the
132 executive office of environmental affairs, the chairman of the commonwealth development
133 coordinating council, the director of the department of housing and community development,
134 the executive director of the Massachusetts Association of Regional Planning Agencies, the
135 president of the Massachusetts Association of Community Development Corporations, and the
136 executive director of the Massachusetts Municipal Association. The secretary of transportation
137 and or his designee shall serve as a non-voting member of the committee and advise the
138 committee. At any committee meeting, a majority of the members of the board entitled to vote
139 must be present to constitute a quorum. The committee shall meet at such times as the committee

140 chairman shall set, but no less than once every 3 months to consider the future re-uses of any
141 surplus property. The committee shall provide a written recommendation to the commissioner on
142 the appropriate future re-use of surplus property.

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

150 (g) For each specific surplus property greater than 2 acres in size or initially valued by the
151 commissioner at $1,000,000 or more, or when the committee considers it otherwise necessary,
152 the commissioner shall, as provided in clause (3) of subsection (h), request that the regional
153 planning agency serving the community in which the surplus property is located conduct a smart
154 growth review regarding the local and regional implications of disposing of the parcel for a
155 variety of prospective uses. If the surplus property is located in more than 1 municipality served
156 by more than 1 regional planning agency, the commissioner shall select 1 regional planning
157 agency to conduct the smart growth review for the entire property. In each smart growth review,
158 the regional planning agency shall consider the need for a variety of housing options, jobs, and
159 open space; current and prospective zoning of the site; need for municipal capital facilities and
160 public uses; impacts on traffic and transit; impacts on the environment and natural resources, and
161 on agricultural lands; existence of historically significant structures; availability of infrastructure,
162 including water supply, waste water and storm water run-off; fiscal impacts of development on

163 the municipality where the parcel is located; remediation of contamination; and other smart
164 growth implications. Within 90 days after the request by the commissioner for a smart growth
165 review, the regional planning agency shall complete and submit the review in writing to the
166 commissioner, the surplus land coordination committee, and the house and senate chairs of the
167 joint committee on bonding, capital expenditures and state assets, and make the review available
168 to all parties listed under clause (1) of subsection (h). Reasonable costs incurred by the regional
169 planning agency shall be considered part of the disposition expenses paid for by the division, and
170 reimbursed from the total proceeds of the sale or lease of surplus property received by the
171 commonwealth not to exceed $6,000 per parcel reviewed. If the smart growth review is not
172 completed within 90 days after the commissioner's request for the review, the commissioner may
173 dispose of the surplus property in accordance with this section.

174 (h) If the commissioner determines that the property is surplus, the commissioner shall:
175 (1) within 10 days of such declaration, provide written notice for each city or town in which the
176 property is located to the city manager of a city under Plan E form of government, the mayor and
177 city council of all other cities, the chairman of the board of selectmen of a town, the county
178 commissioners, the regional planning agency and the members of the general court representing
179 the city or town in which the property is located as well as surrounding cities or towns that the
180 property has been declared surplus and provide a specific description of the property as required
181 in clauses (3) and (4) of subsection (e); (2) if the surplus property exceeds 2 acre or is initially
182 valued by the commissioner at $1,000,000 or more, or the municipality in which the property is
183 located requests a hearing within 30 days of the surplus declaration, or the commissioner so
184 decides in his discretion, provide reasonable public notice and written notice of the hearing to all
185 parties listed under clause (1) of subsection (h) not less than 10 days before such hearing, and

186 conduct the public hearing in each municipality in which the surplus property is located for the
187 purpose of receiving public comment on the potential re-uses and appropriate restrictions upon
188 the use of the property. All oral testimony received at a public hearing shall be recorded, and
189 the commissioner shall provide to the committee any oral or written testimony received at such
190 hearing; (3) declare it available for disposition and identify any restrictions or conditions on
191 such property's re-use and development necessary to comply with the recommendation of the
192 surplus land coordination committee and the policies and principles established by the
193 commonwealth development coordinating council and take into consideration established state,
194 regional and local plans and policies, and any recommendations or comments from a city or town
195 in which the surplus property is located and from any member of the general court representing
196 the city or town where the property is located; and (4) ensure that any deed, lease or other
197 disposition agreement sets forth all such re-use restrictions, provides for effective remedies on
198 behalf of the commonwealth and provides, in the event of a failure to comply with the re-use
199 restrictions by the grantee, lessee or other recipient, that the title or lesser interest conveyed shall
200 revert to the commonwealth upon the recording of a notice in the appropriate registry of deeds.

