

*[[NOTE: This legislation is based on Floor Amendment 1266 that was offered but not adopted in the spring of 2005. Section headings and bold formatting have been provided to enhance readability. They are not part of the original legislation.]]*

## **PETITION -- HOUSE**

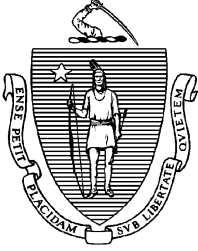
### **CHIEF SPONSORS:**

Representative James B. Eldridge of Acton and Senator Pamela P. Resor of Acton

*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 or resolve.

<b>PETITIONERS: LEGISLATOR/CITIZEN</b>	<b>DISTRICT/FULL MAILING ADDRESS</b>
Rep. James B. Eldridge	37 <sup>th</sup> Middlesex District
Sen. Pamela P. Resor	Middlesex and Worcester
Rep. Cory Atkins	14 <sup>th</sup> Middlesex District



# The Commonwealth of Massachusetts

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IN THE YEAR TWO THOUSAND FIVE

## AN ACT

### REGARDING THE DISPOSITION OF STATE SURPLUS LAND

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

#### [[TERMINOLOGY]]

##### Section 1

(a) For the purposes of this section, the following terms shall have the following meanings:

**"Commissioner"**, the commissioner of the division of capital asset management and maintenance;

**"Real property"**, as defined in section 39A of chapter 7;

**"Surplus real property"**, real property owned by the commonwealth (i) previously determined to be surplus to current and foreseeable state needs pursuant to sections 40F or 40F1/2 of chapter 7, but excluding real property for which there is an established local reuse plan; (ii) determined to be surplus to current and foreseeable state needs pursuant to Chapter 26, Section 548 of the Acts of 2003, or (iii) determined to be surplus to current and foreseeable state needs pursuant to this section;

**"Surplus land coordination committee"**, committee established pursuant to this section to facilitate inter-departmental communication within the executive branch, consisting of one representative appointed by each of the following: the secretary of the executive office for administration and finance, the commissioner of the division of capital asset management and maintenance, the chairman of the commonwealth development

coordinating council, the secretary of the executive office of environmental affairs, the secretary of the executive office of transportation, and the director of the department of housing and community development;

**"Regional planning agency"**, any planning agency established pursuant to chapter 40B;

**"Advisory reuse committee"**, reuse committees established pursuant to this section, composed of the following parties: one representative designated by the commissioner of the division of capital asset management and maintenance who shall serve as chair of the committee; four representatives designated by the mayor of the city where the parcel is located, or the city administrator if the city does not have a mayor, or the chairman of board of selectmen in the case of a town, provided however that if the parcel is located in multiple municipalities, the aforementioned municipal officials shall agree upon and jointly appoint their representatives; one representative designated by the secretary of the executive office of environmental affairs; one representative designated by the chairman of the commonwealth development coordinating council; one representative designated by the secretary of the executive office of economic development; one representative designated by the director of the department of housing and community development; and one representative designated by the executive director of the

regional planning agency where the parcel is located, provided however that if the parcel is located in an area served by multiple regional planning agencies, the executive director of each shall appoint one representative to serve on the committee;

**"Surplus state property disposition board"**, hereinafter "the board", a board established pursuant to this section that shall consist of five representatives appointed as follows: one by the commissioner of the division of capital asset management and maintenance, one by the secretary of the executive office of environmental affairs, one by the executive director of the regional planning agency where the parcel is located, one by the chairman of the commonwealth development coordinating council, and one appointed by the executive director of the Massachusetts Municipal Association. All representatives, with the exception of the representative of the regional planning agency, shall serve for a three year term, which may be renewed upon reappointment. The regional planning agency representative shall rotate so that he is from the region where the parcel under consideration is located, provided however that if the parcel is located in an area served by multiple regional planning agencies, the executive directors of the agencies will agree upon and jointly appoint one representative to serve on the committee. In addition, there shall be one non-voting ex officio representative from the municipality where the parcel is located, designated by the mayor in the case of a city, the town administrator in the case of a city without a mayor, or the chairman of board of selectmen in the case of a town, provided however that if the parcel is located in multiple municipalities, the aforementioned municipal officials shall agree upon and jointly appoint their representative;

**"Net cash proceeds"**, any payments paid to the commonwealth as and when paid, less any transaction-related expenses incurred by the division of capital asset management and maintenance, for which it is not otherwise reimbursed, and less any amounts that may be owed the federal government as a result of disposition.

