

# SENATE . . . . . No. 1617

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## The Commonwealth of Massachusetts

PRESENTED BY:

*Karen E. Spilka*

*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 providing for disposition of surplus state real property based on smart growth land use policies.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Karen E. Spilka</i>	
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>

# SENATE . . . . . No. 1617

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By Ms. Spilka, a petition (accompanied by bill, Senate, No. 1617) of Karen E. Spilka, Jennifer E. Benson and Chris Walsh relative to providing for disposition of surplus state real property based on smart growth land use policies. State Administration and Regulatory Oversight.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 4790 OF 2009-2010.]

## The Commonwealth of Massachusetts

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In the Year Two Thousand Eleven  
\_\_\_\_\_

An Act providing for disposition of surplus state real property based on smart growth land use policies.

*Whereas*, The deferred operation of this act would tend to defeat its purpose, which is to provide for expedited disposition of surplus state real property based on smart growth land use policies , therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

*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  
2   out sections 40F and 40F1/2, as appearing in the 2008 Official Edition, and inserting in place  
3   thereof the following section:-

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

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

11                   “Commissioner”, the commissioner of capital asset management and  
12 maintenance.

13                   “Direct public use”, use of real property by a host municipality for the  
14 municipality ’ s own operations and, with respect to any use of real property by a private non-  
15 profit organization, any use of the real property for affordable housing production, community  
16 economic development, historic preservation or for open space acquisition or preservation.

17                   “Division”, the division of capital asset management and maintenance.

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

20                   “Net cash proceeds”, all payments paid to the commonwealth as and when  
21 paid, less any transaction-related expenses and expenses incurred in connection with the custody  
22 of the property by the division, and the regional planning agency under clause (ii) of subsection  
23 (g) for which it is not otherwise reimbursed, including, but not limited to, costs associated with  
24 the disposal or pre-development of the property from which the funds originated including, but  
25 not limited to, appraisals, surveys, site evaluation, site preparation, plans, recordings, smart  
26 growth review and feasibility and other marketing studies and any other expenses relating to the  
27 disposal or project management services in connection with any reuse or redevelopment of the

surplus real property under this chapter, and less any amounts that may be owing to the federal government as a result of the disposition.

“Property”, real property owned by the commonwealth.

“Secretary”, the secretary of administration and finance.

“Surplus land coordination committee” or “committee”, the committee established by subsection (c).

“Surplus real property”, real property of the commonwealth:

(1) previously determined to be surplus to current and foreseeable state needs under sections 40F or 40F½; or

(2) declared to be surplus under this section.

This term shall not include property subject to Article 97 of the Amendments to the Constitution or any court facilities vacated and determined to be surplus by the commissioner and the chief justice for administration and management as a result of or in anticipation of the construction of new court facilities or the consolidation of court facilities in the city of Cambridge, Lowell, Salem or Worcester.

(b) (1) The commissioner shall be responsible for the acquisition, control and disposition of real property in the manner and to the extent provided in this chapter. The commissioner may delegate such responsibility to an administrator within the division, who has 10 years of experience in the management of commercial, industrial, institutional or public real property. When responsibility is delegated to an administrator, the written approval of the secretary shall be required before the transaction is finalized. The commissioner shall acquire

an interest in real property on behalf of the commonwealth for the use of state agencies by gift, purchase, devise, grant, eminent domain, rental, lease, rental-purchase or otherwise.

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

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

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

(5) The commissioner, in consultation with the secretaries of the executive offices or the chief justice of the administrative office of the trial court as the