201 (i) Upon declaration of a parcel of property as surplus and available for disposition, and
202 after any required public hearing and smart growth review, the committee shall consider all
203 available information, and shall provide a written recommendation to the commissioner on the
204 appropriate disposition, for such parcel, including the smart growth review and information
205 derived from the public hearing when available, and recommend a variety of appropriate uses,
206 restrictions, and future obligations for the disposition of each surplus parcel including, but not
207 limited to, its suitability for housing, economic development or preservation as open space, the
208 parcel's historical significance, a community's master plan, and what restrictions, if any, should

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

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

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

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

253 (k) Before disposing of the surplus real property, the commissioner shall provide to each
254 city or town in which the property is located a written right of first refusal to acquire the surplus

255 real property located within such municipality, on the terms and conditions as offered by the
256 commissioner whether by sale or lease, and on the restrictions established in clause (4) of
257 subsection (h) and at 80 per cent of the value established in subsection (j); but, if the surplus real
258 property is restricted for use as open space, affordable housing or both, then the municipality
259 shall have the right of first refusal to acquire such property at 75 per cent of the established value
260 except, a municipality shall have the right to acquire such property at 50 per cent of the
261 established value with an additional restriction that the municipality retain the parcel for its own
262 use for a term of not less than 25 years. Section 14 of chapter 40 shall apply to the purchase of
263 surplus real property by a city or town under this section; excepting any applicable restriction
264 based on average assessed valuation. The commissioner may accept flexible payment schedule at
265 his discretion. A host municipality exercising a right of first refusal as provided in this subsection
266 may engage the services of the Massachusetts Development Finance Agency to perform
267 planning, feasibility, marketing, and other studies or to provide project management services in
268 connection with any re-use or redevelopment of the real property. This right of first refusal must
269 be exercised, if at all, by the town or city or its assignee within 120 days after this notice by
270 giving written notification to the commissioner. Upon exercise of the right of first refusal, the
271 city or town shall have an additional 180 days to close on the purchase or lease of the property
272 on such terms, conditions and restrictions as previously offered by the commissioner. The
273 commissioner may grant a city or town additional time to close on the purchase or lease of the
274 property. If a city or town has held a vote for debt exclusion under section 21C of chapter 59 to
275 finance the surplus real property purchase, the date by which the host municipality shall exercise
276 its option to purchase shall be extended until 7 days after the vote, but the vote shall take place at
277 the next municipal election after the city or town voted to put the debt exclusion on the ballot. If

278 the city or town fails to close the purchase of the property within the allowed time, the sole
279 remedy of the commonwealth against the host municipality for such failure is to proceed with the
280 disposition of the property without further right of purchase by the host municipality; but, if the
281 failure to close on the purchase of the property was in bad faith as determined by the
282 commissioner, the commonwealth shall not be required to share proceeds of the sale of the real
283 property with the host municipality as required by subsection (q).

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

289 The municipality may assign its right of first refusal to a not-for-profit organization,
290 which shall be a community development corporation as defined in section 1 of chapter 40F,
291 affordable housing non-profit or a non-profit conservation organization. The assignee shall be
292 entitled to acquire the property for the same price and according to the same terms which would
293 apply to a sale to a municipality under this section. An assignment shall not be valid unless the
294 municipality provides the commissioner with identity of the assignee and date of assignment
295 within 10 days from the date of transfer. No further assignment of the right of first refusal shall
296 be permitted unless the assignee is a not-for-profit community development corporation as
297 defined in section 1 of chapter 40F or affordable housing non-profit or a non-profit conservation
298 organization. A lease or rental agreement that provides for periodic future payments to the
299 commonwealth may require the municipality to be a guarantor or the assignee to provide surety
300 for any such payments and, further, may restrict the assignment, sublease or other transfer of the

301 property interest without the written approval of the commissioner. If the municipality or its
302 assignee acquires any portion of the surplus real property for open space purposes, or if any
303 portion of the property is restricted for open space purposes, a conservation restriction under
304 chapter 184 shall be retained by the commonwealth on that parcel. A city or town that has
305 exercised its right of first refusal or otherwise has a right to close on the property, at its own
306 expense, may enter upon the property and any of its agents or contractors may enter upon the
307 property, to conduct inspections, surveys, or tests customarily performed in real estate
308 transactions for the type and nature of the property specified as surplus as long as the
309 commissioner is notified and consents to the inspection, survey or test, which consent shall not
310 be unreasonably withheld. A city or town shall be responsible to the commonwealth for any
311 damage to the property, and shall hold harmless the commonwealth from all losses arising out of
312 a claim of any nature from a third party, which resulted from conducting any such inspection,
313 survey or test.

