

[NOTE: Headings and notes in square brackets with red font has been added to assist in understanding the legislation. It is not part of the bill as filed. Similarly, the use of bold font has been added to assist the reader and is not present in the bill as filed.]

HOUSE No. 55

By Mr. Sanchez of Boston, petition of Jeffrey Sánchez and others relative to continuing the expedited disposal of surplus land. State Administration and Regulatory Oversight.

PETITION OF:
Jeffrey Sanchez
Alice K. Wolf
Walter F. Timilty
Cleon H. Turner

In the Year Two Thousand and Seven.

AN ACT FURTHER REGULATING THE DEVELOPMENT OF UNDERUSED STATE OWNED REAL PROPERTY AND THE DISPOSITION OF STATE OWNED SURPLUS REAL PROPERTY.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows: The Commonwealth of Massachusetts Whereas, The deferred operation of this act would tend to defeat its purpose, which is to authorize forthwith the development or preservation of underused state owned real property and the disposition of certain surplus real property, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

[DEFINITIONS OF TERMS]

SECTION 1. Chapter 7 of the General Laws is hereby amended by striking out sections 40F and 40F1/2, as appearing in the 2004 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:

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

“**Division**” the division of capital asset management and maintenance. “Host municipality”, the municipality or municipalities within which state-owned real property conveyed, leased or otherwise transferred pursuant to this chapter is located.

“**Net cash proceeds**”, all payments paid to the commonwealth as and when paid, less any transaction-related expenses and expenses incurred in connection with the custody of the property by the division of capital asset management and maintenance, and the regional

planning agency under subsection (f) for which it is not otherwise reimbursed, including, but not limited to, costs associated with the disposal or pre-development of the property from which the funds originated including, but not limited to, appraisals, surveys, site evaluation, site preparation, plans, recordings, smart growth review and feasibility and other marketing studies and any other expenses relating to the disposal or project management services in connection with any reuse or redevelopment of the surplus real property under this chapter, and less any amounts that may be owing to the federal government as a result of the disposition.

“Property”, real property owned by the commonwealth.

“Secretary”, the secretary of administration and finance.

“Surplus land coordination committee” or **“committee”**, the committee established by subsection (f).

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

(1) previously determined to be surplus to current and foreseeable state needs under sections 40F or 40F1/2, but excluding real property for which there is an established local reuse plan;

(2) determined to be surplus to current and foreseeable state needs under section 548 of chapter 26 of the acts of 2003; or

(3) declared to be surplus under this section. This term shall not include property subject to Article 97 of the Amendments to the Constitution.

[Note: There is no exclusion of larger properties (greater than 25 acres) as there is in S39.]

[GENERAL RESPONSIBILITIES OF DCAM]

(b)(1) The commissioner shall be responsible for the acquisition, control and disposition of real property in the manner and to the extent provided in this chapter. The commissioner may delegate such responsibility to an administrator, who has 10 years of experience in the management of commercial, industrial, institutional or public real property. When responsibility is delegated to an administrator, the written approval of the secretary shall be required before the transaction is finalized. The commissioner shall acquire interest in real property on behalf of the commonwealth for the use of state agencies by gift, purchase, devise, grant, eminent domain, rental, lease, rental-purchase or otherwise.

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

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

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

(5) The commissioner, with the written approval of the secretary, may transfer use of, and responsibility for maintenance of, real property within or **between state agencies**. No transfer within or between state agencies that involves: (i) a substantial change in the purposes for which such property is currently used, or (ii) a change in the purposes for which a building is currently used; or (iii) a change in use of more than 50 per cent of a building's usable floor space, shall be made without the **additional prior approval of the general court**, except any transfer of surplus property to the division for disposal. Subject to subsection (c), such a transfer shall be based on a determination, made by the commissioner with the advice of the executive heads of affected agencies and secretaries of the executive offices in which such agencies are located, that such property or any part thereof, is not needed or not being put to optimum use under current conditions. The commissioner shall notify the house and senate committees on ways and means and the members of the general court representing the city or town in which such property is located not less than 30 days before the final authorization of any transfer that does not require the approval of the general court. The transfer shall only be made when the general court is in session except as provided in this section. A transfer may be made when the general court is not in session, and the 30 day notification requirement may be waived, only if the commissioner certifies in writing that an emergency exists; but any such transfer may be authorized for a period not to exceed 6 months, and the commissioner shall submit his certification to and notify the house and senate ways and means committees of such transfer at the earliest possible opportunity.

