

HOUSE No. 2815

The Commonwealth of Massachusetts

PRESENTED BY:

Jeffrey Sánchez

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:	DATE ADDED:
<i>Jeffrey Sánchez</i>	<i>15th Suffolk</i>	<i>1/15/2015</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>12/5/2019</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>	<i>12/5/2019</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>	<i>12/5/2019</i>

HOUSE No. 2815

By Mr. Sánchez of Boston, a petition (accompanied by bill, House, No. 2815) of Jeffrey Sánchez and others for legislation to provide for the disposition of certain state property based on smart growth land use policies. State Administration and Regulatory Oversight.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 2874 OF 2013-2014.]

The Commonwealth of Massachusetts

—————
**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**
—————

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

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 7C of the General Laws, as established by chapter 165 of
2 the session laws of 2012, is hereby amended by striking out sections 33 and 34, and inserting in
3 place thereof the following section:-

4 Section 33. (a) For the purposes of this section, in addition to terms defined in
5 section 1, 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 “Emergency,” any situation caused by unforeseen circumstances which render
19 currently used real property unusable or unavailable for the purposes intended and which creates
20 an immediate need for other real property to preserve the health or safety of persons or property.

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

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

30 or project management services in connection with any reuse or redevelopment of the surplus
31 real property under this chapter, and less any amounts that may be owing to the federal
32 government as a result of the disposition.

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

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

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

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

38 (1) previously determined to be surplus to current and foreseeable state needs
39 under section 33; or

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

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

46 (b) (1) The commissioner shall be responsible for the acquisition, control and
47 disposition of real property in the manner and to the extent provided in this chapter. The
48 commissioner may delegate such responsibility to an administrator within the division, who has
49 10 years of experience in the management of commercial, industrial, institutional or public real
50 property. When responsibility is delegated to an administrator, the written approval of the

51 secretary shall be required before the transaction is finalized. The commissioner shall acquire an
52 interest in real property on behalf of the commonwealth for the use of state agencies by gift,
53 purchase, devise, grant, eminent domain, rental, lease, rental-purchase or otherwise.

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

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

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

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

95 oversight, and the representatives to the general court from the city or town in which such real
96 property is located of such transfer at the earliest possible opportunity. An agency shall not be
97 required to purchase or make payment, whether directly or indirectly to acquire property or part
98 thereof, which is made available for that agency's use. As a condition of the transfer of property
99 to a state agency, the commissioner may require that the agency be financially responsible for
100 any outstanding lease, contractual or debt obligations previously incurred by the commonwealth
101 to acquire or improve the property and for any future maintenance, security and improvement
102 costs for the property.

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

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

118 written recommendation to the commissioner on the appropriate future re-use of surplus
119 property, as set forth in subsection (g).

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

127 (d) In order to determine whether specified real property is surplus to the current
128 and foreseeable needs of the commonwealth, the commissioner shall, within 30 days after receipt
129 of a completed transfer request, provide written notice and inquiry to the executive heads of state
130 agencies and secretaries of the executive offices, who shall have 30 days to submit a written
131 response stating that the property is necessary for a specific current or foreseeable need of the
132 agency. If no agency or executive office submits such a response within 30 days of the notice,
133 the commissioner shall proceed with further actions required before declaring a parcel surplus as
134 provided in subsections (e) and (f). Alternatively, if a written response is timely received
135 specifying a current or foreseeable need for the property or any part thereof, the commissioner
136 shall, in consultation with the secretary, the surplus land coordination committee and with those
137 responding affirmatively and the written approval of the secretary, determine whether the real
138 property or part thereof, shall: (1) be retained and made available on account of a current or
139 foreseeable use by a state agency, or (2) be recommended for disposal as surplus property on a
140 temporary or permanent basis. Preference shall be given to ensuring that real property is made

141 available for state needs and not permanently disposed, where a state agency has submitted a
142 timely written response specifying a current or foreseeable need for the property. When the
143 commissioner determines that real property is surplus to current state needs but not to
144 foreseeable state needs, the commissioner shall take all necessary action to ensure that any
145 disposition of the real property is temporary and maintains the commissioner's ability to make
146 such real property available to a state agency as needed.

