

HOUSE No. 30

By Mr. Jones of North Reading, petition of Bradley H. Jones, Jr., and others relative to the disposition of surplus property owned by the Commonwealth. Bonding, Capital Expenditures and State Assets.

The Commonwealth of Massachusetts

PETITION OF:

Bradley H. Jones, Jr. John A. Lepper
Mary S. Rogeness Viriato Manuel deMacedo
George N. Peterson, Jr.

In the Year Two Thousand and Seven.

AN ACT RELATIVE TO THE EXPEDITED DISPOSITION OF SURPLUS REAL 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:

1 SECTION 1. Chapter 10 of the general laws is hereby amended
2 by inserting after section 35CC the following new section:—
3 Section 35DD. There is hereby established on the books of the
4 commonwealth a separate fund to be known as the First Time
5 Homebuyer Closing Cost Assistance Fund. Monies shall be cred-
6 ited to said fund according to section ___ of the acts of 2007 and
7 shall be expended, subject to appropriation, to assist first time
8 homebuyers with the payment of closing costs under section 30 of
9 chapter 23B of the General Laws.

1 SECTION 2. For the purposes of this section, the following
2 terms shall have the following meanings, unless the context
3 clearly requires otherwise:
4 “Commissioner”, the commissioner of the division of capital
5 asset management and maintenance.
6 “Economic target area”, as designated under section 3D of
7 chapter 23A of the General Laws.

8 “Real property”, as defined in section 39A of chapter 7 of the
9 General Laws, and in such parcels as exist as of the effective date
10 of this act.

11 “State agency”, as defined in said section 39A(v) of said
12 chapter 7.

13 “Surplus real property”, real property of the commonwealth
14 (i) previously determined to be surplus to current and foreseeable
15 state needs pursuant to sections 40F or 40F½ of said chapter 7, or
16 (ii) determined to be surplus to current “surplus real property”
17 shall not include property subject to Article 97 of the amendments
18 to the constitution.

1 SECTION 3. Notwithstanding sections 40E to 40F½, inclusive,
2 and 40H of said chapter 7 of the general laws, or any other general
3 or special law to the contrary, the commissioner may sell, lease
4 for a term not to exceed 99 years, transfer or otherwise dispose of
5 surplus real property of the commonwealth, as specified in this
6 act.

1 SECTION 4. In order to determine if specified real property is
2 surplus to the current and foreseeable needs of the common-
3 wealth, the commissioner shall provide thirty (30) days written
4 notice and inquiry to the secretaries and to the commissioners of
5 the various agencies under the respective secretariats of the execu-
6 tive branch of the commonwealth, with a date certain for any
7 response by the secretaries. At the same time, the commissioner
8 shall provide the chief executive officer of the municipality or
9 municipalities in which the property is located with written notice
10 that the property is under consideration for designation as surplus
11 property. If no secretary, in consultation with the respective agen-
12 cies under the secretariat, responds in writing by the date so speci-
13 fied that an agency has a current or foreseeable need for the real
14 property, the commissioner may declare the property as surplus
15 and dispose of it in accordance with this section. Alternatively, if
16 a written response is timely received specifying a current or fore-
17 seeable need for the real property, the commissioner shall, in con-
18 sultation with the secretary of administration and finance and with
19 those responding affirmatively, determine whether the real prop-
20 erty shall (i) be made available for current use by a state agency,

21 (ii) be retained on account of a foreseeable use by a state agency,
22 or (iii) be declared surplus real property which may be disposed of
23 pursuant to this section.

1 SECTION 5. When real property is determined to be surplus to
2 current state needs but not to foreseeable state needs, the commis-
3 sioner shall take such necessary action to ensure that any disposi-
4 tion of the real property is temporary and maintains the
5 commissioner's ability to make such real property available to a
6 state agency as needed.

1 SECTION 6. If the commissioner determines that the real prop-
2 erty is surplus, he shall (i) provide written notice, for each city or
3 town in which the property is located, to the city manager in the
4 case of a city under Plan E form of government, the mayor and
5 city council in the case of all other cities, the chairman of the
6 board of selectmen in the case of a town, the county commis-
7 sioners, the regional planning agency and the members of the
8 General Court in whose district the property is located, (ii) declare
9 it available for disposition and shall identify restrictions, if any,
10 on its use and development necessary to comply with the smart
11 growth policies and principles established by the commonwealth
12 development coordinating council established in section 8B of
13 chapter 6A of the general laws. For surplus properties greater
14 than 25 contiguous acres, the commissioner, in consultation with
15 the commonwealth development coordinating council, shall
16 undertake a smart growth evaluation and file said evaluation with
17 the joint committee on bonding, capital expenditures and state
18 assets, and with the officials referenced in paragraphs (i) and (ii)
19 above, prior to disposition, (iii) if the property parcels exceeds 2
20 acres or if the commissioner determines that a hearing should be
21 held for a smaller parcel, the commissioner shall conduct a public
22 hearing in conjunction with the appropriate district planning com-
23 mission established under chapter 40B of the general laws, which
24 in the case of property located within the metropolitan area plan-
25 ning district shall be the metropolitan area planning council. Said
26 hearing shall be held in the locality in which the property is
27 located to consider potential reuses and appropriate restrictions.
28 The commissioner shall provide reasonable public notice in