(6) Notwithstanding any other general or special law to the contrary, the commissioner, in conjunction with the surplus land coordination committee, 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 whether specified real property is surplus to the current and foreseeable needs of the commonwealth, the commissioner shall provide written notice and inquiry to the executive heads of state agencies and secretaries of the executive offices, who shall have **30 days** to submit a written response stating that the property is

necessary for a specific current or foreseeable need of the agency. If no agency or executive office submits such a response within 30 days of the notice, the commissioner, in consultation with the surplus land coordination committee, may declare the property as surplus and dispose of it under this section. Alternatively, if a written response is timely received specifying a current or foreseeable need for the property or any part thereof, the commissioner shall, in consultation with the secretary, the surplus land coordination committee and with those responding affirmatively and the written approval of the secretary, determine whether the real property or part thereof, shall: (1) be retained and made available on account of a current or foreseeable use by a state agency, or (2) be recommended for disposal as surplus property on a temporary or permanent basis.

[NOTE: The decision to allow a state use of the property is effectively controlled by gubernatorial appointees.]

[PREFERENCE FOR IDENTIFIED STATE USE]

Preference shall be given to ensuring that real property is made available for state needs and not permanently disposed, where a state agency has submitted a timely written response specifying a current or foreseeable need for the property.

[NO PENALTY IMPOSED UPON REQUESTING AGENCY]

An agency shall not be required to purchase or make payment, whether directly or indirectly, by a reduction in a capital or budgetary account or by any other means, to acquire property or part thereof, which is made available for that agency's use. As a condition of the transfer of property to a state agency, the commissioner may require that the agency be financially responsible for any outstanding lease, contractual or debt obligations previously incurred by the commonwealth to acquire or improve the property and for any future maintenance, security and improvement costs for the property.

[NOTE: At one point, the Executive Office of Administration and Finance under Governor Romney specified that any agency that proposed reuse of a property would have to accept a budget cut equal to the assessed value of the property. This was widely interpreted as an effort to deter proposals for state reuse.]

The commissioner shall specify in writing whether to retain or dispose of the property and the reasons therefore and, if the commissioner recommends temporary disposal of the property, the length of the temporary disposal shall be specified. Within 10 days of any determination made by the commissioner to retain property under this subsection, the commissioner shall provide written notice to the parties listed in clause (1) of subsection (h) specifically identifying the property so retained.

(d) When real property is determined to be surplus to current state needs but not to foreseeable state needs, the commissioner shall take all 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.

(e) When notice is required under subsection (c) before declaring specified property surplus, the commissioner shall provide the following written notice to all parties under clause (1) of subsection (h): (1) a statement that the property is currently being considered by the commissioner for disposal on a temporary or permanent basis as surplus; (2) a brief description of the surplus process and the right of first refusal by a municipality to acquire the property should the commonwealth seek to dispose of the property whether on a temporary or permanent basis; (3) a general description of the property under consideration for disposal including as applicable, a description of the land, buildings, appurtenant structures and equipment and the current use and square footage of such property; and (4) a legal description of the property including approximate metes and bounds and other information identifying any existing easements, restrictions or other conditions.

