

HOUSE No. 00837

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 passage of the accompanying bill:

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

PETITION OF:

NAME:

Jeffrey Sánchez

DISTRICT/ADDRESS:

15th Suffolk

HOUSE No. 00837

By Mr. Jeffrey Sánchez of Boston, petition (accompanied by bill, House, No. 00837) of Jeffrey Sánchez relative to continuing the expedited disposal of surplus land. Joint Committee on State Administration and Regulatory Oversight.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
□ HOUSE
□ , NO. 3025 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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

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

1 SECTION 1. Chapter 7 of the General Laws is hereby amended by striking out sections 40F and
2 40F1/2, as appearing in the 2004 Official Edition, and inserting in place thereof the following
3 section:-

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

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

7 "Division" the division of capital asset management and maintenance.

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

10 "Net cash proceeds", all payments paid to the commonwealth as and when paid, less any
11 transaction-related expenses and expenses incurred in connection with the custody of the
12 property by the division of capital asset management and maintenance, and the regional planning
13 agency under subsection (f) for which it is not otherwise reimbursed, including, but not limited
14 to, costs associated with the disposal or pre-development of the property from which the funds
15 originated including, but not limited to, appraisals, surveys, site evaluation, site preparation,
16 plans, recordings, smart growth review and feasibility and other marketing studies and any other
17 expenses relating to the disposal or project management services in connection with any reuse or
18 redevelopment of the surplus real property under this chapter, and less any amounts that may be
19 owing to the federal government as a result of the disposition.

20 "Property", real property owned by the commonwealth.

21 "Secretary", the secretary of administration and finance.

22 "Surplus land coordination committee" or "committee", the committee established by subsection
23 (f).

24 "Surplus real property", real property of the commonwealth:

25 (1) previously determined to be surplus to current and foreseeable state needs under sections
26 40F or 40F½, but excluding real property for which there is an established local reuse plan;

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

29 (3) declared to be surplus under this section. This term shall not include property subject to
30 Article 97 of the Amendments to the Constitution.

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

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

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

47 (4) The commissioner shall assist in the preparation and shall approve of plans for the
48 organization of all space within and around buildings and appurtenant structures used by state
49 agencies, and shall assign the use of space within and around the state house, subject to rules that
50 the committee on rules of the two branches acting concurrently may adopt, in accordance with

51 sections 10, 16A and 17 of chapter 8; the John W. McCormack State Office Building; 100
52 Cambridge Street formerly known as the Leverett Saltonstall State Office Building; the
53 Springfield Office Building; the Pittsfield Office Building; the Erich Lindemann Building; the
54 Charles F. Hurley Building; any real property acquired for the use of state agencies, the greater
55 part of which is not needed by any 1 state agency; and any other real property assigned by law to
56 the division of capital asset management and maintenance.

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

74 not to exceed 6 months, and the commissioner shall submit his certification to and notify the
75 house and senate ways and means committees of such transfer at the earliest possible
76 opportunity.

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

81 (c) In order to determine whether specified real property is surplus to the current and
82 foreseeable needs of the commonwealth, the commissioner shall provide written notice and
83 inquiry to the executive heads of state agencies and secretaries of the executive offices, who shall
84 have 30 days to submit a written response stating that the property is necessary for a specific
85 current or foreseeable need of the agency. If no agency or executive office submits such a
86 response within 30 days of the notice, the commissioner, in consultation with the surplus land
87 coordination committee, may declare the property as surplus and dispose of it under this section.
88 Alternatively, if a written response is timely received specifying a current or foreseeable need for
89 the property or any part thereof, the commissioner shall, in consultation with the secretary, the
90 surplus land coordination committee and with those responding affirmatively and the written
91 approval of the secretary, determine whether the real property or part thereof, shall: (1) be
92 retained and made available on account of a current or foreseeable use by a state agency, or (2)
93 be recommended for disposal as surplus property on a temporary or permanent basis.
94 Preference shall be given to ensuring that real property is made available for state needs and not
95 permanently disposed, where a state agency has submitted a timely written response specifying a

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

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

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

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

118 should the commonwealth seek to dispose of the property whether on a temporary or permanent
119 basis; (3) a general description of the property under consideration for disposal including as
120 applicable, a description of the land, buildings, appurtenant structures and equipment and the
121 current use and square footage of such property; and (4) a legal description of the property
122 including approximate metes and bounds and other information identifying any existing
123 easements, restrictions or other conditions.