29 advance of the hearing, (iv) ensure that any deed, lease, or other
30 disposition agreement shall set forth all such reuse restrictions,
31 provide for effective remedies on behalf of the commonwealth
32 and provide, in the event of a failure to comply with the reuse
33 restrictions by the grantee, lessee or other recipient, that title or
34 such lesser interest as may have been conveyed, shall immediately
35 revert to the commonwealth, and (v) for any surplus property
36 greater than 25 contiguous acres, the commissioner shall file a
37 report with the joint committee on bonding, capital expenditures
38 and state assets and with the officials referenced in (e)(i) and
39 (ii) above, which shall include his recommendations as to the pro-
40 posed disposition of said property. Within 30 days of said filing,
41 said joint committee shall hold a public hearing on the commis-
42 sioner's recommendations. Thereafter, said joint committee shall
43 report its findings to the General Court for its approval, and shall
44 provide a copy of such findings to the commissioner. The House
45 and Senate shall, within 75 days of the filing of the commis-
46 sioner's recommendations, either approve or disapprove of them
47 without amendment; provided, that disapproval of the commis-
48 sioner's recommendations by either the House or Senate shall ter-
49 minate the commissioner's ability to dispose of such surplus
50 property under this section according to his proposed recommen-
51 dations; and provided further, that House and Senate shall be
52 deemed to have approved the commissioner's recommendations
53 under this section should they fail to take final action on them
54 within said 75 day period.

1 SECTION 7. The commissioner shall establish the value of sur-
2 plus real property using customarily accepted appraisal method-
3 ologies. The value shall be calculated both for (i) the highest and
4 best use of the property as currently zoned and (ii) subject to uses,
5 restrictions and encumbrances defined by the commissioner.
6 Appraisals under this paragraph shall be conducted by a Massa-
7 chusetts licensed appraiser familiar with the local appraisal
8 market. In no instance in which the commonwealth retains
9 responsibility for maintaining the said property shall the terms
10 provide for payment of less than the annual maintenance costs.

1 SECTION 8. Prior to disposing of the surplus property, the
2 commissioner shall provide to each city or town in which the
3 property is located a written right of first refusal to purchase the
4 surplus property on the conditions established in subsection (e)
5 and at 85% of the value established in subsection (f) above. Such
6 right of first refusal must be exercised, if at all, by the town or
7 city within 90 days of such notice by giving written notification to
8 the commissioner. Upon exercise of such right of first refusal, the
9 city or town shall have an additional 180 days to close the pur-
10 chase of such property. The commissioner, in his discretion, may
11 negotiate with a municipality exercising its right of first refusal to
12 flexible financing arrangements to facilitate the purchase of prop-
13 erty under this section; provided that no such arrangements shall
14 provide for a period of more than 5 years for all payments due
15 under this section to be made. In the event that the city or town
16 fails to close the purchase of such property within such time, the
17 sole remedy of the commonwealth against the city or town for
18 such failure is to proceed with the disposition of the surplus prop-
19 erty without further right of purchase by the city or town and the
20 elimination of any requirement to share proceeds of the sale with
21 the city or town as provided in subsection (n) below.

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

1 SECTION 9. If the city or town has not exercised or assigned
2 its right of first refusal, or if the city, town or assignee has failed
3 to close in a timely manner if such right was exercised, the com-
4 missioner shall dispose of surplus real property utilizing appro-
5 priate competitive processes and procedures. Such competitive
6 processes and procedures may include, but are not limited to auc-
7 tion, sealed bids and requests for price and development pro-
8 posals. At least 30 days before the date of an auction or the date

9 on which bids or proposals or other offers to purchase or lease
10 surplus real property are due, the commissioner shall place a
11 notice in the central register published by the state secretary pur-
12 suant to secretary 20A of chapter 9 stating the availability of such
13 property, the nature of the competitive process and other informa-
14 tion deemed relevant, including the time and location of the auc-
15 tion, the submission of bids or proposals and the opening thereof.
16 Said notice shall simultaneously be filed with the joint committee
17 on bonding, capital expenditures and state assets.

