

[[NOTE: Version posted on Legislative website dated 6/15/05. Section headings and bold formatting have been provided to enhance readability. They are not part of the original legislation.]]

PETITION -- HOUSE

CHIEF SPONSORS:

Representative JONES of NORTH READING and STANLEY OF WALTHAM

*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.

PETITIONERS: LEGISLATOR/CITIZEN DISTRICT/FULL MAILING ADDRESS

Bradley H. Jones, Jr. 20th Middlesex District
Thomas M. Stanley 9th Middlesex District
Mary S. Rogeness 2nd Hampden District
George N. Peterson, Jr. 9th Worcester District
John A. Lepper 1st Bristol District
Viriato Manuel deMacedo 1st Plymouth District
Paul J. P. Loscocco 8th Middlesex District
Susan Williams Gifford 2nd Plymouth District
Karyn E. Polito 11th Worcester District
Elizabeth Poirier 14th Bristol District
Shirley Gomes 4th Barnstable District
Susan W. Pope 13th Middlesex District
Richard J. Ross 9th Norfolk District

H. 3840

AN ACT RELATIVE TO THE DISPOSITION OF SURPLUS PROPERTY OWNED BY THE COMMONWEALTH.

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, unless the context clearly requires otherwise:

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

"Economic target area", as designated under section 3D of chapter 23A of the general laws.

"Real property", as defined in section 39A of chapter 7 of the general laws, and in such parcels as exist as of the effective date of this act.

"State agency", as defined in said section 39A(v) of said chapter 7.

"Surplus real property", real property of the commonwealth (i) previously determined to be surplus to current and foreseeable state needs pursuant to sections 40F or 40F1/2 of said chapter 7, or (ii) determined to be surplus to current and foreseeable state needs pursuant to this section. The term "surplus real property" shall not include property subject to Article 97 of the amendments to the constitution.

[[SALE AND 99 YEAR LEASES]]

(b) Notwithstanding sections 40E to 40F1/2, inclusive, and 40H of said chapter 7 of the general laws, or any other general or special law to the contrary, the commissioner may sell, **lease for a term not to exceed 99 years**, transfer or otherwise dispose of surplus real property of the commonwealth, as specified in this section.

[[POLLING OF STATE AGENCIES]]

(c) In order to determine if specified real property is surplus to the current and foreseeable needs of the commonwealth, the commissioner shall provide thirty **(30) days written notice and inquiry to the secretaries and to the commissioners** of the various agencies under the respective secretariats of the executive branch of the commonwealth, with a date certain for any response by the secretaries. At the same time, the commissioner shall provide the chief

executive officer of the municipality or municipalities in which the property is located with written notice that the property is under consideration for designation as surplus property. **If no secretary, in consultation with the respective agencies under the secretariat, responds** in writing by the date so specified that an agency has a current or foreseeable need for the real property, the commissioner **may declare the property as surplus** and dispose of it in accordance with this section.

[[DETERMINE IF SURPLUS TO STATE USE]]

Alternatively, if a written response is timely received specifying a current or foreseeable need for the real property, **the commissioner shall**, in consultation with the secretary of administration and finance and with those responding affirmatively, determine whether the real property shall (i) be made available for current use by a state agency, (ii) be retained on account of a foreseeable use by a state agency, or (iii) be declared surplus real property which may be disposed of pursuant to this section.

[[TEMPORARY DISPOSITION]]

(d) 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 agency as needed.

[[NOTIFICATION]]

(e) If the commissioner determines that the real property is surplus, he shall

(i) provide written notice, for each city or town in which the property is located, to the city manager in the case of a city under Plan E form of government, the mayor and city council in the case of all other cities, the chairman of the board of selectmen in the case of a town, the county commissioners, the regional planning agency and the members of the General Court in whose district the property is located,

[[COMMISSIONER'S RESTRICTIONS]]

(ii) declare it available for disposition and shall identify **restrictions, if any, on its use and development necessary to comply with the smart growth policies and principles** established by the commonwealth development coordinating council established in section 8B of chapter 6A of the general laws.