124 (f) There shall be a surplus land coordination committee. The committee shall consist of 1
125 representative appointed by each of the following: the commissioner, the secretary of the
126 executive office of environmental affairs, the chairman of the commonwealth development
127 coordinating council, the secretary of the executive office of transportation, the director of the
128 department of housing and community development, the secretary of the executive office of
129 economic development, the executive director of the Massachusetts Association of Regional
130 Planning Agencies, the president of the Massachusetts Association of Community Development
131 Corporations, and the executive director of the Massachusetts Municipal Association. At any
132 committee meeting, a majority of the members of the board entitled to vote must be present to
133 constitute a quorum. The committee shall meet at such times as the committee chairman shall
134 set, but no less than once every 3 months to consider the future re-uses of any surplus property.
135 The committee shall provide a written recommendation to the commissioner on the appropriate
136 future re-use of surplus property.

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

141 direct financial interest in the particular matter and if the member discloses in writing his
142 affiliation and financial interest to the committee and it is recorded in the minutes of the meeting
143 of the committee.

144 (g) For each specific surplus property greater than 2 acres in size or initially valued by the
145 commissioner at \$1,000,000 or more, or when the committee considers it otherwise necessary,
146 the commissioner shall, as provided in clause (3) of subsection (h), request that the regional
147 planning agency serving the community in which the surplus property is located conduct a smart
148 growth review regarding the local and regional implications of disposing of the parcel for a
149 variety of prospective uses. If the surplus property is located in more than 1 municipality served
150 by more than 1 regional planning agency, the commissioner shall select 1 regional planning
151 agency to conduct the smart growth review for the entire property. In each smart growth review,
152 the regional planning agency shall consider the need for a variety of housing options, jobs, and
153 open space; current and prospective zoning of the site; need for municipal capital facilities and
154 public uses; impacts on traffic and transit; impacts on the environment and natural resources, and
155 on agricultural lands; existence of historically significant structures; availability of infrastructure,
156 including water supply, waste water and storm water run-off; fiscal impacts of development on
157 the municipality where the parcel is located; remediation of contamination; and other smart
158 growth implications. Within 75 days after the request by the commissioner for a smart growth
159 review, the regional planning agency shall complete and submit the review in writing to the
160 commissioner, the members of the surplus land coordination committee, and the house and
161 senate chairs of the joint committee on bonding, capital expenditures and state assets, and make
162 the review available to all parties listed under clause (1) of subsection (h). Reasonable costs
163 incurred by the regional planning agency shall be considered part of the disposition expenses

164 paid for by the division, and reimbursed from the total proceeds of the sale or lease of surplus
165 property received by the commonwealth not to exceed \$6,000 per parcel reviewed. If the smart
166 growth review is not completed within 75 days after the commissioner's request for the review,
167 the commissioner may dispose of the surplus property in accordance with this section.

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

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

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

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

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

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

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

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

247 (k) Before disposing of the surplus real property, the commissioner shall provide to each city
248 or town in which the property is located a written right of first refusal to acquire the surplus real
249 property located within such municipality, on the terms and conditions as offered by the
250 commissioner whether by sale or lease, and on the restrictions established in clause (4) of
251 subsection (h) and at 80 per cent of the value established in subsection (j); but, if the surplus real
252 property is restricted for use as open space, affordable housing or both, then the municipality
253 shall have the right of first refusal to acquire such property at 75 per cent of the established
254 value. Section 14 of chapter 40 shall apply to the purchase of surplus real property by a city or
255 town under this section; excepting any applicable restriction based on average assessed

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

276 (l) A municipality that exercises the right of first refusal set forth in subsection (k) and
277 purchases the surplus real property shall not transfer the property to a for-profit organization for
278 5 years unless the transfer is for not less than the current fair market value of the property and the

279 municipality has used an amount equal to 15 per cent of the value of the parcel established in
280 subsection (j) for smart growth purposes.