71 commissioner deems appropriate and with the written approval of the secretary, may transfer and  
72 change the use of, and transfer responsibility for maintenance of, land, buildings and other real  
73 property of the commonwealth (other than the state house) within or between state agencies  
74 including, without limitation, to the division, and the judiciary. No such transfer within or  
75 between state agencies or executive offices which involves either a change in the purposes for  
76 which such building is currently used or a change in use in excess of 50 per cent of the usable  
77 floor space, shall be made without the prior approval of the general court. Such a transfer shall  
78 be based on a determination, made by the commissioner with the advice of the executive heads  
79 of affected agencies and secretaries of the executive offices in which such agencies are located,  
80 that such property or any part thereof, is not needed or not being put to optimum use under  
81 current conditions. The commissioner shall notify the chairs of house and senate committees on  
82 ways and means, the chairs of the joint committee on state administration and regulatory  
83 oversight and the representatives to the general court from the city or town in which such real  
84 property is located not less than 30 days prior to the final authorization of any transfer which  
85 does not require the approval of the general court, and such transfer shall only be made when the  
86 general court is in session except as provided hereafter. Such transfer may be made when the  
87 general court is not in session, and the thirty day notification requirement may be waived, only if  
88 the commissioner certifies in writing that an emergency exists; provided, however, that any such  
89 transfer may be authorized for a period not to exceed 6 months; and provided, further, that the  
90 commissioner shall submit his certification to and notify the chairs of house and senate ways and  
91 means committees and the chairs of the joint committee on state administration and regulatory  
92 oversight , and the representatives to the general court from the city or town in which such real  
93 property is located of such transfer at the earliest possible opportunity. An agency shall not be

required to purchase or make payment, whether directly or indirectly to acquire property or part thereof, which is made available for that agency's use. As a condition of the transfer of property to a state agency, the commissioner may require that the agency be financially responsible for any outstanding lease, contractual or debt obligations previously incurred by the commonwealth to acquire or improve the property and for any future maintenance, security and improvement costs for the property.

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

(c) There shall be a surplus land coordination committee. The committee shall consist of 1 representative appointed by each of the following: the secretary, the commissioner, the secretary of energy and environmental affairs, the secretary of housing and economic development, the secretary of transportation, the director of housing and community development, the executive director of the Massachusetts Association of Regional Planning Agencies, the president of the Massachusetts Association of Community Development Corporations, and the executive director of the Massachusetts Municipal Association. The representative appointed by the secretary shall chair the committee. At any committee meeting, a majority of the members of the board entitled to vote must be present to constitute a quorum. The committee shall meet at such times as the committee chair shall set, but no less than once every 3 months to consider the future re-uses of any surplus property. The committee shall provide a written recommendation to the commissioner on the appropriate future re-use of surplus property, as set forth in subsection (g).

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

(d) In order to determine whether specified real property is surplus to the current and foreseeable needs of the commonwealth, the commissioner shall, within 30 days after receipt of a completed transfer request, provide written notice and inquiry to the executive heads of state agencies and secretaries of the executive offices, who shall have 30 days to submit a written response stating that the property is necessary for a specific current or foreseeable need of the agency. If no agency or executive office submits such a response within 30 days of the notice, the commissioner shall proceed with further actions required before declaring a parcel surplus as provided in subsections (e) and (f) . Alternatively, if a written response is timely received specifying a current or foreseeable need for the property or any part thereof, the commissioner shall, in consultation with the secretary, the surplus land coordination committee and with those responding affirmatively and the written approval of the secretary, determine whether the real property or part thereof, shall: (1) be retained and made available on account of a current or foreseeable use by a state agency, or (2) be recommended for disposal as surplus property on a temporary or permanent basis. Preference shall be given to ensuring that real property is made available for state needs and not permanently disposed, where a state agency has submitted a timely written response specifying a current or foreseeable need for the property.



When the commissioner determines that real property is surplus to current state needs but not to foreseeable state needs, the commissioner shall take all necessary action to ensure that any disposition of the real property is temporary and maintains the commissioner's ability to make such real property available to a state agency as needed.

(e) Before making a determination that any real property larger than 2 acres or valued at more than \$1,000,000 is surplus to current and foreseeable state uses , the commissioner shall file a report with the joint committee on state administration and regulatory oversight that shall include the commissioner's recommendation as to the proposed designation of the real property as surplus. Within 30 days of such filing, the joint committee shall hold a public hearing on the commissioner's proposed designation. The joint committee shall report its findings to the general court together with legislation within 30 days of the public hearing and provide a copy of its findings and legislation to the commissioner . Before the commissioner may determine that the real property should be declared surplus to current and foreseeable state uses, there shall be an affirmative vote of the general court enacting legislation ; provided, however, that if the general court does not enact such legislation within 60 days of the report of the joint committee, the commissioner shall be authorized to proceed with a determination whether the real property should be declared surplus to current and foreseeable uses.