1 SECTION 10. The commissioner shall place a notice in the
2 central register identifying the individual or firm selected as party
3 to such real property transaction, along with the amount of such
4 transaction and shall provide a copy of such notice with said joint
5 committee. If the commissioner accepts an amount below the
6 value calculated under subsection (f), he shall include the justifi-
7 cation therefore, specifying the difference between the calculated
8 value and the price received. Said notice shall be filed with the
9 joint committee on bonding, capital expenditures and state assets.

1 SECTION 11. No agreement for the sale, lease, transfer or
2 other disposition of surplus real property and no deed, executed
3 by or on behalf of the commonwealth, shall be valid unless such
4 agreement or deed contains the following certification, signed by
5 the commissioner: "The undersigned certifies under penalties of
6 perjury that I have fully complied with section ___ of chapter ___
7 of the acts of 2005 in connection with the property described
8 herein."

1 SECTION 12. No agreement for the sale, lease transfer or other
2 disposition of surplus real property shall be valid unless the pur-
3 chaser or lessee has executed and filed with the commissioner the
4 statement required by section 40J of chapter 7 of the general laws.

1 SECTION 13. The grantee or lessee of any surplus real prop-
2 erty shall be responsible for all costs including, but not limited to,
3 appraisals, surveys, plans, recordings and any other expenses
4 relating to the transfer, as shall be deemed necessary by the com-
5 missioner.

1 SECTION 14. The authority granted by the commissioner here-
2 under shall cease as of June 30, 2010, however, the commissioner
3 may complete any transaction for which agreements have been
4 signed and delivered on or before that date.

1 SECTION 15. In the case of any property that is under a pur-
2 chase and sales agreement as of the effective date of this act or in
3 the case of any property sold under this section, 10% of the net
4 cash proceeds from the disposition of said property shall be paid
5 to the city or town in which the property is located, except in the
6 case of a property located in an economic target area, in which
7 case the amount so paid shall be 20% of the net cash proceeds
8 from the disposition; provided, that this subsection shall not apply
9 to any disposition of property for which the city or town in which
10 the property is located exercised or assigned its right of first
11 refusal, whether or not the transaction thereafter closed; and pro-
12 vided further, that in the case of property located in more than one
13 city or town, payments under this subsection shall be allocated on
14 a pro rata square foot basis between all cities and towns in which
15 the property is located.

1 SECTION 16. Following the deduction of any amounts payable
2 under section 14 hereof, any remaining funds from the net cash
3 proceeds of dispositions of surplus property pursuant to this
4 section shall be distributed by depositing them: 1) in the First
5 Time Homebuyer Closing Cost Assistance Fund established in
6 section 35DD of chapter 10 of the General Laws, if the balance of
7 said fund is less than \$15,000,000, or 2) if the balance of said
8 fund is more than \$15,000,000, then 50 percent of such remaining
9 funds from the net cash proceeds of disposition shall be deposited
10 into the Smart Growth Housing Trust Fund established in Section
11 35BB of chapter 10 of the general laws and 50 per cent shall be
12 deposited into a separate fund on the books of the commonwealth
13 to be known as the Capital Projects and Maintenance Fund to be
14 expended, without appropriation, by the commissioner upon
15 approval by the secretary of administration and finance. Monies
16 so deposited into the Capital Projects and Maintenance Fund shall
17 be allocated to the respective agency or agencies whose facility or
18 facilities generated the proceeds deposited into the fund and shall

19 be expended exclusively for one-time capital projects, mainte-
20 nance and repairs to such agency's facilities. The books and
21 records of the Capital Projects and Maintenance Fund shall be
22 subject to a biennial audit by the state auditor. No expenditure
23 from said the Capital Projects and Maintenance Fund shall be per-
24 mitted if it shall cause said fund to be in deficiency at the close of
25 a fiscal year.

1 SECTION 17. For the purposes of sections 14 and 15, inclu-
2 sive, "net cash proceeds" shall mean all payments paid to the
3 commonwealth as and when paid, less any transaction-related
4 expenses incurred by the division for which it is not otherwise
5 reimbursed, and less any amounts that may be owing to the fed-
6 eral government as a result of the disposition. The division shall
7 be entitled to reimbursement from the gross proceeds for expenses
8 reasonably incurred in connection with the custody, preparation of
9 the surplus property and reasonable transaction costs relating to
10 the sale.

1 SECTION 18. Nothing in this section shall be construed to
2 grant to any municipality or other third party the right to partici-
3 pate in the negotiation, execution, or enforcement of any agree-
4 ments between the division and a purchaser or lessee of surplus
5 property.

1 SECTION 19. Re-use committees in existence as of the effec-
2 tive date of this act shall remain in existence.