[SURPLUS LAND COORDINATION COMMITTEE]

(f) There shall be a **surplus land coordination committee**. The committee shall consist of 1 representative appointed by each of the following: the commissioner, the secretary of the executive office of environmental affairs, the chairman of the commonwealth development coordinating council, the secretary of the executive office of transportation, the director of the department of housing and community development, the secretary of the executive office of economic development, the executive director of the Massachusetts Association of Regional Planning Agencies, the president of the Massachusetts Association of Community Development Corporations, and the executive director of the Massachusetts Municipal Association. At any committee meeting, a majority of the members of the board entitled to vote must be present to constitute a quorum. The committee shall meet at such times as the committee chairman shall set, but no less than **once every 3 months** to consider the future re-uses of any surplus property. The committee shall provide a **written recommendation** to the commissioner on the appropriate future re-use of surplus property.

[CONFLICT OF INTEREST PROVISION]

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

[NOTE: Gubernatorial appointees sometimes have ties to real estate developers and have to refrain from voting on properties in which they or their business partners have interests.]

[SMART GROWTH REVIEW BY REGIONAL PLANNING AGENCY]

(g) For each specific surplus property greater than 2 acres in size or initially valued by the commissioner at \$1,000,000 or more, or when the committee considers it otherwise necessary, the commissioner shall, as provided in clause (3) of subsection (h), request that the **regional planning agency** serving the community in which the surplus property is located conduct a **smart growth review** regarding the local and regional implications of disposing of the parcel for a variety of prospective uses. If the surplus property is located in more than 1 municipality served by more than 1 regional planning agency, the commissioner shall select 1 regional planning agency to conduct the smart growth review for the entire property. In each smart growth review, 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. Within **75 days** after the request by the commissioner for a smart growth review, the regional planning agency shall complete and submit the review in writing to the commissioner, the members of the surplus land coordination committee, and the house and senate chairs of the joint committee on bonding, capital expenditures and state assets, and make the review available to all parties listed under clause (1) of subsection (h). Reasonable costs incurred by the regional planning agency shall be considered part of the disposition expenses paid for by the division, and reimbursed from the total proceeds of the sale or lease of surplus property received by the commonwealth not to exceed \$6,000 per parcel reviewed. If the smart growth review is **not completed within 75 days** after the commissioner's request for the review, the commissioner may dispose of the surplus property in accordance with this section.

[PUBLIC NOTICES AND HEARINGS]

(h) If the commissioner determines that the property is surplus, the commissioner shall:

(1) within 10 days of such declaration, provide written notice for each city or town in which the property is located to the city manager of a city under Plan E form of government, the mayor and city council of all other cities, the chairman of the board of selectmen of a town, the county commissioners, the regional planning agency and the members of the general court representing the city or town in which the property is located as well as surrounding cities or towns that the property has been declared surplus and provide a specific description of the property as required in clauses (3) and (4) of subsection (e);

(2) if the surplus property exceeds 2 acre or is initially valued by the commissioner at \$1,000,000 or more, or the municipality in which the property is located requests a hearing within 30 days of the surplus declaration, or the commissioner so decides in his discretion, provide reasonable public notice and written notice of the hearing to all parties listed under clause (1) of subsection (h) not less than 10 days before such hearing, and

conduct the **public hearing in each municipality** in which the surplus property is located for the purpose of receiving public comment on the potential re-uses and appropriate restrictions upon the use of the property. All oral testimony received at a public hearing shall be recorded, and the commissioner shall provide to the committee any oral or written testimony received at such hearing;

[COMMISSIONER IDENTIFIES RESTRICTIONS AND CONDITIONS]

(3) declare it available for disposition and identify any **restrictions or conditions** on such property's re-use and development necessary to comply with the recommendation of the surplus land coordination committee and the policies and principles established by the commonwealth development coordinating council and **take into consideration** established state, regional and local plans and policies, and any recommendations or comments from a city or town in which the surplus property is located and from any member of the general court representing the city or town where the property is located; and (4) ensure that any deed, lease or other disposition agreement sets forth all such re-use restrictions, provides for effective remedies on behalf of the commonwealth and provides, in the event of a failure to comply with the re-use restrictions by the grantee, lessee or other recipient, that the title or lesser interest conveyed shall revert to the commonwealth upon the recording of a notice in the appropriate registry of deeds.