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

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

164 located indicating that the real property is available. For parcels of real property larger than 2
165 acres or valued at more than \$1,000,000, the commissioner shall commission the regional
166 planning agency for the region where the real property is located to conduct a smart growth reuse
167 review. If the surplus property is located in more than 1 municipality served by more than 1
168 regional planning agency, the commissioner shall select 1 regional planning agency to conduct
169 the smart growth review for the entire property. In each smart growth review, the regional
170 planning agency shall consider the need for a variety of housing options, including but not
171 limited to the development of supportive and affordable housing for the physically and
172 cognitively disabled and the mentally ill, economic development and jobs, open space
173 preservation; current and prospective zoning of the site; need for municipal capital facilities and
174 public uses; impacts on traffic and transit; impacts on the environment and natural resources, and
175 on agricultural lands; existence of historically significant structures; availability of infrastructure,
176 including water supply, waste water and storm water run-off; fiscal impact of the development
177 on the host municipality; remediation of contamination; and other smart growth implications.
178 Within 60 days after the request by the commissioner for a smart growth review, the regional
179 planning agency shall complete and submit the review in writing to the commissioner and to the
180 surplus land coordination committee, and shall make the review available to all parties listed in
181 subsection (e). Reasonable costs incurred by the regional planning agency shall be considered
182 part of the disposition expenses paid for by the division, and reimbursed from the total proceeds
183 of the sale or lease of surplus property received by the commonwealth not to exceed \$6,000 per
184 parcel reviewed. If the smart growth review is not completed within 60 days after the
185 commissioner's request for the review, the commissioner may dispose of the surplus property in
186 accordance with this section.

187 If the surplus property is 2 acres or less or valued at \$1,000,000 or less but the
188 commissioner, in consultation with the committee, makes a determination that a smart growth
189 review is necessary, the smart growth review shall be conducted in accordance with this
190 subsection.

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

208 (h) Each host municipality shall have a right of first refusal to acquire the surplus
209 real property located within such municipality for a direct public use on the terms and conditions

210 as offered by the commissioner pursuant to this subsection at 80 per cent of the value established
211 pursuant to subsection (k). The host municipality shall have the right of first refusal to purchase
212 the real property for a purpose other than a direct public use at fair market value as established
213 pursuant to this chapter. Section 14 of chapter 40 shall apply to the purchase of surplus real
214 property by a host municipality under this section; excepting any applicable restriction based on
215 average assessed valuation. The commissioner may accept a flexible payment schedule at his
216 discretion, provided, that all payments shall be made within 5 fiscal years of the sale or lease of
217 the surplus real property to the host municipality. This right of first refusal must be exercised, if
218 at all, by the host municipality giving written notice of the municipality's intention to acquire the
219 property for a direct public use to the commissioner within 180 days after the written notice
220 given by the commissioner pursuant to subsection (g). If the host municipality does give such
221 written notice, the host municipality shall have until the date which is 180 days after its written
222 notice to the commissioner to close on the purchase or lease of the property on such terms,
223 conditions and restrictions as previously offered by the commissioner, provided, that the
224 commissioner may grant a host municipality additional time to close on the purchase or lease of
225 the property. If a host municipality has held a vote for debt exclusion under section 21C of
226 chapter 59 to finance the surplus real property purchase, the date by which the host municipality
227 shall exercise its option to purchase shall be extended until 7 days after the vote, but the vote
228 shall take place at the next municipal election after the host municipality voted to put the debt
229 exclusion on the ballot. If the host municipality fails to close the purchase of the property within
230 the allowed time, the sole remedy of the commonwealth against the host municipality for such
231 failure is to proceed with the disposition of the property without further right of purchase by the
232 host municipality; but, if the failure to close on the purchase of the property was in bad faith as

233 determined by the commissioner, the commonwealth shall not be required to share proceeds of
234 the sale of the real property with the host municipality as required by subsection (q). The
235 commissioner shall ensure that any deed, lease or other disposition agreement conveying surplus
236 real property to the host municipality provides that the use of the property shall be limited to the
237 direct public use specified by the host municipality and provides for effective remedies on behalf
238 of the commonwealth as deemed appropriate by the commissioner, which remedies may include,
239 without limitation, that the title or lesser interest conveyed may revert to the commonwealth
240 upon the recording of a notice in the appropriate registry of deeds, in the event of a failure to
241 comply such use restriction.

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

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

254 A host municipality shall be permitted to assign its right of first refusal to
255 purchase the real property for a direct public use at 80 per cent of the fair market value of the real
256 property as established pursuant to this chapter to a non-profit organization for a direct public
257 use of such organization. The host municipality must make the assignment, if at all, within 180
258 days of receipt of notification pursuant to subsection (g), the assignee non-profit organization
259 must exercise said right, if at all, within 90 days of its assignment by the host municipality by
260 providing written notice to the commissioner of the assignee non-profit organization's intent to
261 purchase the real property. The assignee non-profit organization shall then have an additional 90
262 days from its exercise of said assignment by the host municipality to close on the purchase of the
263 real property. In the event that the assignee non-profit organization fails to close on the purchase
264 of the real property within such time, the sole remedy of the commonwealth against the host
265 municipality for such failure is to proceed with the disposition of the real property without
266 further right of purchase by the host municipality; provided, however, that if said failure to close
267 on the purchase of the real property was in bad faith, the commonwealth shall not be required to
268 share proceeds of the sale of said real property with the host municipality as required by
269 subsection (q).

