HOUSE DOCKET, NO. 1387 FILED ON: 1/20/2011

HOUSE . . . . . No. 3045

The Commonwealth of Massachusetts

PRESENTED BY:

Steven M. Walsh

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:

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

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Steven M. Walsh	*11th Essex*
Jennifer E. Benson	*37th Middlesex*
Denise Provost	*27th Middlesex*
Alice K. Wolf	*25th Middlesex*
Chris Walsh	*6th Middlesex*

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HOUSE . . . . . No. 3045

By Mr. Walsh of Lynn, a petition (accompanied by bill, House, No. 3045) of Steven M. Walsh and others for legislation to provide for the disposition of certain state property based on smart growth land use policies. State Administration and Regulatory Oversight.

The Commonwealth of Massachusetts

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

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to provide for expedited disposition of surplus state real property based on smart growth land use policies,, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

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

SECTION 1. Chapter 7 of the General Laws is hereby amended by striking out sections 40F and 40F1/2, as appearing in the 2008 Official Edition, and inserting in place thereof the following section:-

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

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

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

"Direct public use", use of real property by a host municipality for the municipality's own operations and, with respect to any use of real property by a private non-profit organization,

15 any use of the real property for affordable housing production, community economic
16 development, historic preservation or for open space acquisition or preservation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

87 notification requirement may be waived, only if the commissioner certifies in writing that an
88 emergency exists; provided, however, that any such transfer may be authorized for a period not
89 to exceed 6 months; and provided, further, that the commissioner shall submit his certification to
90 and notify the chairs of house and senate ways and means committees and the chairs of the joint
91 committee on state administration and regulatory oversight, and the representatives to the general
92 court from the city or town in which such real property is located of such transfer at the earliest
93 possible opportunity. An agency shall not be required to purchase or make payment, whether
94 directly or indirectly to acquire property or part thereof, which is made available for that
95 agency's use. As a condition of the transfer of property to a state agency, the commissioner may
96 require that the agency be financially responsible for any outstanding lease, contractual or debt
97 obligations previously incurred by the commonwealth to acquire or improve the property and for
98 any future maintenance, security and improvement costs for the property.

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

103 (c) There shall be a surplus land coordination committee. The committee shall consist of
104 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.
112 The 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 at
144 more than $1,000,000 is surplus to current and foreseeable state uses, the commissioner shall file
145 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. (g) If the commissioner, in consultation with the committee and the secretary, and
187 after any required smart growth review as provided in subsection (f) or any required legislative
188 approval as provided in subsection ( ), declares that real property is surplus to current or
189 foreseeable state needs, the commissioner shall, within 10 days after such determination, provide
190 written notice for each host municipality to the chief executive officer of the city or town, the
191 county commissioners, the regional planning agency and the members of the general court
192 representing the host municipality as well as adjoining cities or towns. Such written notice shall
193 include: (1) a statement that the property is currently being considered by the commissioner for
194 disposal on a temporary or permanent basis as surplus; (2) a general description of the property
195 under consideration for disposal including as applicable, a description of the land, buildings,
196 appurtenant structures and equipment and the current use and square footage of such property;
197 (3) a legal description of the property including approximate metes and bounds and other
198 information identifying any existing easements, restrictions or other conditions, to the extent
199 available; (4) a statement that the municipality in which any portion of the property is located has
200 a right of first refusal to acquire the property and the right to assign such right as set forth in
201 subsection (h); and (5) an invitation to make written comments about the future use of the
202 property.

203 (h) Each host municipality shall have a right of first refusal to acquire the surplus real
204 property located within such municipality for a direct public use on the terms and conditions as
205 offered by the commissioner pursuant to this subsection at 80 per cent of the value established
206 pursuant to subsection (k). The host municipality shall have the right of first refusal to purchase
207 the real property for a purpose other than a direct public use at fair market value as established
208 pursuant to this chapter. Section 14 of chapter 40 shall apply to the purchase of surplus real
209 property by a host municipality under this section; excepting any applicable restriction based on
210 average assessed valuation. The commissioner may accept a flexible payment schedule at his
211 discretion, provided, that all payments shall be made within 5 fiscal years of the sale or lease of
212 the surplus real property to the host municipality. This right of first refusal must be exercised, if
213 at all, by the host municipality giving written notice of the municipality's intention to acquire the
214 property for a direct public use to the commissioner within 180 days after the written notice
215 given by the commissioner pursuant to subsection (g). If the host municipality does give such
216 written notice, the host municipality shall have until the date which is 180 days after its written
217 notice to the commissioner to close on the purchase or lease of the property on such terms,
218 conditions and restrictions as previously offered by the commissioner, provided, that the
219 commissioner may grant a host municipality additional time to close on the purchase or lease of
220 the property. If a host municipality has held a vote for debt exclusion under section 21C of
221 chapter 59 to finance the surplus real property purchase, the date by which the host municipality
222 shall exercise its option to purchase shall be extended until 7 days after the vote, but the vote
223 shall take place at the next municipal election after the host municipality voted to put the debt
224 exclusion on the ballot. If the host municipality fails to close the purchase of the property within
225 the allowed time, the sole remedy of the commonwealth against the host municipality for such
226 failure is to proceed with the disposition of the property without further right of purchase by the
227 host municipality; but, if the failure to close on the purchase of the property was in bad faith as
228 determined by the commissioner, the commonwealth shall not be required to share proceeds of
229 the sale of the real property with the host municipality as required by subsection (q). The
230 commissioner shall ensure that any deed, lease or other disposition agreement conveying surplus
231 real property to the host municipality provides that the use of the property shall be limited to the
232 direct public use specified by the host municipality and provides for effective remedies on behalf
233 of the commonwealth as deemed appropriate by the commissioner, which remedies may include,
234 without limitation, that the title or lesser interest conveyed may revert to the commonwealth
235 upon the recording of a notice in the appropriate registry of deeds, in the event of a failure to
236 comply such use restriction.