281 The municipality may assign its right of first refusal to a not-for-profit organization, which shall
282 be a community development corporation as defined in section 1 of chapter 40F, affordable
283 housing non-profit or a non-profit conservation organization. The assignee shall be entitled to
284 acquire the property for the same price and according to the same terms which would apply to a
285 sale to a municipality under this section, having 180 days to close on the purchase or lease of the
286 property on such terms, conditions and restrictions as previously offered by the commissioner.

287 An assignment shall not be valid unless the municipality provides the commissioner with identity
288 of the assignee and date of assignment within 10 days from the date of transfer. No further
289 assignment of the right of first refusal shall be permitted unless the assignee is a not-for-profit
290 community development corporation as defined in section 1 of chapter 40F or affordable housing
291 non-profit or a non-profit conservation organization. A lease or rental agreement that provides
292 for periodic future payments to the commonwealth may require the municipality to be a
293 guarantor or the assignee to provide surety for any such payments and, further, may restrict the
294 assignment, sublease or other transfer of the property interest without the written approval of the
295 commissioner. If the municipality or its assignee acquires any portion of the surplus real property
296 for open space purposes, or if any portion of the property is restricted for open space purposes, a
297 conservation restriction under chapter 184 shall be retained by the commonwealth on that parcel.

298 A city or town that has exercised its right of first refusal or otherwise has a right to close on the
299 property, at its own expense, may enter upon the property and any of its agents or contractors
300 may enter upon the property, to conduct inspections, surveys, or tests customarily performed in
301 real estate transactions for the type and nature of the property specified as surplus as long as the

302 commissioner is notified and consents to the inspection, survey or test, which consent shall not
303 be unreasonably withheld. A city or town shall be responsible to the commonwealth for any
304 damage to the property, and shall hold harmless the commonwealth from all losses arising out of
305 a claim of any nature from a third party, which resulted from conducting any such inspection,
306 survey or test.

307 (m) If the city or town has failed to exercise or assign its right of first refusal, or the city or town
308 or its assignee has failed to close in a timely manner if such right was exercised or assigned, the
309 commissioner shall file a report of the recommended disposition of the surplus property with the
310 joint committee on bonding, capital expenditures and state assets. For parcels larger than five
311 contiguous acres, and if the city or town has not successfully exercised or assigned its right of
312 first refusal, the commissioner shall be authorized to proceed with disposition of the property
313 only after the General Court has accepted and authorized the recommended disposition of the
314 surplus property as contained in the report to the joint committee on bonding, capital
315 expenditures and state assets through a vote of both chambers in formal or informal session,
316 provided that in instances where the General Court has failed to act upon the recommended
317 disposition within 120 days of the disposition having been recommended to said committee, the
318 commissioner shall be deemed authorized to proceed with the disposition as recommended. For
319 parcels equal to or less than five contiguous acres, or if the city or town has successfully
320 exercised or assigned its right of first refusal, the commissioner shall be deemed authorized to
321 proceed with the disposition as recommended. The commissioner shall dispose of surplus real
322 property using appropriate competitive processes and procedures, subject to the notification and
323 advertising provisions of section 40H, and further, the terms restrictions, conditions and type of
324 disposition for such re-use previously established by the commissioner under clause (4) of

325 subsection (h). These competitive processes may include, but are not limited to, auction, sealed
326 bids and requests for price and development proposals. All auctions, sealed bids or other
327 competitive process shall be with reserve, and the commissioner shall retain the right to
328 withdraw any surplus property offered for sale or lease by such competitive process before
329 accepting any bid, proposal, offer or contract. At least 30 days before the date of an auction or
330 the date on which bids, proposals or other offers to purchase or lease surplus real property are
331 due, the commissioner shall place a notice in the central register published by the state secretary
332 under section 20A of chapter 9 stating the availability of such property, the nature of the
333 competitive process and other information deemed relevant, including the time and location of
334 the auction, the submission of bids or proposals and the opening thereof.

