

SENATE No. 01617

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 passage 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:

Karen E. Spilka

Second Middlesex and Norfolk

Jennifer E. Benson

37th Middlesex

Chris Walsh

6th Middlesex

SENATE No. 01617

By Ms. Spilka, petition (accompanied by bill, Senate, No. 1617) of Walsh, Benson and Spilka relative to providing for disposition of surplus state real property based on smart growth land use policies [Joint Committee on 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 forthwith 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 out
2 sections 40F and 40F1/2, as appearing in the 2008 Official Edition, and inserting in place thereof
3 the following section:-

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

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

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

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

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

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

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

25 review and feasibility and other marketing studies and any other expenses relating to the disposal
26 or project management services in connection with any reuse or redevelopment of the surplus
27 real property under this chapter, and less any amounts that may be owing to the federal
28 government as a result of the disposition.

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

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

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

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

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

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

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

42 (b) (1) The commissioner shall be responsible for the acquisition, control and
43 disposition of real property in the manner and to the extent provided in this chapter. The
44 commissioner may delegate such responsibility to an administrator within the division, who has
45 10 years of experience in the management of commercial, industrial, institutional or public real

46 property. When responsibility is delegated to an administrator, the written approval of the
47 secretary shall be required before the transaction is finalized. The commissioner shall acquire
48 an interest in real property on behalf of the commonwealth for the use of state agencies by gift,
49 purchase, devise, grant, eminent domain, rental, lease, rental-purchase or otherwise.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

266

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

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

275 (i) If the surplus property exceeds 2 acres or is valued at \$1,000,000 or more , the
276 commissioner shall, within 45 days after the

277 waiver and after reasonable public notice, conduct a public hearing in each municipality in
278 which the surplus property is located

279 for the purpose of receiving public comment on the potential re-uses and appropriate
280 restrictions upon the use of the

281 property. The commissioner shall, within 30 days after such hearing, prepare a written
282 report of all oral or written testimony

283 received at a public hearing, and shall submit such report to the committee and to the
284 regional planning agency serving the

285 community in which the surplus property is located (ii) If the surplus property is 2
286 acres or less or valued at

287 \$1,000,000 or less but the commissioner, in consultation with the committee, makes a
288 determination within 60 days after the

289 waiver that a hearing is necessary, the public hearing shall be conducted in accordance
290 with this section.

291 (ii) Within 60 days after its receipt of the commissioner's report of any public hearing held ,
292 and after the completion of any smart

293 growth study undertaken pursuant to subsection (f) above, the committee shall provide a
294 written recommendation to the

295 commissioner on the appropriate disposition for any parcel, and recommend a variety of
296 appropriate uses, restrictions, and

297 future obligations for the disposition of each surplus parcel including, but not limited to, its
298 suitability for housing, , including but

299 not limited to the development of supportive and affordable housing for the physically and
300 cognitively disabled and the

301 mentally ill, economic development or preservation as open space, the parcel's historical
302 significance, a community's master

303 plan, and what restrictions, if any, should be imposed on its use and development ;
304 provided, however, that provided,

305 however, that in the case of real property formerly used as a department of mental health
306 state hospital or department of

307 mental retardation in patient care facility, the committee shall place a reuse restriction on
308 land ensuring that at least 15% of

309 any housing units developed on the real property be affordable supported housing for
310 individuals who are clients, or former

311 clients of the respective department; provided further, that such housing shall be made
312 affordable and available to such

313 individuals with incomes of 15% of average median income or below . The committee in
314 making recommendations to the
315 commissioner on the re-uses, restrictions and development of the surplus property shall
316 consider any: (1) written report
317 from any public hearing pursuant to clause (i) above; (2) testimony, recommendations
318 or comments, from a host municipality
319 including any recommendation or comment from a local re-use committee established
320 by such host municipality to advise on
321 the future reuse of land, buildings or structures; (3) testimony, recommendations or
322 comments from immediate surrounding
323 communities and from any member of the general court representing the host municipality
324 where the surplus property is
325 located; (4) smart growth review conducted under subsection (f) above; (5) comments and
326 recommendations by the
327 commissioner; and (6) established state and local plans and policies. The committee may
328 also consider any other testimony
329 and necessary and relevant information received with respect to the surplus property. If
330 the committee does not recommend
331 appropriate uses for the property within that 60 day period , the commissioner may dispose
332 of the property without a

333 recommendation from the committee in a manner consistent with this section.