[NOTE: SLCC recommendations must be applied but all other input is only taken into consideration.]

[SLCC WRITTEN RECOMMENDATIONS]

(i) Upon declaration of a parcel of property as surplus and available for disposition, and after any required public hearing and smart growth review, the committee shall consider all available information, and shall provide a **written recommendation** to the commissioner on the appropriate disposition, for such parcel, including the smart growth review and information derived from the public hearing when available, and recommend a variety of appropriate uses, restrictions, and future obligations for the disposition of each surplus parcel including, but not limited to, its suitability for housing, economic development or preservation as open space, the parcel's historical significance, a community's master plan, and what restrictions, if any, should be imposed on its use and development. The committee in making recommendations to the commissioner on the re-uses, restrictions and development of the surplus property **shall consider** any: (1) testimony received at a public hearing held under clause (2) of subsection (h); (2) testimony, recommendations or comments, from a city or town in which the property is located including any recommendation or comment from a local re-use committee established by such city or town to advise on the future reuse of land, buildings or structures; (3) testimony, recommendations or comments from immediate surrounding communities and from any member of the general court representing the city or town where the surplus property is located; (4) smart growth review conducted under subsection (g); (5) comments and recommendations by the commissioner; (6) applicable policies and principles established by the commonwealth development coordinating council under section 8B of chapter 6A and (7) established state and local plans and

policies. The committee may also consider any other testimony and necessary and relevant information received with respect to the surplus property.

[SURPLUS SPACE IN A BUILDING

If **space** within a state-owned, building or structure, **but not the land**, has been declared surplus, the commissioner may temporarily dispose of such space by lease or rental without a public hearing, smart growth review or surplus land committee recommendation under clauses (2), (3) and(4) of subsection (h), if: (i) the term of the lease or rental period, including any extension or renewal, does not exceed a cumulative period of 5 years, except where a lease or rental is entered into with a municipality that has exercised a right of first refusal under subsection (k) then such cumulative period may not be greater than 10 years; and (ii) the rental or lease shall not be for more than 10,000 square feet within such building or structure, and (iii), notwithstanding any provision of this section to the contrary, the lease or rental agreement or tenancy cannot be assigned or sublet.

[SLCC RECOMMENDATIONS MUST BE FOLLOWED. BUT ONLY IF THEY ARE ISSUED WITHIN TWO MEETINGS.]

The commissioner shall send to the house and senate chairs of the committee on bonding, capital expenditures and state assets and the house and senate committees on ways and means a detailed **list of all property** being considered for surplus by the surplus land coordination committee and recommendations for disposition of each parcel of property and its potential uses and restrictions; the list and recommendations shall be sent by the commissioner on a quarterly basis and within 14 days after any advisory meeting with the committee. The commissioner shall dispose of all surplus real property in a manner **substantially consistent with the recommendations of the committee**. If the committee does not recommend appropriate uses for the property after (1) the parcel has been declared surplus, (2) the committee has had two subsequent meetings, and (3) 14 days have elapsed after the second meeting, the commissioner may dispose of the property **without a recommendation from the committee** in a manner consistent with this chapter.

[APPRAISALS]

(j) The commissioner shall establish the value of surplus real property using customarily accepted appraisal methodologies, including without limitation, a written appraisal by an independent professional real estate appraiser, licensed by the commonwealth, with 5 or more years of experience in the appraisal of commercial or industrial real estate. The value shall be calculated both: (1) for the highest and best use of the surplus real property as may be encumbered, and (2) subject to uses, restrictions, encumbrances and other conditions and terms for the type of disposition, whether by sale or lease, as defined previously in writing by the commissioner. In no instance in which the commonwealth retains responsibility for maintaining the property shall the terms provide for payment of less than the annual maintenance costs.