( f ) Before making a determination that the real property should be declared surplus to current and foreseeable state uses , the commissioner shall, within 10 days of the general court's action as required by subsection ( e ), provide simultaneous written notification to the host municipality and the regional planning agency for the region where the real property is located indicating that the real property is available. For parcels of real property larger than 2 acres or valued at more than \$1,000,000 , the commissioner shall commission the regional

163 planning agency for the region where the real property is located to conduct a smart growth reuse  
164 review. If the surplus property is located in more than 1 municipality served by more than 1  
165 regional planning agency, the commissioner shall select 1 regional planning agency to conduct  
166 the smart growth review for the entire property. In each smart growth review, the regional  
167 planning agency shall consider the need for a variety of housing options, including but not  
168 limited to the development of supportive and affordable housing for the physically and  
169 cognitively disabled and the mentally ill, economic development and jobs, open space  
170 preservation ; current and prospective zoning of the site; need for municipal capital facilities and  
171 public uses; impacts on traffic and transit; impacts on the environment and natural resources, and  
172 on agricultural lands; existence of historically significant structures; availability of infrastructure,  
173 including water supply, waste water and storm water run-off; fiscal impact of the development  
174 on the host municipality; remediation of contamination; and other smart growth implications.  
175 Within 60 days after the request by the commissioner for a smart growth review, the regional  
176 planning agency shall complete and submit the review in writing to the commissioner and to the  
177 surplus land coordination committee, and shall make the review available to all parties listed in  
178 subsection (e). Reasonable costs incurred by the regional planning agency shall be considered  
179 part of the disposition expenses paid for by the division, and reimbursed from the total proceeds  
180 of the sale or lease of surplus property received by the commonwealth not to exceed \$6,000 per  
181 parcel reviewed. If the smart growth review is not completed within 60 days after the  
182 commissioner's request for the review, the commissioner may dispose of the surplus property in  
183 accordance with this section.

184                   If the surplus property is 2 acres or less or valued at \$1,000,000 or less but the  
185 commissioner, in consultation with the committee, makes a determination that a smart growth

review is necessary, the smart growth review shall be conducted in accordance with this subsection.

(g) If the commissioner, in consultation with the committee and the secretary, and after any required smart growth review as provided in subsection (f) or any required legislative approval as provided in subsection (e), declares that real property is surplus to current or foreseeable state needs, the commissioner shall, within 10 days after such determination, provide written notice for each host municipality to the chief executive officer of the city or town, the county commissioners, the regional planning agency and the members of the general court representing the host municipality as well as adjoining cities or towns. Such written notice shall include: (1) a statement that the property is currently being considered by the commissioner for disposal on a temporary or permanent basis as surplus; (2) a general description of the property under consideration for disposal including as applicable, a description of the land, buildings, appurtenant structures and equipment and the current use and square footage of such property; (3) a legal description of the property including approximate metes and bounds and other information identifying any existing easements, restrictions or other conditions, to the extent available; (4) a statement that the municipality in which any portion of the property is located has a right of first refusal to acquire the property and the right to assign such right as set forth in subsection ( h ); and (5) an invitation to make written comments about the future use of the property.

( h ) Each host municipality shall have a right of first refusal to acquire the surplus real property located within such municipality for a direct public use on the terms and conditions as offered by the commissioner pursuant to this subsection at 80 per cent of the value established pursuant to subsection (k). The host municipality shall have the right of first refusal

to purchase the real property for a purpose other than a direct public use at fair market value as established pursuant to this chapter. Section 14 of chapter 40 shall apply to the purchase of surplus real property by a host municipality under this section; excepting any applicable restriction based on average assessed valuation. The commissioner may accept a flexible payment schedule at his discretion, provided, that all payments shall be made within 5 fiscal years of the sale or lease of the surplus real property to the host municipality. This right of first refusal must be exercised, if at all, by the host municipality giving written notice of the municipality's intention to acquire the property for a direct public use to the commissioner within 180 days after the written notice given by the commissioner pursuant to subsection (g). If the host municipality does give such written notice, the host municipality shall have until the date which is 180 days after its written notice to the commissioner to close on the purchase or lease of the property on such terms, conditions and restrictions as previously offered by the commissioner, provided, that the commissioner may grant a host municipality additional time to close on the purchase or lease of the property. If a host municipality has held a vote for debt exclusion under section 21C of chapter 59 to finance the surplus real property purchase, the date by which the host municipality shall exercise its option to purchase shall be extended until 7 days after the vote, but the vote shall take place at the next municipal election after the host municipality voted to put the debt exclusion on the ballot. If the host municipality fails to close the purchase of the property within the allowed time, the sole remedy of the commonwealth against the host municipality for such failure is to proceed with the disposition of the property without further right of purchase by the host municipality; but, if the failure to close on the purchase of the property was in bad faith as determined by the commissioner, the commonwealth shall not be required to share proceeds of the sale of the real property with the host municipality