335 (n) If there is no plan to develop housing on the real property formerly used as a department of
336 mental health state hospital or department of mental retardation facility for individuals with
337 mental retardation, not less than 15% of the sale price shall be placed within a dedicated account
338 under control of the department which operated the property to support the development of
339 affordable community-based supported housing at another location for individuals who are
340 clients, or former clients of the department of mental health or the department of mental
341 retardation.

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

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

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

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

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

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

362 (i) Not more than 10 per cent of the net cash proceeds from the sale or lease of each such
363 property shall be paid to the host municipality where the real property is located; but if the
364 commissioner certifies that the municipality has expedited permitting, has adopted an approved
365 smart growth zoning district under chapter 40R, or has taken other affirmative actions to further
366 the commonwealth's objectives for the parcel consistent with the commonwealth development
367 coordinating council's smart growth principles, and the smart growth review when available,
368 then the host municipality shall be eligible for up to a total of 25 per cent of the net cash

369 proceeds from the sale or lease of the particular parcel under a schedule and regulations to be
370 promulgated by the commissioner. A municipality that exercises its right of first refusal shall not
371 receive a percentage of the net cash proceeds.

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

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

378 50 per cent of the monies deposited in the Smart Growth Housing Trust Fund under clause (ii),
379 but not more than \$2,800,000 in any fiscal year, shall be transferred pursuant to Section 2XXX
380 of Chapter 29 of the General Laws to be administered by the department of housing and
381 community development for regional planning agencies to provide technical assistance to
382 municipalities. The remaining 50 per cent, plus any funds in excess of \$2,800,000, shall be used
383 by the Smart Growth Housing Trust Fund to pay for financial incentives and other payments to
384 communities under chapter 40R.

385 (s) The commissioner, in consultation with the secretary of the office of commonwealth
386 development, shall adopt regulations governing the disposition of surplus property in accordance
387 with this section. The commissioner shall include in these regulations criteria that allow real
388 property to be considered for disposition under this section. These criteria shall include an
389 automatic notice and inquiry to the executive heads of state agencies and secretaries as specified

390 under subsection (c) regarding any parcel that is left unused or abandoned for a specified period
391 of time and shall include any applicable regulations required under section 40L.

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

401 SECTION 2. Section 35AA of chapter 10 of the General Laws, as so appearing, is hereby
402 amended by inserting after the word "section", in line 11, the following words:-

403 and in subsection (p) of section 40F of chapter 7.

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

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

412 the code and a statute, ordinance or by-law regulating any historic district, regional historic
413 district or architecturally controlled district, any such statute, ordinance or by-law regulating
414 exterior architectural features within that district shall prevail. The inspector shall enforce the
415 state building code as to any building or structure within any city or town that is owned in whole
416 or in part by the commonwealth or any departments, commissions, agencies or authorities of the
417 commonwealth. The inspector shall have all the powers of a local inspector under this chapter
418 and under the state building code as to such buildings or structures that are owned in whole or in
419 part by the commonwealth or any of its departments, agencies, commissions or authorities.

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

423 SECTION 5. The commissioner of capital asset management and maintenance shall adopt the
424 initial regulations under subsection (r) of section 40F of chapter 7 of the General Laws within 6
425 months after the effective date of this act.

426 SECTION 6. The sum set forth in this section, subject to the conditions specified under this act
427 and previous appropriation acts, is hereby authorized for expenditure, subject to the laws
428 regulating the disbursement of public funds and approval thereof.