237 A host municipality that has exercised its right of first refusal or otherwise has a right to
238 close on the property, at its own expense, may enter upon the property and any of its agents or
239 contractors may enter upon the property, to conduct inspections, surveys, or tests customarily
240 performed in real estate transactions for the type and nature of the property specified as surplus
241 as long as the commissioner is notified and consents to the inspection, host municipality shall be
242 responsible to the commonwealth for any damage to the property, and shall hold harmless the

243 commonwealth from all losses arising out of a claim of any nature from a third party, which
244 resulted from conducting any such inspection, survey or test.

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

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

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

273 (i) If the surplus property exceeds 2 acres or is valued at $1,000,000 or more, the
274 commissioner shall, within 45 days after the waiver and after reasonable public notice, conduct a
275 public hearing in each municipality in which the surplus property is located for the purpose of
276 receiving public comment on the potential re-uses and appropriate restrictions upon the use of
277 the property. The commissioner shall, within 30 days after such hearing, prepare a written report
278 of all oral or written testimony received at a public hearing, and shall submit such report to the
279 committee and to the regional planning agency serving the community in which the surplus
280 property is located (ii) If the surplus property is 2 acres or less or valued at $1,000,000 or

281 less but the commissioner, in consultation with the committee, makes a determination within 60
282 days after the waiver that a hearing is necessary, the public hearing shall be conducted in
283 accordance with this section.

284 (iii) Within 60 days after its receipt of the commissioner's report of any public hearing
285 held, and after the completion of any smart growth study undertaken pursuant to subsection (f)
286 above, the committee shall provide a written recommendation to the commissioner on the
287 appropriate disposition for any parcel, and recommend a variety of appropriate uses, restrictions,
288 and future obligations for the disposition of each surplus parcel including, but not limited to, its
289 suitability for housing, , including but not limited to the development of supportive and
290 affordable housing for the physically and cognitively disabled and the mentally ill, economic
291 development or preservation as open space, the parcel's historical significance, a community's
292 master plan, and what restrictions, if any, should be imposed on its use and development;
293 provided, however, that provided, however, that in the case of real property formerly used as a
294 department of mental health state hospital or department of mental retardation in patient care
295 facility, the committee shall place a reuse restriction on land ensuring that at least 15% of any
296 housing units developed on the real property be affordable supported housing for individuals
297 who are clients, or former clients of the respective department; provided further, that such
298 housing shall be made affordable and available to such individuals with incomes of 15% of
299 average median income or below. The committee in making recommendations to the
300 commissioner on the re-uses, restrictions and development of the surplus property shall consider
301 any: (1) , written report from any public hearing pursuant to clause (i) above; (2) testimony,
302 recommendations or comments, from a host municipality including any recommendation or
303 comment from a local re-use committee established by such host municipality to advise on the
304 future reuse of land, buildings or structures; (3) testimony, recommendations or comments from
305 immediate surrounding communities and from any member of the general court representing the
306 host municipality where the surplus property is located; (4) smart growth review conducted
307 under subsection (f) above; (5) comments and recommendations by the commissioner; and (6)
308 established state and local plans and policies. The committee may also consider any other
309 testimony and necessary and relevant information received with respect to the surplus property.
310 If the committee does not recommend appropriate uses for the property within that 60 day
311 period, the commissioner may dispose of the property without a recommendation from the
312 committee in a manner consistent with this section.

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

320 deed, lease or other disposition agreement sets forth all such re-use restrictions, provides for
321 effective remedies on behalf of the commonwealth and provides, in the event of a failure to
322 comply with the re-use restrictions by the grantee, lessee or other recipient, that the title or lesser
323 interest conveyed shall revert to the commonwealth upon the recording of a notice in the
324 appropriate registry of deeds.

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

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

344 (l) For any disposition of surplus real property other than to a host municipality which
345 has exercised its right of first refusal or right of assignment pursuant to subsection (k), the
346 commissioner shall dispose of surplus real property using appropriate competitive processes and
347 procedures, subject to the notification and advertising provisions of section 40H. These
348 competitive processes may include, but are not limited to, auction, sealed bids and requests for
349 price and development proposals. At least 30 days before the date of an auction or the date on
350 which bids, proposals or other offers to purchase or lease surplus real property are due, the
351 commissioner shall place a notice in the central register published by the state secretary under
352 section 20A of chapter 9 stating the availability of such property, the nature of the competitive
353 process and other information deemed relevant, including the time and location of the auction,
354 the submission of bids or proposals and the opening thereof. A host municipality which did not
355 exercise its right of first refusal or right of assignment pursuant to subsection (k) to acquire
356 surplus real property may submit a bid, proposal or other offer to purchase or lease surplus real
357 property in response to such competitive process.

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

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

366 "I certify under penalties of perjury that I have fully complied with section 40F of chapter
367 7 of the General Laws in connection with the property described in this document."

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

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

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

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

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

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

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

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

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

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

423 (v) For bills which authorize the sale, transfer, or other disposition of any state-owned
424 real property filed by persons other than the commissioner of capital asset management and
425 maintenance, the clerk of the house of representatives and the clerk of the senate shall, within 10
426 days of the filing, forward a copy of the bill to the commissioner. Within 90 days of the receipt
427 of the copy, the commissioner shall submit in writing a report to the commissioner of
428 administration, the legislative committee before which the bill is pending, and the joint

429 committee on state administration together with a recommendation for either the approval or the
430 disapproval of the bill and his reasons therefor.

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

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

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

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

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

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

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