## **[[SELECTION OF PROPERTIES]]**

(b)(i) The surplus land coordination committee shall meet at least quarterly to evaluate and recommend which properties are not necessary for any current or foreseeable commonwealth needs.

## **[[POLLING OF STATE AGENCIES]]**

(ii) Once the surplus land coordination committee has recommended that a parcel of real property may be declared surplus, the commissioner shall provide written notice and inquiry to all secretaries of the executive offices of the commonwealth and heads of commonwealth agencies and departments to determine if any have a **defined current or foreseeable need** for said parcel. Recipients of notification shall have **thirty days** to respond in writing from the date the notice and inquiry was mailed.

## **[[DETERMINE IF SURPLUS TO STATE USE]]**

(iii) If a written response is timely received specifying a defined current or foreseeable need for the property, and affirmatively displays an **ability to fund** the maintenance and security on the parcel, the **commissioner** shall, in consultation with the surplus land coordination committee, determine whether the real property shall: (1) be made available for current use by a state agency, or (2) be retained on account of a foreseeable use by a state agency. If no executive office, agency or department responds in writing within the specified time period, the commissioner may declare the property surplus. If the agency that responds with a current or foreseeable need for the real property has not demonstrated the ability to fund the maintenance and security of the parcel, the commissioner, in consultation with the surplus land coordination committee, may declare the property surplus.

## **[[TEMPORARY DISPOSITION]]**

(c) When real property is determined to be surplus to current state needs but not to foreseeable state needs, the commissioner shall take such necessary action to ensure that any disposition of the real property is temporary and maintains the commissioner's

ability to make such real property available to a state executive office, agency or department as needed.

### [[NOTIFICATION]]

(d)(i) If after consideration by the surplus land coordination committee, the commissioner determines that the real property is surplus and intends to dispose of the property, he shall provide written notice to the mayor in the case of a city, the city administrator in the case of a city without a mayor, or the chairman of board of selectmen in the case of a town, for any municipality in which the parcel is located; the members of the general court that represent each notified municipality; any regional planning agencies whose jurisdiction include any notified municipality; and all commonwealth authorities or districts whose jurisdiction include any notified municipality. The notice shall include: 1) a brief summary of the surplus real property disposition process, 2) a statement that the notified entity has 60 days to comment, 3) the date, time and place where the public hearing will be held, pursuant to subsection (d)(ii) below, and 4) a statement that the municipality will have a right of first refusal to purchase the property if the decision to sell the property is made.

### [[PUBLIC HEARING]]

(ii) The commissioner shall conduct a public hearing between 30 and 60 days of his having declared the property surplus, to consider potential reuses, municipal capital needs and appropriate restrictions on the use of the parcel. The public hearing shall be held in the city or town where the majority of the parcel is located, or in an adjoining community if no suitable meeting location is available. The testimony of all surplus property public hearings shall be recorded and provided to the surplus state property disposition board and advisory reuse committee, if it is convened. The commissioner shall provide reasonable public notice at least 15 but not more than 30 days in advance of the public hearing, once in the Central Register published by the state secretary pursuant to section 20A of chapter 9, and once in a newspaper of general circulation in the municipality or municipalities where the parcel is located.

### [[SMART GROWTH REVIEW]]

(iii) In the event that a parcel declared surplus is **two acres** or greater in size but less than twenty five acres in size, or the parcel is less than two acres in size and its initial valuation pursuant to subsection (f)(i) is \$1,000,000 or greater, the commissioner will, at the time of notification pursuant to subsection (d)(i) above, ask the **regional planning agency** or agencies serving the area where the parcel is located to conduct a **smart growth review** regarding the local and regional implications of disposing of the parcel for a variety of prospective uses. The regional planning agency shall consider the need for a variety of housing options, jobs, and open space; current and prospective zoning of the site; need for municipal capital facilities and public uses; impacts on traffic and transit; impacts on the environment and natural resources, and on agricultural lands; existence of historically significant structures; availability of infrastructure, including water supply, waste water and storm water run-off; fiscal impacts of development on the municipality where the parcel is located; remediation of contamination; and other smart growth implications.