[MUNICIPAL RIGHT OF FIRST REFUSAL]

(k) Before disposing of the 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 acquire the surplus real property located within such municipality, on the terms and conditions as offered by the commissioner whether by sale or lease, and on the restrictions established in clause (4) of subsection (h) and at **80 per cent** of the value established in subsection (j); but, if the surplus real property is restricted for use as open space, affordable housing or both, then the municipality shall have the right of first refusal to acquire such property at **75 per cent** of the established value. Section 14 of chapter 40 shall apply to the purchase of surplus real property by a city or town under this section; excepting any applicable restriction based on average assessed valuation. The commissioner may accept flexible payment schedule at his discretion. A host municipality exercising a right of first refusal as provided in this subsection may engage the services of the Massachusetts Development Finance Agency to perform planning, feasibility, marketing, and other studies or to provide project management services in connection with any re-use or redevelopment of the real property. This right of first refusal must be exercised, if at all, by the town or city or its assignee within **120 days** after this notice by giving written notification to the commissioner. Upon exercise of the right of first refusal, the city or town shall have an additional **180 days** to close on the purchase or lease of the property on such terms, conditions and restrictions as previously offered by the commissioner. The commissioner may grant a city or town additional time to close on the purchase or lease of the property. If a city or town has held a vote for debt exclusion under section 21C of chapter 59 to finance the surplus real property purchase, the date by which the host municipality shall exercise its option to purchase shall be extended until 7 days after the vote, but the vote shall take place at the next municipal election after the city or town voted to put the debt exclusion on the ballot.

[PENALTIES IF MUNICIPALITY FAILS TO COMPLETE PURCHASE]

If the city or town fails to close the purchase of the property within the allowed time, the sole remedy of the commonwealth against the host municipality for such failure is to proceed with the disposition of the property without further right of purchase by the host municipality; but, if the failure to close on the purchase of the property was in **bad faith as determined by the commissioner**, the commonwealth **shall not be required to share proceeds** of the sale of the real property with the host municipality as required by subsection (q).

[TRANSFERS SUBSEQUENT TO PURCHASE]

(l) A municipality that exercises the right of first refusal set forth in subsection (k) and purchases the surplus real property shall not transfer the property to a for-profit organization for 5 years unless the transfer is for not less than the current fair market value of the property and the municipality has used an amount equal to 15 per cent of the value of the parcel established in subsection (j) for smart growth purposes.

[ASSIGNMENT OF FIRST REFUSAL TO NOT FOR PROFIT ORGANIZATION]

The municipality may assign its right of first refusal to a **not-forprofit organization**, which shall be a community development corporation as defined in section 1 of chapter 40F, affordable housing non-profit or a non-profit conservation organization. The assignee shall be entitled to acquire the property for the same price and according to the same terms which would apply to a sale to a municipality under this section, having 180 days to close on the purchase or lease of the property on such terms, conditions and restrictions as previously offered by the commissioner. An assignment shall not be valid unless the municipality provides the commissioner with identity of the assignee and date of assignment within 10 days from the date of transfer. No further assignment of the right of first refusal shall be permitted unless the assignee is a not-for-profit community development corporation as defined in section 1 of chapter 40F or affordable housing non-profit or a non-profit conservation organization. A lease or rental agreement that provides for periodic future payments to the commonwealth may require the municipality to be a guarantor or the assignee to provide surety for any such payments and, further, may restrict the assignment, sublease or other transfer of the property interest without the written approval of the commissioner. If the municipality or its assignee acquires any portion of the surplus real property for open space purposes, or if any portion of the property is restricted for open space purposes, a conservation restriction under chapter 184 shall be retained by the commonwealth on that parcel. A city or town that has exercised its right of first refusal or otherwise has a right to close on the property, at its own expense, may enter upon the property and any of its agents or contractors may enter upon the property, to conduct inspections, surveys, or tests customarily performed in real estate transactions for the type and nature of the property specified as surplus as long as the commissioner is notified and consents to the inspection, survey or test, which consent shall not be unreasonably withheld. A city or town shall be responsible to the commonwealth for any damage to the property, and shall hold harmless the commonwealth from all losses arising out of a claim of any nature from a third party, which resulted from conducting any such inspection, survey or test.