as required by subsection ( q ). The commissioner shall ensure that any deed, lease or other disposition agreement conveying surplus real property to the host municipality provides that the use of the property shall be limited to the direct public use specified by the host municipality and provides for effective remedies on behalf of the commonwealth as deemed appropriate by the commissioner, which remedies may include, without limitation, that the title or lesser interest conveyed may revert to the commonwealth upon the recording of a notice in the appropriate registry of deeds, in the event of a failure to comply such use restriction.

A host municipality that has exercised its right of first refusal or otherwise has a right to close on the property, at its own expense, may enter upon the property and any of its agents or contractors may enter upon the property, to conduct inspections, surveys, or tests customarily performed in real estate transactions for the type and nature of the property specified as surplus as long as the commissioner is notified and consents to the inspection, host municipality shall be responsible to the commonwealth for any damage to the property, and shall hold harmless the commonwealth from all losses arising out of a claim of any nature from a third party, which resulted from conducting any such inspection, survey or test.

A host municipality exercising a right of first refusal as provided in this subsection may engage the services of the Massachusetts Development Finance Agency to perform planning, feasibility, marketing, and other studies or to provide project management services in connection with any re-use or redevelopment of the real property.

A host municipality shall be permitted to assign its right of first refusal to purchase the real property for a direct public use at 80 per cent of the fair market value of the real property as established pursuant to this chapter to a non-profit organization for a direct

public use of such organization. The host municipality must make the assignment, if at all, within 180 days of receipt of notification pursuant to subsection ( g ), the assignee non-profit organization must exercise said right, if at all, within 90 days of its assignment by the host municipality by providing written notice to the commissioner of the assignee non-profit organization's intent to purchase the real property. The assignee non-profit organization shall then have an additional 90 days from its exercise of said assignment by the host municipality to close on the purchase of the real property. In the event that the assignee non-profit organization fails to close on the purchase of the real property within such time, the sole remedy of the commonwealth against the host municipality for such failure is to proceed with the disposition of the real property without further right of purchase by the host municipality; provided, however, that if said failure to close on the purchase of the real property was in bad faith, the commonwealth shall not be required to share proceeds of the sale of said real property with the host municipality as required by subsection (q) .

(i) If the host municipality does not elect to exercise its right of first refusal by giving written notice of its intention to acquire the surplus real property or notice of its election to assign its right of first refusal within 180 days in accordance with subsection ( k ), or if the host municipality timely makes such election but fails to close the purchase, lease or other disposition of the property or to make the assignment within the allowed time, or the assignee fails to close the purchase, lease or other disposition of the property, the host municipality shall be deemed to have waived its right of first refusal and the commissioner may dispose of the surplus property in accordance with this section, as follows:

276 (i) If the surplus property exceeds 2 acres or is valued at \$1,000,000 or more , the  
277 commissioner shall, within 45 days after the  
  
278 waiver and after reasonable public notice, conduct a public hearing in each  
279 municipality in which the surplus property is located  
  
280 for the purpose of receiving public comment on the potential re-uses and  
281 appropriate restrictions upon the use of the  
  
282 property. The commissioner shall, within 30 days after such hearing, prepare a  
283 written report of all oral or written testimony  
  
284 received at a public hearing, and shall submit such report to the committee and to  
285 the regional planning agency serving the  
  
286 community in which the surplus property is located (ii) If the surplus  
287 property is 2 acres or less or valued at  
  
288 \$1,000,000 or less but the commissioner, in consultation with the committee,  
289 makes a determination within 60 days after the  
  
290 waiver that a hearing is necessary, the public hearing shall be conducted in  
291 accordance with this section.  
  