### [[60 DAYS FOR STUDY]]

(iv) The regional planning agency will have **60 days** from notification by the commissioner to submit the review to the surplus state property disposition board, and to make the review available to all parties that received notification under subsection (d)(i).

### [[REIMBURSEMENT FOR REGIONAL PLANNING AGENCY]]

Reasonable costs incurred by the regional planning agency shall be considered part of sale expenses paid for by the division, and reimbursed from commonwealth real property sale proceeds not to exceed **\$10,000 per parcel reviewed**.

### [[DCAM'S AUTHORITY FOR PARCELS LESS THAN 2 ACRES]]

(e)(i) Notwithstanding the provisions of sections 40E, 40F, 40F1/2, and 40H of chapter 7, or any other general or special law to the contrary, the commissioner may, as specified in this section, sell, **lease for a term not to**

**exceed 99 years**, transfer or otherwise dispose of surplus real property of the commonwealth that is less than **two acres** in size and is worth less than \$1,000,000 as established pursuant to subsection (f)(i). The commissioner may use appropriate competitive processes to dispose of surplus property, including, but not limited to, absolute auction, sealed bids, and requests for price and development proposals. The commissioner may identify and place restrictions and affirmative obligations on the parcel's use and development as he deems necessary to comply with the policies and principles adopted by the commonwealth development coordinating council established in section 8B of chapter 6A of the General Laws, and shall take into consideration comments and reuse suggestions from other agencies and municipalities, and testimony given at the public hearing held pursuant to subsection (d)(ii).

#### **[[BOARD'S AUTHORITY OVER 2 ACRES]]**

(ii) However, for all surplus real property two acres in size or greater, or exceeding a value of \$1,000,000, as determined in subsection (f)(i) below, or if the commissioner has waived his rights regarding the disposition of any other parcel consistent with subsection (e)(iii) below, the **surplus state property disposition board** shall have authority to convene, deliberate, and vote to determine whether to sell, **lease for a term not to exceed 99 years**, transfer or otherwise dispose of said property, and if so, what restrictions and affirmative obligations to place on the parcel's use and development, as well as what method of sale to use to dispose of the property. In the conduct of its business, the board will act in a manner that complies with the policies and principles adopted by the commonwealth development coordinating council established in section 8B of chapter 6A of the General Laws, and shall take into consideration the findings and recommendations of the regional planning agency review or the advisory reuse committee report, as well as comments and reuse suggestions from other agencies and municipalities, and the testimony given at the public hearing held pursuant to subsection (d)(ii).

#### **[[QUORUM FOR BOARD]]**

The board shall meet at least quarterly, and at least three voting board members must be present to constitute a quorum. All decisions shall be made by a majority vote of those present and voting.

#### **[[DCAM WAIVER TO BOARD]]**

(iii) The commissioner may decide to waive his right to dispose of a parcel of surplus real property pursuant to subsection (e)(i), and to transfer this right to the surplus state property disposition board, in response to the filing of a written request by a mayor, city council, or board of selectmen of a municipality in which said parcel is located, in whole or in part. In the event of such a waiver, the board will undertake its responsibilities in accordance with the provisions of subsection (e)(ii).

(iv) No surplus real property shall be disposed of except in accordance with the terms of this section.

#### **[[ASSESSMENT]]**

(f)(i) Prior to providing notice pursuant to subsection (d)(i), the commissioner shall reasonably estimate the value of each parcel of surplus real property. The value shall be calculated by the commissioner for the highest and best use of the property as encumbered. (ii) Once the commissioner or the surplus state property disposition board, in accordance with their authority in subsection (e), determines which restrictions and affirmative obligations, if any, shall be placed on the parcel's use and development, the commissioner shall have the property professionally appraised to reflect the highest and best use of the property as it may be encumbered and subject to said restrictions and obligations. The appraisal shall be the figure by which the municipal right of first refusal is calculated.