314 (m) If the city or town has not exercised or assigned its right of first refusal, or has failed
315 to close in a timely manner if such right was exercised, the commissioner shall dispose of surplus
316 real property using appropriate competitive processes and procedures, subject to the notification
317 and advertising provisions of section 40H, and further, the terms restrictions, conditions and type
318 of disposition for such re-use previously established by the commissioner under clause (4) of
319 subsection (h) . These competitive processes may include, but are not limited to, auction,
320 sealed bids and requests for price and development proposals. All auctions, sealed bids or other
321 competitive process shall be with reserve, and the commissioner shall retain the right to
322 withdraw any surplus property offered for sale or lease by such competitive process before
323 accepting any bid, proposal, offer or contract. The commissioner shall not accept any offer, bid

324 or contract which is less than 75 percent of the value of the surplus real property originally
325 established in subsection (j). At least 30 days before the date of an auction or the date on which
326 bids, proposals or other offers to purchase or lease surplus real property are due, the
327 commissioner shall place a notice in the central register published by the state secretary under
328 section 20A of chapter 9 stating the availability of such property, the nature of the competitive
329 process and other information deemed relevant, including the time and location of the auction,
330 the submission of bids or proposals and the opening thereof.

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

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

340 "I certify under penalties of perjury that I have fully complied with section 40F of chapter
341 7 of the General Laws in connection with the property described in this document."

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

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

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

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

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

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

368 50 per cent of the monies deposited in the Smart Growth Housing Trust Fund under
369 clause (ii), but not more than $2,800,000 in any fiscal year, shall be used by the department of
370 housing and community development to provide grants to regional planning agencies for
371 technical assistance to municipalities. The department shall grant each regional planning district
372 created under chapter 40B or by special act a fixed base allocation of $150,000, except that the
373 Metropolitan Area Planning Council shall receive a base allocation of $200,000, the Martha's
374 Vineyard commission shall receive a full annual allocation of $100,000, and the Nantucket
375 Planning and Economic Development Commission shall receive an annual allocation of $50,000.
376 One-half of the remainder of the annual disbursement of net cash proceeds to the department of
377 housing and community development for technical assistance grants under this section shall be
378 allocated among said entities based on the percentage of the commonwealth's population served
379 by each entity, with the other half allocated based on the percentage of the commonwealth's
380 communities served by each entity. Technical assistance services funded by these grants shall
381 be provided at the request of a municipality in any subject within regional planning expertise,
382 including but not limited to: zoning and permitting; economic development; land use planning,
383 conservation planning, and water resources; municipal management; public safety planning and
384 emergency response; transportation; data management, information technology, geographic
385 information systems, statistical trends and modeling; and other land use and smart growth issues.
386 Each regional planning agency receiving such funds shall annually file with the department of
387 housing and community development, and with the house and senate committees on ways and
388 means a report detailing the use of said funds.

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

392 (r) The commissioner, in consultation with the chairman of the commonwealth
393 development coordinating council, shall adopt regulations governing the disposition of surplus
394 property in accordance with this section. The commissioner shall include in these regulations
395 criteria that allow real property to be considered for disposition under this section. These criteria
396 shall include an automatic notice and inquiry to the executive heads of state agencies and
397 secretaries as specified under subsection (c) regarding any parcel that is left unused or abandoned
398 for a specified period of time and shall include any applicable regulations required under section
399 40L.

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

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

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

415 Section 30. There shall be within each regional planning district created under this
416 chapter or by special act a technical assistance center for the delivery of coordinated,
417 comprehensive, and continuing technical services at the request of a municipality. Technical
418 assistance services may be provided in any subject area within the capability of each technical
419 assistance center including but not limited to: zoning and permitting; economic development;
420 land use planning, conservation planning, and water resources; municipal management; public
421 safety planning and emergency response; transportation; data management, information
422 technology, geographic information systems, statistical trends, and modeling; and other land use
423 and smart growth issues.

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

427 Unless otherwise provided by the state building code, the local inspector shall enforce the
428 state building code as to any building or structure within the city or town from which he is
429 appointed, including any building or structure owned by any authority established by the general
430 court but not owned in whole or in part by the commonwealth, and the state building code shall
431 be the code for all buildings and structures within the city or town. In the event of a conflict

432 between the code and a statute, ordinance or by-law regulating any historic district, regional
433 historic district or architecturally controlled district, any such statute, ordinance or by-law
434 regulating exterior architectural features within that district shall prevail. The inspector shall
435 enforce the state building code as to any building or structure within any city or town that is
436 owned in whole or in part by the commonwealth or any departments, commissions, agencies or
437 authorities of the commonwealth. The inspector shall have all the powers of a local inspector
438 under this chapter and under the state building code as to such buildings or structures that are
439 owned in whole or in part by the commonwealth or any of its departments, agencies,
440 commissions or authorities.

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

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