[[SMART GROWTH EVALUATION]]

For surplus properties **greater than 25 contiguous acres**, the commissioner, in consultation with the **commonwealth development coordinating council**, shall undertake a **smart growth evaluation** and file said evaluation with the **joint committee on bonding, capital expenditures and state assets**, and with the officials referenced in (e)(i) and (ii) above, prior to disposition,

[[PUBLIC HEARING]]

(iii) if the property parcels exceeds 2 acres or if the commissioner determines that a hearing should be held for a smaller parcel, the commissioner shall conduct a **public hearing** in conjunction with the appropriate district planning commission established under chapter 40B of the general laws, which in the case of property located within the metropolitan area planning district shall be the metropolitan area planning council. Said hearing shall be held in the locality in which the property is located to consider potential reuses and appropriate restrictions. The commissioner shall provide reasonable public notice in advance of the hearing, (iv) ensure that any deed, lease, or other disposition agreement shall set forth all such reuse restrictions, provide for effective remedies on behalf of the commonwealth and provide, in the event of a failure to comply with the reuse restrictions by the grantee, lessee or other recipient, that title or such lesser interest as may have been conveyed, shall immediately revert to the commonwealth, and

[[COMMISSIONER FILES HIS DISPOSITION PROPOSAL]]

(v) for any surplus property **greater than 25 contiguous acres, the commissioner shall file a report** with the joint committee on bonding, capital expenditures and state assets and with the officials referenced in (e)(i) and (ii) above, which shall include his recommendations as to the proposed disposition of said property.

[[JOINT COMMITTEE EVALUATES PROPOSAL]]

Within 30 days of said filing, said joint committee shall hold a **public hearing** on the commissioner's recommendations. Thereafter, said **joint committee**

shall report its findings to the General Court for its approval, and shall provide a copy of such findings to the commissioner.

[[HOUSE/SENATE CAN VOTE; AMENDMENTS PROHIBITED]]

The House and Senate shall, **within 75 days of the filing of the commissioner's recommendations, either approve or disapprove of them without amendment**; provided, that disapproval of the commissioner's recommendations by either the House or Senate shall terminate the commissioner's ability to dispose of such surplus property under this section according to his proposed recommendations;

[[APPROVAL WITHOUT A VOTE]]

and provided further, that House and Senate **shall be deemed to have approved the commissioner's recommendations under this section should they fail to take final action on them within said 75 day period.**

[[APPRAISAL]]

(f) The commissioner shall establish the value of surplus real property using customarily accepted appraisal methodologies. The value shall be calculated both for (i) the highest and best use of the property as currently zoned and (ii) subject to uses, restrictions and encumbrances defined by the commissioner. Appraisals under this paragraph shall be conducted by a Massachusetts licensed appraiser familiar with the local appraisal market. In no instance in which the commonwealth retains responsibility for maintaining the said property shall the terms provide for payment of less than the annual maintenance costs.

[[RIGHT OF FIRST REFUSAL]]

(g) Prior to disposing of the surplus 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 on the conditions established in subsection (e) and at **85% of the value** established in subsection (f) above. Such right of first refusal must be exercised, if at all, by the town or city within **90 days** of such notice by giving written notification to the commissioner. Upon exercise of such right of first refusal, the city or town shall have an additional **180 days to close the purchase** of such property. The commissioner, in his discretion, may negotiate with a municipality exercising its right of first refusal flexible financing arrangements to facilitate the purchase of property under this section; provided that no such arrangements shall provide for a period of more than 5 years for all payments due under this section to be made. In the event that the city or town fails to close the purchase of such property within such

time, 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** of the sale with the city or town as provided in subsection (n) below.

[[ASSIGNMENT OF RIGHT OF FIRST REFUSAL]]

A municipality shall be able to **assign its right of first refusal** under this subsection to one of a limited number of not-for-profit public benefit corporations, which shall be approved by the commissioner and shall include, without limitation, conservation land trusts and community development corporations, and which shall thereby be entitled to purchase the property for the same price and according to the same terms which would apply to a sale to a municipality under this subsection. A municipality shall not assign its right of first refusal except as provided herein.

[[SALE OF PROPERTY]]

(h) If the city or town has not exercised or assigned its right of first refusal, or if the city, town or assignee has failed to close in a timely manner if such right was exercised, the commissioner shall dispose of surplus real property utilizing appropriate **competitive processes and procedures**. Such competitive processes and procedures may include, but are not limited to auction, sealed bids and requests for price and development proposals. 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 secretary 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, the submission of bids or proposals and the opening thereof. Said notice shall simultaneously be filed with the joint committee on bonding, capital expenditures and state assets.