#### **[[ADVISORY REUSE COMMITTEE]]**

(g) In the event that a parcel declared surplus is **25 acres** or greater in size, the commissioner shall convene an **advisory reuse committee** and designate a chair thereof. The advisory reuse committee shall conduct a smart growth review based upon the

same factors considered by the regional planning agency pursuant to subsection (d)(iii) above. Reasonable costs incurred by the reuse committee, not to exceed \$100,000 per parcel reuse review, shall be considered part of sale expenses, paid for by the division, and reimbursed from commonwealth real property sale proceeds. The reuse committee shall have the authority to contract with a professional planning entity, including a regional planning agency, to conduct the reuse review.

### **[[ONE YEAR TIME LIMIT]]**

**Within one year** of being convened, the advisory reuse committee shall provide the surplus state property disposition board with a report of its findings. However, if it fails to submit a timely report, the board may dispose of the property in accordance with the provisions of subsection (e)(ii) hereof.

### **[[DEED]]**

(h) The commissioner shall ensure that any deed, lease or other disposition agreement shall set forth all restrictions and affirmative obligations upon the parcel's use and development, as determined in accordance with this section, and shall provide for appropriate remedies on behalf of the commonwealth if violated.

### **[[RIGHT OF FIRST REFUSAL]]**

(i)(i) Upon the commissioner or the board deciding to sell a parcel of surplus real property, the commissioner shall provide to each city or town in which the property is located a written **right of first refusal** to purchase the surplus property at no more than 80 per cent of the value established pursuant to subsection (f)(ii). Such right of first refusal must be exercised, if at all, by the town or city within **180 days** of such notice by giving written notification to the division on a form prescribed by the commissioner. The city or town shall have an additional **60 days** from the date it agrees to purchase the property to close on the transaction. The commissioner shall have authority to accept a flexible payment schedule at his discretion.

(ii) If a town meeting or city council has approved to hold a vote for debt exclusion

pursuant to section 21C of chapter 59 of the General Laws, commonly known as a Proposition 2 \_ debt exclusion, to finance the surplus real property purchase, the date by which the town must exercise its option to purchase will be extended until seven days after the vote.

### **[[PENALTY FOR FAILURE TO CLOSE]]**

(iii) In the event that the city or town agrees to purchase the property, but fails to close on the purchase of such property within the 60 days allowed in subsection (i)(i) above, the sole remedy of the commonwealth against the city or town for such failure is to proceed with the disposition of the surplus property without further right of purchase by the city or town, and the **elimination of any requirement to share proceeds** with the city of town as provided in subsection (o) below. The only circumstance whereupon a city or town may rescind its agreement to purchase the property and still receive a portion of the sale proceeds is if a significant environmental hazard exists on the property and is discovered by way of due diligence within the 60 day closing period.

### **[[ASSIGNMENT OF RIGHT OF FIRST REFUSAL]]**

(iv) The municipality shall have the right to **assign its right of first refusal** to a **nonprofit organization, a community development corporation as defined in chapter 40F, or a conservation land trust**, under such terms and conditions as the mayor of a city, town administrator in the case of a city without a mayor, or board of selectmen in the case of a town deem appropriate. The assignee shall have 180 days from the date the city or town was notified of its right of first refusal to 1) sign a purchase and sale agreement, 2) submit a deposit of five percent of the purchase price, and 3) submit an affidavit signed before a notary public under penalty of perjury that the nonprofit organization will use the land in a manner consistent with the restrictions and affirmative obligations imposed by the commonwealth. The assignee shall have **60 days to close** on the purchase of the property from the date on which the assignee signs the purchase and sale agreement. In the event the assignee fails to close the purchase of such property within such

time, the assignee shall forfeit its deposit, and the commissioner shall proceed with the disposition of the property. The only circumstance whereupon an assignee may rescind its agreement to purchase the property and not forfeit its deposit is if a significant environmental hazard exists on the property and is discovered by way of due diligence within the 60 day closing period. If an assignee rescinds its agreement and another entity closes on the property, the municipality may share in the sales proceeds pursuant to subsection (o)

### **[[CONSERVATION RESTRICTIONS]]**

(v) If the municipality or its assignee acquires any portion of the property for open space purposes, or if any portion of the property is restricted for open space purposes, a conservation restriction pursuant to chapter 184 of the General Laws shall be retained by the commonwealth on such parcels.