292 (ii) Within 60 days after its receipt of the commissioner's report of any public hearing  
293 held , and after the completion of any smart  
  
294 growth study undertaken pursuant to subsection (f) above, the committee shall  
295 provide a written recommendation to the

296 commissioner on the appropriate disposition for any parcel, and recommend a  
297 variety of appropriate uses, restrictions, and  
  
298 future obligations for the disposition of each surplus parcel including, but not  
299 limited to, its suitability for housing, , including but  
  
300 not limited to the development of supportive and affordable housing for the  
301 physically and cognitively disabled and the  
  
302 mentally ill, economic development or preservation as open space, the parcel's  
303 historical significance, a community's master  
  
304 plan, and what restrictions, if any, should be imposed on its use and development ;  
305 provided, however, that provided,  
  
306 however, that in the case of real property formerly used as a department of mental  
307 health state hospital or department of  
  
308 mental retardation in patient care facility, the committee shall place a reuse  
309 restriction on land ensuring that at least 15% of  
  
310 any housing units developed on the real property be affordable supported housing  
311 for individuals who are clients, or former  
  
312 clients of the respective department; provided further, that such housing shall be  
313 made affordable and available to such  
  
314 individuals with incomes of 15% of average median income or below . The  
315 committee in making recommendations to the



316 commissioner on the re-uses, restrictions and development of the surplus property  
317 shall consider any: (1) written report  
318 from any public hearing pursuant to clause ( i ) above; (2) testimony,  
319 recommendations or comments, from a host municipality  
320 including any recommendation or comment from a local re-use committee  
321 established by such host municipality to advise on  
322 the future reuse of land, buildings or structures; (3) testimony, recommendations  
323 or comments from immediate surrounding  
324 communities and from any member of the general court representing the host  
325 municipality where the surplus property is  
326 located; (4) smart growth review conducted under subsection (f) above; (5)  
327 comments and recommendations by the  
328 commissioner; and (6) established state and local plans and policies. The  
329 committee may also consider any other testimony  
330 and necessary and relevant information received with respect to the surplus  
331 property. If the committee does not recommend  
332 appropriate uses for the property within that 60 day period , the commissioner may  
333 dispose of the property without a  
334 recommendation from the committee in a manner consistent with this section.

(iii) Before disposing of surplus real property, the commissioner (1) shall identify any restrictions or conditions on such property's

re-use and development which the commissioner considers appropriate to reflect the recommendation of the surplus land

coordination committee and take into consideration established state, regional and local plans and policies, any

recommendations or comments from a host municipality including, without limitation, recommendations or comments submitted

at a hearing held pursuant to clause ( i ), and from any member of the general court representing the host municipality; and

(2) shall ensure that any deed, lease or other disposition agreement sets forth all such re-use restrictions, provides for

effective remedies on behalf of the commonwealth and provides, in the event of a failure to comply with the re-use restrictions

by the grantee, lessee or other recipient, that the title or lesser interest conveyed shall revert to the commonwealth upon the

recording of a notice in the appropriate registry of deeds.

( j ) The commissioner shall on a quarterly basis send to the house and senate chairs of the joint committee on state administration and regulatory oversight and the house and senate committees on ways and means a detailed list of all property which has been determined

to be surplus to current and foreseeable state needs pursuant to subsection s (d) through (f) and is being considered for disposition by the commissioner and the surplus land coordination committee, together with recommendations for disposition of each parcel of property and its potential uses and restrictions to the extent they have been developed and approved pursuant to this section.

( k ) The commissioner shall establish the value of surplus real property using customarily accepted appraisal methodologies, including without limitation, a written appraisal by an independent professional real estate appraiser, licensed by the commonwealth, with 5 or more years of experience in the appraisal of commercial or industrial real estate. The value shall be calculated both: (1) for the highest and best use of the surplus real property; and (2) subject to uses, restrictions, encumbrances and other conditions and terms for the type of disposition, whether by sale or lease, as defined in writing by the commissioner. Notwithstanding the foregoing, the value of any property to be sold or leased to a host municipality for a direct public use shall be calculated subject to the restriction to direct public use and to such other uses, restrictions, encumbrances and other conditions and terms as defined in writing by the commissioner. In no instance in which the commonwealth retains responsibility for maintaining the property shall the terms provide for payment of less than the annual maintenance costs.