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

276 have waived its right of first refusal and the commissioner may dispose of the surplus property in
277 accordance with this section, as follows:

278 (i) If the surplus property exceeds 2 acres or is valued at \$1,000,000 or more, the
279 commissioner shall, within 45 days after the waiver and after reasonable public notice, conduct a
280 public hearing in each municipality in which the surplus property is located for the purpose of
281 receiving public comment on the potential re-uses and appropriate restrictions upon the use of
282 the property. The commissioner shall, within 30 days after such hearing, prepare a written report
283 of all oral or written testimony received at a public hearing, and shall submit such report to the
284 committee and to the regional planning agency serving the community in which the surplus
285 property is located (ii) If the surplus property is 2 acres or less or valued at \$1,000,000 or less but
286 the commissioner, in consultation with the committee, makes a determination within 60 days
287 after the waiver that a hearing is necessary, the public hearing shall be conducted in accordance
288 with this section.

289 (iii) Within 60 days after its receipt of the commissioner's report of any public
290 hearing held, and after the completion of any smart growth study undertaken pursuant to
291 subsection (f) above, the committee shall provide a written recommendation to the commissioner
292 on the appropriate disposition for any parcel, and recommend a variety of appropriate uses,
293 restrictions, and future obligations for the disposition of each surplus parcel including, but not
294 limited to, its suitability for housing, , including but not limited to the development of supportive
295 and affordable housing for the physically and cognitively disabled and the mentally ill, economic
296 development or preservation as open space, the parcel's historical significance, a community's
297 master plan, and what restrictions, if any, should be imposed on its use and development;
298 provided, however, that provided, however, that in the case of real property formerly used as a

299 department of mental health state hospital or department of mental retardation in patient care
300 facility, the committee shall place a reuse restriction on land ensuring that at least 15% of any
301 housing units developed on the real property be affordable supported housing for individuals
302 who are clients, or former clients of the respective department; provided further, that such
303 housing shall be made affordable and available to such individuals with incomes of 15% of
304 average median income or below. The committee in making recommendations to the
305 commissioner on the re-uses, restrictions and development of the surplus property shall consider
306 any: (1) , written report from any public hearing pursuant to clause (i) above; (2) testimony,
307 recommendations or comments, from a host municipality including any recommendation or
308 comment from a local re-use committee established by such host municipality to advise on the
309 future reuse of land, buildings or structures; (3) testimony, recommendations or comments from
310 immediate surrounding communities and from any member of the general court representing the
311 host municipality where the surplus property is located; (4) smart growth review conducted
312 under subsection (f) above; (5) comments and recommendations by the commissioner; and (6)
313 established state and local plans and policies. The committee may also consider any other
314 testimony and necessary and relevant information received with respect to the surplus property.
315 If the committee does not recommend appropriate uses for the property within that 60 day
316 period, the commissioner may dispose of the property without a recommendation from the
317 committee in a manner consistent with this section.

318 (iv) Before disposing of surplus real property, the commissioner (1) shall
319 identify any restrictions or conditions on such property's re-use and development which the
320 commissioner considers appropriate to reflect the recommendation of the surplus land
321 coordination committee and take into consideration established state, regional and local plans

322 and policies, any recommendations or comments from a host municipality including, without
323 limitation, recommendations or comments submitted at a hearing held pursuant to clause (i), and
324 from any member of the general court representing the host municipality; and (2) shall ensure
325 that any deed, lease or other disposition agreement sets forth all such re-use restrictions, provides
326 for effective remedies on behalf of the commonwealth and provides, in the event of a failure to
327 comply with the re-use restrictions by the grantee, lessee or other recipient, that the title or lesser
328 interest conveyed shall revert to the commonwealth upon the recording of a notice in the
329 appropriate registry of deeds.

330 (j) The commissioner shall on a quarterly basis send to the house and senate
331 chairs of the joint committee on state administration and regulatory oversight and the
332 house and senate committees on ways and means a detailed list of all property which has been
333 determined to be surplus to current and foreseeable state needs pursuant to subsections (d)
334 through (f) and is being considered for disposition by the commissioner and the surplus land
335 coordination committee, together with recommendations for disposition of each parcel of
336 property and its potential uses and restrictions to the extent they have been developed and
337 approved pursuant to this section.

338 (k) The commissioner shall establish the value of surplus real property using
339 customarily accepted appraisal methodologies, including without limitation, a written appraisal
340 by an independent professional real estate appraiser, licensed by the commonwealth, with 5 or
341 more years of experience in the appraisal of commercial or industrial real estate. The value shall
342 be calculated both: (1) for the highest and best use of the surplus real property; and (2) subject to
343 uses, restrictions, encumbrances and other conditions and terms for the type of disposition,
344 whether by sale or lease, as defined in writing by the commissioner. Notwithstanding the

345 foregoing, the value of any property to be sold or leased to a host municipality for a direct public
346 use shall be calculated subject to the restriction to direct public use and to such other uses,
347 restrictions, encumbrances and other conditions and terms as defined in writing by the
348 commissioner. In no instance in which the commonwealth retains responsibility for maintaining
349 the property shall the terms provide for payment of less than the annual maintenance costs.