### **[[PROCESS FOR SALE]]**

(j)(i) If the city or town has not exercised its right of first refusal, has not duly assigned its interest, or the city, town or its assignee has failed to close in a timely manner if such right was exercised, the commissioner shall dispose of the property utilizing appropriate competitive processes and procedures as determined in accordance with subsection (e).  
(ii) At least 30 days before the date of an auction or the date on which bids or proposals or other offers to purchase or lease surplus real property are due, the commissioner shall place a notice in the central register published by the state secretary pursuant to section 20A of chapter 9 stating the availability of such property, the nature of the competitive process and other information deemed relevant, including the time and location of the auction, or the time and address for the submission of bids or proposals..

(k) The commissioner shall place a notice in the central register identifying the individual or firm selected as party to such real property transaction, along with the amount of such transaction within 120 days of the property sale closing.

(l) No agreement for the sale, lease, transfer or

other disposition of surplus real property and no deed, executed by or on behalf of the commonwealth, shall be valid unless such agreement or deed contains the following certification, signed by the commissioner: "The undersigned certifies under penalties of perjury that I have fully complied with section \_\_\_ of chapter \_\_\_ of the acts of 2005 in connection with the property described herein."

(m) No agreement for the sale, lease, transfer or other disposition of surplus real property shall be valid unless the purchaser or lessee has executed and filed with the commissioner the statement required by section 40J of chapter 7 of the General Laws.

(n) The grantee or lessee of any surplus real property, provided that the grantee or lessee is not a town or city, shall be responsible for all costs including, appraisals pursuant to subsection (f) hereof, official reviews, surveys, plans, recordings and any other expenses relating to the transfer, as shall be deemed necessary by the commissioner.

### **[[PROCEEDS SHARED]]**

(o) A minimum of **10 per cent but not more than 25 per cent** of the net cash proceeds of each transaction shall be paid to the city or town in which the property is located, provided however that such city or town did not exercise or assign its right of first refusal, regardless of whether the transaction thereafter closed. The commissioner shall pay the municipality in excess of the minimum ten per cent in cases where the municipality takes **affirmative actions in furtherance of the commonwealth's objectives** for the parcel, and consistent with smart growth.

### **[[ALLOCATION OF PROCEEDS]]**

(p) Funds for the net cash proceeds of dispositions of surplus property pursuant to this section shall be allocated as follows: (i) the net proceeds of each sale minus funds paid to the municipality shall be deposited into the **Smart Growth Housing Trust Fund** established in section 35AA of chapter 10 of the General Laws, until such time as the trust fund balance is \$25,000,000 and thereafter, (ii) 10 per cent of the net cash proceeds of each transaction shall continue to be placed in

the Smart Growth Housing Trust Fund established in section 35AA of chapter 10 of the General Laws, and (iii) any remaining funds shall be placed in the **General Fund**.

**[[ANNUAL REPORT ON SURPLUS PROPERTY]]**

(q) On or before February 1, 2006, and annually thereafter, the commissioner shall produce and file with the joint committee on state administration and the house and senate committees on ways and means, a **public surplus state property report**. The report shall include a list of all surplus state properties that were sold, where the property is located, price paid for the property, and where the funds were allocated during the past year. The division shall also update the current report of state owned property required pursuant to section 40K of chapter 7 to include a list of state-owned properties that have been declared surplus, and in each case, the current status of disposition. State agencies controlling parcels of land shall also provide the division of capital asset management and maintenance with status information, as requested by the commissioner, of agency-owned land that is surplus to the agency's current or foreseeable needs, and the commissioner shall incorporate such information into his annual report.

**[[REGULATIONS]]**

(r) The commissioner shall promulgate regulations consistent with this section to facilitate the disposition of surplus real property.

**[[SUSPENSION OF AUCTIONS UNTIL REGULATIONS PROMULGATED]]**

Section 2

(a) All scheduled auctions shall be immediately suspended until the commissioner promulgates regulations consistent with Section 1, and any disposition of surplus land hereafter shall proceed under the new laws and regulations, including the ability of communities to purchase the land directly at a discount or to transfer the right of first refusal to a qualified conservation land trust or community development corporation.