( l ) For any disposition of surplus real property other than to a host municipality which has exercised its right of first refusal or right of assignment pursuant to subsection ( k ), the commissioner shall dispose of surplus real property using appropriate competitive processes and procedures, subject to the notification and advertising provisions of section 40H. These competitive processes may include, but are not limited to, auction, sealed bids and requests for price and development proposals. At least 30 days before the date of an

378 auction or the date on which bids, proposals or other offers to purchase or lease surplus real  
379 property are due, the commissioner shall place a notice in the central register published by the  
380 state secretary under section 20A of chapter 9 stating the availability of such property, the nature  
381 of the competitive process and other information deemed relevant, including the time and  
382 location of the auction, the submission of bids or proposals and the opening thereof. A host  
383 municipality which did not exercise its right of first refusal or right of assignment pursuant to  
384 subsection ( k ) to acquire surplus real property may submit a bid, proposal or other offer to  
385 purchase or lease surplus real property in response to such competitive process.

386 ( m ) The commissioner shall place a notice in the central register and notify in  
387 writing all parties listed in subsection ( g ), identifying the individual or firm selected as party to  
388 the real property transaction, along with the amount of the transaction. If the commissioner  
389 accepts an amount below the value calculated under subsection ( k ), he shall include the  
390 justification for doing so, specifying the difference between the calculated value and the price  
391 received.

392 ( n ) No agreement for the sale, lease, transfer or other disposition of surplus  
393 real property, and no deed executed by or on behalf of the commonwealth, shall be valid unless  
394 the agreement or deed contains the following certification, signed by the commissioner:

395 "I certify under penalties of perjury that I have fully complied with section 40F of chapter  
396 7 of the General Laws in connection with the property described in this document."

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

400                   ( p ) The grantee or lessee, including any host municipality or any assignee of a  
401 host municipality ' s right of first refusal , of any surplus real property shall be responsible for all  
402 costs including, but not limited to, appraisals, surveys, plans, recordings and any other expenses  
403 relating to the transfer, as shall be considered necessary by the commissioner.

404                   ( q ) The division shall transfer the net cash proceeds of each sale or lease of  
405 surplus real property to the secretary within 45 days after the closing of such sale or lease. The  
406 secretary shall distribute such funds on at least a quarterly basis in the following order of priority  
407 each year, and the secretary shall annually report to the house and senate committees on ways  
408 and means detailing the total amount and distribution of these funds:-

409                   ( i ) 15 per cent of the net cash proceeds from the sale or lease of each such property  
410 shall be paid to the host municipality; but if

411                   the host municipality has adopted for such property either an approved smart  
412 growth zoning district under chapter 40R or an

413                   approved priority development site under chapter 43D, 25 per cent of the net cash  
414 proceeds from the sale or lease of the

415                   particular parcel shall be paid to the host municipality. A municipality that  
416 acquires a property either by exercise of its right of

417                   first refusal pursuant to subsection ( h ) or through a competitive process pursuant  
418 to subsection ( l ) shall not receive a

419                   percentage of the net cash proceeds.

420                    If a host municipality fails to close on a surplus real property due solely to a  
421 failure to receive an affirmative vote on a debt  
  
422                    exclusion ballot question to raise funds to acquire a particular parcel under section  
423 21C of chapter 59, the host municipality  
  
424                    shall remain eligible to receive its share of the net cash proceeds.  
  
425                    (ii) After distribution of net cash proceeds under clause ( i ), 50 per cent of the  
426 remaining net cash proceeds shall be deposited in  
  
427                    the Smart Growth Housing Trust Fund and 50 per cent shall be deposited in the  
428 Capital Projects Fund established by section  
  
429                    2YYY of chapter 29.  
  
