

**SENATE . . . . . No. 1719**

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The Commonwealth of Massachusetts

PRESENTED BY:

***Karen E. Spilka***

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

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

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Karen E. Spilka</i>	<i>Second Middlesex and Norfolk</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>

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By Ms. Spilka, a petition (accompanied by bill, Senate, No. 1719) of Karen E. Spilka, Carolyn C. Dykema, Jason M. Lewis, Mary S. Keefe and other members of the General Court for legislation relative to providing for disposition of surplus state real property based on smart growth land use policies. State Administration and Regulatory Oversight.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. 1535 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 appearing in the 2012 Official Edition,  
2 is hereby amended by striking out sections 33 and 34, and inserting in place thereof the  
3 following section:-

4 Section 33. (a) For the purposes of this section, in addition to terms defined in section 1,  
5 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  
8 individuals whose income at initial occupancy is equal to or less than 100 per cent of the median

9 area 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  
13 own operations and, with respect to any use of real property by a private non-profit organization,  
14 any use of the real property for affordable housing production, community economic  
15 development, historic preservation or for open space acquisition or preservation.

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

17 “Emergency,” any situation caused by unforeseen circumstances which render currently  
18 used real property unusable or unavailable for the purposes intended and which creates an  
19 immediate need for other real property to preserve the health or safety of persons or property.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

276 (i) If the surplus property exceeds 2 acres or is valued at \$1,000,000 or more, the  
277 commissioner shall, within 45 days after the waiver and after reasonable public notice, conduct a

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

287 (iii) Within 60 days after its receipt of the commissioner's report of any public hearing  
288 held, and after the completion of any smart growth study undertaken pursuant to subsection (f)  
289 above, the committee shall provide a written recommendation to the commissioner on the  
290 appropriate disposition for any parcel, and recommend a variety of appropriate uses, restrictions,  
291 and future obligations for the disposition of each surplus parcel including, but not limited to, its  
292 suitability for housing, , including but not limited to the development of supportive and  
293 affordable housing for the physically and cognitively disabled and the mentally ill, economic  
294 development or preservation as open space, the parcel's historical significance, a community's  
295 master plan, and what restrictions, if any, should be imposed on its use and development;  
296 provided, however, that provided, however, that in the case of real property formerly used as a  
297 department of mental health state hospital or department of mental retardation in patient care  
298 facility, the committee shall place a reuse restriction on land ensuring that at least 15% of any  
299 housing units developed on the real property be affordable supported housing for individuals  
300 who are clients, or former clients of the respective department; provided further, that such

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

316 (iv) Before disposing of surplus real property, the commissioner (1) shall identify any  
317 restrictions or conditions on such property's re-use and development which the commissioner  
318 considers appropriate to reflect the recommendation of the surplus land coordination committee  
319 and take into consideration established state, regional and local plans and policies, any  
320 recommendations or comments from a host municipality including, without limitation,  
321 recommendations or comments submitted at a hearing held pursuant to clause (i), and from any  
322 member of the general court representing the host municipality; and (2) shall ensure that any  
323 deed, lease or other disposition agreement sets forth all such re-use restrictions, provides for



324 effective remedies on behalf of the commonwealth and provides, in the event of a failure to  
325 comply with the re-use restrictions by the grantee, lessee or other recipient, that the title or lesser  
326 interest conveyed shall revert to the commonwealth upon the recording of a notice in the  
327 appropriate registry of deeds.

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

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

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

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

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

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

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

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

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

383 (i) 15 per cent of the net cash proceeds from the sale or lease of each such property shall  
384 be paid to the host municipality; but if the host municipality has adopted for such property either  
385 an approved smart growth zoning district under chapter 40R or an approved priority  
386 development site under chapter 43D, 25 per cent of the net cash proceeds from the sale or lease  
387 of the particular parcel shall be paid to the host municipality. A municipality that acquires a  
388 property either by exercise of its right of first refusal pursuant to subsection (h) or through a  
389 competitive process pursuant to subsection (l) shall not receive a percentage of the net cash  
390 proceeds.

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

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

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

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

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

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

426 (v) For bills which authorize the sale, transfer, or other disposition of any state-owned  
427 real property filed by persons other than the commissioner of capital asset management and  
428 maintenance, the clerk of the house of representatives and the clerk of the senate shall, within 10  
429 days of the filing, forward a copy of the bill to the commissioner. Within 90 days of the receipt  
430 of the copy, the commissioner shall submit in writing a report to the commissioner of  
431 administration, the legislative committee before which the bill is pending, and the joint  
432 committee on state administration together with a recommendation for either the approval or the  
433 disapproval of the bill and his reasons therefore.

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

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

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

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

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

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

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