(i) 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 and shall provide a copy of such notice with said joint committee. If the commissioner accepts an amount below the value calculated under subsection (f), he shall include the justification therefore, specifying the difference between the calculated value and the price received. Said notice shall be filed with the joint committee on bonding, capital expenditures and state assets.

(j) 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."

(k) 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.

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

[[SUNSET IN 2010]]

(m) The authority granted by the commissioner hereunder shall **cease as of June 30, 2010**, however, the commissioner may complete any transaction for which agreements have been signed and delivered on or before that date.

[[PAYMENT TO CITY OR TOWN]]

(n) In the case of any property that is under a purchase and sales agreement as of the effective date of this act or in the case of any property sold under this section, **10% of the net cash proceeds** from the disposition of said property shall be paid to the city or town in which the property is located, except in the case of a property located in an **economic target area**, in which case the amount so paid shall be 20% of the net cash proceeds from the disposition; provided, that this subsection shall not apply to any disposition of property for which the city or town in which the property is located exercised or assigned its right of first refusal, whether or not the transaction thereafter closed; and provided further, that in the case of property located in more than one city or town, payments under this subsection shall be allocated on a pro rata square foot basis between all cities and towns in which the property is located.

[[PAYMENT TO TOWNS INVOLVED IN PREVIOUS SALES]]

(o) Following the deduction of any amounts payable under subsection (n) hereof, any remaining funds from the net cash proceeds of dispositions of surplus property pursuant to this section shall be paid to the cities and towns in which property which was disposed of under section 548 of chapter 26 of the acts of 2003 is located; provided, that such payments shall be made pro rata according to the net cash value of the dispositions made in each such city or town under said section 548; and provided further, that this subsection shall cease to be operative at such time as each such city or town has been paid an amount equal to 10% of

the net cash proceeds generated by such dispositions under said section 548.

(s) **Re-use committees** in existence as of the effective date of this act shall remain in existence. SECTION 2.

This act shall take effect upon its passage.

[[DISTRIBUTION OF REMAINING FUNDS]]

(p) Following the deduction of any amounts payable under subsections (n) and (o) hereof, any remaining funds from the net cash proceeds of dispositions of surplus property pursuant to this section shall be distributed by depositing them: i) in the **Smart Growth Housing Trust Fund** established in Section 35BB of chapter 10 of the general laws, if the balance of said fund is less than \$25,000,000, or ii) if the balance of said fund is \$25,000,000 or more, then 10% of such remaining funds from the net cash proceeds of disposition shall be deposited into the Smart Growth Housing Trust Fund and 90% shall be deposited into a separate fund on the books of the commonwealth to be known as the **Capital Projects and Maintenance Fund** to be expended, without appropriation, by the commissioner upon approval by the secretary of administration and finance. Monies so deposited into the Capital Projects and Maintenance Fund shall be allocated to the respective agency or agencies whose facility or facilities generated the proceeds deposited into the fund and shall be expended exclusively for one-time capital projects, maintenance and repairs to such agency's facilities. The books and records of the Capital Projects and Maintenance Fund shall be subject to a biennial audit by the state auditor. No expenditure from said the Capital Projects and Maintenance Fund shall be permitted if it shall cause said fund to be in deficiency at the close of a fiscal year.

[[NET CASH PROCEEDS]]

(q) For the purposes of subsections (n) through (p), inclusive, "net cash proceeds" shall mean all payments paid to the commonwealth as and when paid, less any transaction-related expenses incurred by the division for which it is not otherwise reimbursed, and less any amounts that may be owing to the federal government as a result of the disposition. The division shall be entitled to reimbursement from the gross proceeds for expenses reasonably incurred in connection with the custody, preparation of the surplus property and reasonable transaction costs relating to the sale.

[[MUNICIPALITIES HAVE NO RIGHT TO PARTICIPATE IN NEGOTIATIONS]]

(r) Nothing in this section shall be construed to grant to any municipality or other third party **the right to participate in the negotiation, execution, or enforcement** of any agreements between the division and a purchaser or lessee of surplus property.

[[EXISTING RE-USE COMMITTEES CONTINUE]]