334 (iii) Before disposing of surplus real property, the commissioner (1) shall identify any

335 restrictions or conditions on such property's

336 re-use and development which the commissioner considers appropriate to reflect the

337 recommendation of the surplus land

338 coordination committee and take into consideration established state, regional and local

339 plans and policies, any

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

341 recommendations or comments submitted

342 at a hearing held pursuant to clause (i), and from any member of the general court

343 representing the host municipality; and

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

345 use restrictions, provides for

346 effective remedies on behalf of the commonwealth and provides, in the event of a failure

347 to comply with the re-use restrictions

348 by the grantee, lessee or other recipient, that the title or lesser interest conveyed shall

349 revert to the commonwealth upon the

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

351 (j) The commissioner shall on a quarterly basis send to the house and senate chairs of

352 the joint committee on state administration and regulatory oversight and the house and senate

353 committees on ways and means a detailed list of all property which has been determined to be
354 surplus to current and foreseeable state needs pursuant to subsection s (d) through (f) and is
355 being considered for disposition by the commissioner and the surplus land coordination
356 committee, together with recommendations for disposition of each parcel of property and its
357 potential uses and restrictions to the extent they have been developed and approved pursuant to
358 this section.

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

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

376 price and development proposals. At least 30 days before the date of an auction or the date on
377 which bids, proposals or other offers to purchase or lease surplus real property are due, the
378 commissioner shall place a notice in the central register published by the state secretary under
379 section 20A of chapter 9 stating the availability of such property, the nature of the competitive
380 process and other information deemed relevant, including the time and location of the auction,
381 the submission of bids or proposals and the opening thereof. A host municipality which did
382 not exercise its right of first refusal or right of assignment pursuant to subsection (k) to acquire
383 surplus real property may submit a bid, proposal or other offer to purchase or lease surplus real
384 property in response to such competitive process.

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

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

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

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

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

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

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

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

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

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

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

417 percentage of the net cash proceeds.

418 If a host municipality fails to close on a surplus real property due solely to a failure to
419 receive an affirmative vote on a debt

420 exclusion ballot question to raise funds to acquire a particular parcel under section 21C of
421 chapter 59, the host municipality

422 shall remain eligible to receive its share of the net cash proceeds.

423 (ii) After distribution of net cash proceeds under clause (i), 50 per cent of the remaining net
424 cash proceeds shall be deposited in

425 the Smart Growth Housing Trust Fund and 50 per cent shall be deposited in the Capital
426 Projects Fund established by section

427 2YYY of chapter 29.

428 (r) Section 43I shall not apply to surplus real property disposed by the commissioner
429 under this section. Notwithstanding any provision of this section to the contrary, the

430 commissioner, in an emergency situation which poses a threat to the public safety or health and

431 upon request by a municipality, may permit, license, rent or otherwise allow occupancy to such

432 municipality of any surplus real property, not disposed, on a temporary and at-will basis and on

433 such other appropriate and consistent terms as established by the commissioner; but this

434 occupancy shall not exceed a period of 6 months, and the commissioner, within 10 days of any

435 permitted municipal use, shall certify in writing that an emergency exists and submits the

436 certification to the governor and the house and senate chairmen of the ways and means

437 committees.

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

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

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

456 (v) For bills which authorize the sale, transfer, or other disposition of any state-
457 owned real property filed by persons other than
458 the commissioner of capital asset management and maintenance, the clerk of the house of
459 representatives and the clerk of the senate shall, within 10 days of the filing, forward a copy of

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

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

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

480 (w) The commissioner shall maintain, for a period of at least 6 years next following
481 disposition of real property pursuant to this section, a file containing a copy of each document

482 necessary to establish fulfillment of the requirements this section, provided, however, that any
483 documents reflecting the value of the real property established by the commissioner and any
484 independent appraisals used to establish that value, shall be exempted from the definition of
485 “public records” appearing in section 7 of chapter 4 of the general laws until the disposition of
486 the real property has been completed.

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

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

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

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