[LEGISLATIVE ACTION IF NO MUNICIPAL PURCHASE] [AUTOMATIC APPROVAL IF NO VOTE TAKEN]

(m) If the city or town has failed to exercise or assign its right of first refusal, or the city or town or its assignee has failed to close in a timely manner if such right was exercised or assigned, the commissioner shall file a **report of the recommended disposition** of the surplus property with the joint committee on bonding, capital expenditures and state assets. For parcels larger than **five contiguous acres**, and if the city or town has not successfully exercised or assigned its right of first refusal, the commissioner shall be authorized to proceed with disposition of the property only after the **General Court has accepted and authorized the recommended disposition** of the surplus property as contained in the report to the joint committee on bonding, capital expenditures and state assets through a **vote of both chambers in formal or informal session**, provided that in instances where the General Court has failed to act upon the recommended disposition within **120 days** of the disposition having been recommended to said committee, the

commissioner shall be deemed authorized to proceed with the disposition as recommended. For parcels equal to or less than five contiguous acres, or if the city or town has successfully exercised or assigned its right of first refusal, the commissioner shall be deemed authorized to proceed with the disposition as recommended.

[USE OF AUCTIONS, BIDS, PROPOSALS, ETC.]

The commissioner shall dispose of surplus real property using appropriate **competitive processes and procedures**, subject to the notification and advertising provisions of section 40H, and further, the terms restrictions, conditions and type of disposition for such re-use previously established by the commissioner under clause (4) of subsection (h). These competitive processes may include, but are not limited to, auction, sealed bids and requests for price and development proposals. All auctions, sealed bids or other competitive process shall be with reserve, and the commissioner shall retain the right to withdraw any surplus property offered for sale or lease by such competitive process before accepting any bid, proposal, offer or contract. At least 30 days before the date of an auction or the date on which bids, 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 under 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, the submission of bids or proposals and the opening thereof.

[15% OF SALE PRICE FOR DMR HOUSING]

(n) If there is no plan to develop housing on the real property formerly used as a department of mental health state hospital or department of mental retardation facility for individuals with mental retardation, not less than **15% of the sale price** shall be placed within a dedicated account under control of the department which operated the property to support the development of **affordable community based supported housing** at another location for individuals who are clients, or former clients of the department of mental health or the department of mental retardation.

[MISCELLANEOUS PROCEDURAL REQUIREMENTS]

(o)The commissioner shall place a notice in the central register and notify in writing all parties listed under clause (1) of subsection

(h), identifying the individual or firm selected as party to the real property transaction, along with the amount of the transaction. If the commissioner accepts an amount below the value calculated under subsection (i), he shall include the justification for doing so, specifying the difference between the calculated value and the price received.

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 the agreement or deed contains the following certification, signed by the commissioner: “I

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

(p) 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.

(q) 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 considered necessary by the commissioner.

(r) The division shall distribute funds from the net cash proceeds of the sale or lease of surplus real property on at least a quarterly basis in the following order of priority each year, and the division shall annually report to the house and senate committees on ways and means detailing the total amount and distribution of these funds:—