350 (l) For any disposition of surplus real property other than to a host municipality
351 which has exercised its right of first refusal or right of assignment pursuant to subsection (k), the
352 commissioner shall dispose of surplus real property using appropriate competitive processes and
353 procedures, subject to the notification and advertising provisions of section 36. These
354 competitive processes may include, but are not limited to, auction, sealed bids and requests for
355 price and development proposals. At least 30 days before the date of an auction or the date on
356 which bids, proposals or other offers to purchase or lease surplus real property are due, the
357 commissioner shall place a notice in the central register published by the state secretary under
358 section 20A of chapter 9 stating the availability of such property, the nature of the competitive
359 process and other information deemed relevant, including the time and location of the auction,
360 the submission of bids or proposals and the opening thereof. A host municipality which did not
361 exercise its right of first refusal or right of assignment pursuant to subsection (k) to acquire
362 surplus real property may submit a bid, proposal or other offer to purchase or lease surplus real
363 property in response to such competitive process.

364 (m) The commissioner shall place a notice in the central register and notify in
365 writing all parties listed in subsection (g), identifying the individual or firm selected as party to
366 the real property transaction, along with the amount of the transaction. If the commissioner
367 accepts an amount below the value calculated under subsection (k), he shall include the

368 justification for doing so, specifying the difference between the calculated value and the price
369 received.

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

373 "I certify under penalties of perjury that I have fully complied with sections 33
374 and 36 of the General Laws in connection with the property described in this document."

375 (o) No agreement for the sale, lease, transfer or other disposition of surplus real
376 property shall be valid unless the purchaser or lessee has executed and filed with the
377 commissioner the statement required by section 38.

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

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

387 (i) 15 per cent of the net cash proceeds from the sale or lease of each such
388 property shall be paid to the host municipality; but if the host municipality has adopted for such

389 property either an approved smart growth zoning district under chapter 40R or an approved
390 priority development site under chapter 43D, 25 per cent of the net cash proceeds from the sale
391 or lease of the particular parcel shall be paid to the host municipality. A municipality that
392 acquires a property either by exercise of its right of first refusal pursuant to subsection (h) or
393 through a competitive process pursuant to subsection (l) shall not receive a percentage of the net
394 cash proceeds.

395 If a host municipality fails to close on a surplus real property due solely to a
396 failure to receive an affirmative vote on a debt exclusion ballot question to raise funds to acquire
397 a particular parcel under section 21C of chapter 59, the host municipality shall remain eligible to
398 receive its share of the net cash proceeds.

399 (ii) After distribution of net cash proceeds under clause (i), 50 per cent of the
400 remaining net cash proceeds shall be deposited in the Smart Growth Housing Trust Fund and 50
401 per cent shall be deposited in the Capital Projects Fund established by section 2YYY of chapter
402 29.

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

411 certification to the governor and the house and senate chairmen of the ways and means
412 committees.

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

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

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

431 (v) For bills which authorize the sale, transfer, or other disposition of any state-
432 owned real property filed by persons other than the commissioner of capital asset management

433 and maintenance, the clerk of the house of representatives and the clerk of the senate shall,
434 within 10 days of the filing, forward a copy of the bill to the commissioner. Within 90 days of
435 the receipt of the copy, the commissioner shall submit in writing a report to the commissioner of
436 administration, the legislative committee before which the bill is pending, and the joint
437 committee on state administration together with a recommendation for either the approval or the
438 disapproval of the bill and his reasons therefore.

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

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

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

463 SECTION 2. Section 35AA of chapter 10 of the General Laws, as so appearing,
464 is hereby amended by inserting after the word “section”, in line 11, the following words:- and in
465 subsection (q) of section 33 of chapter 7C.

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

468 Section 2BBBB. There is hereby established and set up on the books of the
469 commonwealth a separate fund, to be known as the Capital Projects Fund, in this section called
470 the fund. The fund shall consist of the portion of net cash proceeds of the commonwealth’s
471 disposition of surplus real property deposited under clause (ii) of subsection (q) of section 33 of
472 chapter 7C, and all other monies credited or transferred to the fund from any other fund or source
473 pursuant to law. The fund shall be expended, subject to appropriation, to meet the capital
474 improvement needs of the commonwealth.

475 SECTION 4. Notwithstanding any general or special law to the contrary, section
476 1 shall not apply to the disposition of real property that is the subject of a special act having an
477 effective date before the effective date of this act.