

SENATE No. 1617

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

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.

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

The Commonwealth of Massachusetts

—————
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

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

30 “Property”, real property owned by the commonwealth.

31 “Secretary”, the secretary of administration and finance.

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

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

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

37 (2) declared to be surplus under this section.

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

43 (b) (1) The commissioner shall be responsible for the acquisition, control and
44 disposition of real property in the manner and to the extent provided in this chapter. The
45 commissioner may delegate such responsibility to an administrator within the division, who has
46 10 years of experience in the management of commercial, industrial, institutional or public real
47 property. When responsibility is delegated to an administrator, the written approval of the
48 secretary shall be required before the transaction is finalized. The commissioner shall acquire

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

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

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

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

69 (5) The commissioner, in consultation with the secretaries of the
70 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

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

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

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

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

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

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

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

157 (f) Before making a determination that the real property should be declared
158 surplus to current and foreseeable state uses , the commissioner shall, within 10 days of the
159 general court's action as required by subsection (e), provide simultaneous written notification to
160 the host municipality and the regional planning agency for the region where the real property is
161 located indicating that the real property is available. For parcels of real property larger than 2
162 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

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

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

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

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

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

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

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

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

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

267

268 (i) If the host municipality does not elect to exercise its right of first refusal by
269 giving written notice of its intention to acquire the surplus real property or notice of its election
270 to assign its right of first refusal within 180 days in accordance with subsection (k), or if the
271 host municipality timely makes such election but fails to close the purchase, lease or other
272 disposition of the property or to make the assignment within the allowed time, or the assignee
273 fails to close the purchase, lease or other disposition of the property, the host municipality shall
274 be deemed to have waived its right of first refusal and the commissioner may dispose of the
275 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.

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

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

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

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

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

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

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

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

351 recording of a notice in the appropriate registry of deeds.

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

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

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

372 (l) For any disposition of surplus real property other than to a host
373 municipality which has exercised its right of first refusal or right of assignment pursuant to
374 subsection (k), the commissioner shall dispose of surplus real property using appropriate
375 competitive processes and procedures, subject to the notification and advertising provisions of
376 section 40H. These competitive processes may include, but are not limited to, auction, sealed
377 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

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

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

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

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

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

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

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

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