**[MUNICIPALITY GETS 10% BASIC SHARE,
ADDITIONAL 15% AT DISCRETION OF COMMISSIONER]**

(i) Not more than **10 per cent** of the net cash proceeds from the sale or lease of each such property shall be paid to the host municipality where the real property is located; but if the **commissioner certifies** that the municipality has **expedited permitting**, has adopted an approved **smart growth zoning district** under chapter 40R, or has taken **other affirmative actions to further the commonwealth’s objectives for the parcel** consistent with the commonwealth development coordinating council’s smart growth principles, and the smart growth review when available, then the host municipality shall be eligible for up to a total of 25 per cent of the net cash proceeds from the sale or lease of the particular parcel under a schedule and regulations to be promulgated by the commissioner. A municipality that exercises its right of first refusal shall not receive a percentage of the net cash proceeds. If a city or town fails to close on a surplus real property due solely to a failure to receive an affirmative vote on a debt exclusion ballot question to raise funds to acquire a particular parcel under section 21 C of chapter 59, the city or town shall remain eligible to receive its share of the net cash proceeds.

[DISTRIBUTION TO SMART GROWTH HOUSING TRUST FUND]

(ii) After distribution of net cash proceeds under clause (i), the remaining net cash proceeds shall be deposited in the **Smart Growth Housing Trust Fund**.

50 per cent of the monies deposited in the Smart Growth Housing Trust Fund under clause (ii), but not more than \$2,800,000 in any fiscal year, shall be transferred pursuant to Section 2XXX of Chapter 29 of the General Laws to be administered by the department of housing and community development for regional planning agencies to provide technical assistance to municipalities. The remaining 50 per cent, plus any funds in excess of \$2,800,000, shall be used by the Smart Growth Housing Trust Fund to pay for financial incentives and other payments to communities under chapter 40R.

[ADDITIONAL REGULATIONS]

(s) The commissioner, in consultation with the secretary of the office of commonwealth development, shall adopt **regulations** governing the disposition of surplus property in accordance with this section. The commissioner shall include in these regulations criteria that allow real property to be considered for disposition under this section. These criteria shall include an automatic notice and inquiry to the executive heads of state agencies and secretaries as specified under subsection (c) regarding any parcel that is left unused or abandoned for a specified period of time and shall include any applicable regulations required under section 40L.

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

[This is the law that is made inapplicable by the preceding paragraph:
Chapter 7: Section 43I. Occupation or maintenance of land, buildings, facilities or property by state departments

Section 43I. No department of the commonwealth shall occupy, or make any expenditure for the maintenance of, any land, buildings or other state-owned or state-occupied facilities or other property other than that under its control or jurisdiction. No department of the commonwealth shall authorize or otherwise allow the use by any private agency of such land, buildings or facilities under its control or jurisdiction unless such use or expenditure shall have been approved by the general court after recommendation by the commissioner of administration. Use without such approval shall be deemed to be a violation of this section, and the user shall pay a civil penalty at the rate of ten dollars per square foot annually for the period of such use.]

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

SECTION 3. Section 3A of chapter 143 of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph:—

Unless otherwise provided by the state building code, the **local inspector** shall enforce

the state building code as to any building or structure within the city or town from which he is appointed, including any building or structure owned by any authority established by the general court but not owned in whole or in part by the commonwealth, and the state building code shall be the code for all buildings and structures within the city or town. In the event of a conflict between the code and a statute, ordinance or by-law regulating any historic district, regional historic district or architecturally controlled district, any such statute, ordinance or by-law regulating **exterior architectural features** within that district shall prevail. The inspector shall enforce the state building code as to any building or structure within any city or town that is owned in whole or in part by the commonwealth or any departments, commissions, agencies or authorities of the commonwealth. The inspector shall have all the powers of a local inspector under this chapter and under the state building code as to such buildings or structures that are owned in whole or in part by the commonwealth or any of its departments, agencies, commissions or authorities.

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

SECTION 5. The commissioner of capital asset management and maintenance shall adopt the initial regulations under subsection (r) of section 40F of chapter 7 of the General Laws within **6 months** after the effective date of this act.

SECTION 6. The sum set forth in this section, subject to the conditions specified under this act and previous appropriation acts, is hereby authorized for expenditure, subject to the laws regulating the disbursement of public funds and approval thereof.