430                    ( r ) Section 43I shall not apply to surplus real property disposed by the  
431 commissioner under this section. Notwithstanding any provision of this section to the contrary,  
432 the commissioner, in an emergency situation which poses a threat to the public safety or health  
433 and upon request by a municipality, may permit, license, rent or otherwise allow occupancy to  
434 such municipality of any surplus real property, not disposed, on a temporary and at-will basis  
435 and on such other appropriate and consistent terms as established by the commissioner; but this  
436 occupancy shall not exceed a period of 6 months, and the commissioner, within 10 days of any  
437 permitted municipal use, shall certify in writing that an emergency exists and submits the  
438 certification to the governor and the house and senate chairmen of the ways and means  
439 committees.

440                   ( s )   The disposition of any real property subject to section 7E of chapter 81  
441 shall not be subject to subsections (c), (d), (e), (f), (g), (h) ,( i ), (j) or ( q ) of this section. The  
442 division shall distribute funds from the net cash proceeds of any sale of such property to the  
443 department of highways.

444                   ( t )   The commissioner may enter into agreements for the direct public use of surplus  
445 real property by public agencies other than state agencies, for a term not to exceed 5 years. Such  
446 agreement shall prohibit subsequent conveyance of interest in the property by the public agency  
447 to another party. The commissioner shall notify the house and senate committees on ways and  
448 means and the joint committee on state administration 30 days prior to the final authorization of  
449 any such agreement. The notification shall include the commissioner's report on recommended  
450 reuse restrictions. In no event shall any such agreement be made when the general court is not in  
451 session.

452                   ( u )   Notwithstanding this section, leases for agricultural purposes on land  
453 owned by the commonwealth shall be made for a term of not more than 5 years, and the renewal  
454 date for such leases shall not be less than 1 year prior to the end of the lease period. Holders of  
455 such leases shall be given the opportunity to renew such leases for a consideration equal to the  
456 current lease amount plus an escalation amount to be established annually by the commissioner  
457 for application to all such leases.

458                   ( v )   For bills which authorize the sale, transfer, or other disposition of any  
459 state-owned real property filed by persons other than

460                   the commissioner of capital asset management and maintenance, the clerk of the house of  
461 representatives and the clerk of the senate shall, within 10 days of the filing, forward a copy of

the bill to the commissioner. Within 90 days of the receipt of the copy, the commissioner shall submit in writing a report to the commissioner of administration, the legislative committee before which the bill is pending, and the joint committee on state administration together with a recommendation for either the approval or the disapproval of the bill and his reasons therefor.

If the commissioner is recommending the approval of a bill proposing the disposition of a parcel exceeding 2 acres, the report shall include: (1) a description of the property including its current use, structures, and approximate metes and bounds; (2) the value of the property, determined through procedures customarily accepted by the appraising profession as valid for such purposes, calculated both for (a) the highest and best use of the property as currently encumbered and (b) uses and encumbrances that would be imposed by the bill if enacted; (3) all current and foreseeable direct public uses identified by following the division's procedures for such purposes as they apply to the property to be disposed (4) other potential public and private uses of the property; and (5) any other information the general court may require.

The commissioner shall expeditiously review and recommend approval or disapproval of any proposal to the general court for the sale, rental or other disposition of real property acquired on behalf of state agencies, and shall dispose of real property as mandated by the general court. All legislation submitted to the general court by the division of capital asset management and maintenance requesting authorization to convey or transfer real property under its jurisdiction shall be accompanied by a full report outlining the division's reasons for pursuing the conveyance or transfer.



( w ) The commissioner shall maintain, for a period of at least 6 years next following disposition of real property pursuant to this section, a file containing a copy of each document necessary to establish fulfillment of the requirements this section, provided, however, that any documents reflecting the value of the real property established by the commissioner and any independent appraisals used to establish that value, shall be exempted from the definition of “public records” appearing in section 7 of chapter 4 of the general laws until the disposition of the real property has been completed.

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

SECTION 3. Chapter 29 of the General Laws is hereby amended by inserting after section 2 AAAA the following section:-

Section 2 BBBB . There is hereby established and set up on the books of the commonwealth a separate fund, to be known as the Capital Projects Fund, in this section called the fund. The fund shall consist of the portion of net cash proceeds of the commonwealth’s disposition of surplus real property deposited under clause (ii) of subsection ( q ) of section 40F of chapter 7, and all other monies credited or transferred to the fund from any other fund or source pursuant to law. The fund shall be expended, subject to appropriation, to meet the capital improvement needs of the commonwealth.

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