

SENATE NO. 57

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

Whereas, The deferred operation of this act would tend to defeat its purpose, which is 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.

*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 7 of the General Laws is hereby amended by striking out sections 40F and
2 40F1/2, as appearing in the 2004 Official Edition, and inserting in place thereof the following
3 section:-

4 Section 40F. (a) For the purposes of this section, in addition to terms defined in section
5 39A, the following terms shall have the following meanings, unless the context clearly requires
6 otherwise:

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

8 "Division" the division of capital asset management and maintenance

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

11 "Net cash proceeds", all payments paid to the commonwealth as and when paid, less any
12 transaction-related expenses and expenses incurred in connection with the custody of the
13 property by the division of capital asset management and maintenance, and the regional
14 planning agency under subsection (f) for which it is not otherwise reimbursed, including, but
15 not limited to, costs associated with the disposal or pre-development of the property from which
16 the funds originated including, but not limited to, appraisals, surveys, site evaluation, site
17 preparation, plans, recordings, smart growth review and feasibility and other marketing studies
18 and any other expenses relating to the disposal or project management services in connection
19 with any reuse or redevelopment of the surplus real property under this chapter, and less any
20 amounts that may be owing to the federal government as a result of the disposition.

21 "Property", real property owned by the commonwealth.

22 "Secretary", the secretary of administration and finance.

23 "Surplus land coordination committee" or "committee", the committee established
24 by subsection (f).

25 "Surplus real property", real property of the commonwealth:

26 (1) previously determined to be surplus to current and foreseeable state needs under
27 sections 40F or 40F½, but excluding real property for which there is an established local reuse
28 plan;

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

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

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

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

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

49 (4) The commissioner shall assist in the preparation and shall approve of plans for
50 the organization of all space within and around buildings and appurtenant structures used by
51 state agencies, and shall assign the use of space within and around the state house, subject to

52 rules that the committee on rules of the two branches acting concurrently may adopt, in
53 accordance with sections 10, 16A and 17 of chapter 8; the John W. McCormack State Office
54 Building; 100 Cambridge Street formerly known as the Leverett Saltonstall State Office
55 Building; the Springfield Office Building; the Pittsfield Office Building; the Erich Lindemann
56 Building; the Charles F. Hurley Building; any real property acquired for the use of state
57 agencies, the greater part of which is not needed by any 1 state agency; and any other real
58 property assigned by law to the division of capital asset management and maintenance.

59 (5) The commissioner, with the written approval of the secretary, may transfer use
60 of, and responsibility for maintenance of, real property within or between state agencies. No
61 transfer within or between state agencies that involves: (i) a substantial change in the purposes
62 for which such property is currently used, or (ii) a change in the purposes for which a building is
63 currently used; or (iii) a change in use of more than 50 per cent of a building's usable floor
64 space, shall be made without the additional prior approval of the general court, except any
65 transfer of surplus property to the division for disposal. Subject to subsection (c), such a
66 transfer shall be based on a determination, made by the commissioner with the advice of the
67 executive heads of affected agencies and secretaries of the executive offices in which such
68 agencies are located, that such property or any part thereof, is not needed or not being put to
69 optimum use under current conditions. The commissioner shall notify the house and senate
70 committees on ways and means and the members of the general court representing the city or
71 town in which such property is located not less than 30 days before the final authorization of
72 any transfer that does not require the approval of the general court. The transfer shall only be
73 made when the general court is in session except as provided in this section. A transfer may be
74 made when the general court is not in session, and the 30 day notification requirement may be

75 waived, only if the commissioner certifies in writing that an emergency exists; but any such
76 transfer may be authorized for a period not to exceed 6 months, and the commissioner shall
77 submit his certification to and notify the house and senate ways and means committees of such
78 transfer at the earliest possible opportunity.

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

83 (c) In order to determine whether specified real property is surplus to the current and
84 foreseeable needs of the commonwealth, the commissioner shall provide written notice and
85 inquiry to the executive heads of state agencies and secretaries of the executive offices, who
86 shall have 30 days to submit a written response stating that the property is necessary for a
87 specific current or foreseeable need of the agency. If no agency or executive office submits
88 such a response within 30 days of the notice, the commissioner, in consultation with the surplus
89 land coordination committee, may declare the property as surplus and dispose of it under this
90 section. Alternatively, if a written response is timely received specifying a current or
91 foreseeable need for the property or any part thereof, the commissioner shall, in consultation
92 with the secretary, the surplus land coordination committee and with those responding
93 affirmatively and the written approval of the secretary, determine whether the real property or
94 part thereof, shall: (1) be retained and made available on account of a current or foreseeable use
95 by a state agency, or (2) be recommended for disposal as surplus property on a temporary or
96 permanent basis.

97 Preference shall be given to ensuring that real property is made available for state needs
98 and not permanently disposed, where a state agency has submitted a timely written response
99 specifying a current or foreseeable need for the property. An agency shall not be required to
100 purchase or make payment, whether directly or indirectly, by a reduction in a capital or
101 budgetary account or by any other means, to acquire property or part thereof, which is made
102 available for that agency's use. As a condition of the transfer of property to a state agency, the
103 commissioner may require that the agency be financially responsible for any outstanding lease,
104 contractual or debt obligations previously incurred by the commonwealth to acquire or improve
105 the property and for any future maintenance, security and improvement costs for the property.

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

112 (d) When real property is determined to be surplus to current state needs but not to
113 foreseeable state needs, the commissioner shall take all necessary action to ensure that any
114 disposition of the real property is temporary and maintains the commissioner's ability to make
115 such real property available to a state agency as needed.

116 (e) When notice is required under subsection (c) before declaring specified property
117 surplus, the commissioner shall provide the following written notice to all parties under clause
118 (1) of subsection (h): (1) a statement that the property is currently being considered by the

119 commissioner for disposal on a temporary or permanent basis as surplus; (2) a brief description
120 of the surplus process and the right of first refusal by a municipality to acquire the property
121 should the commonwealth seek to dispose of the property whether on a temporary or permanent
122 basis; (3) a general description of the property under consideration for disposal including as
123 applicable, a description of the land, buildings, appurtenant structures and equipment and the
124 current use and square footage of such property; and (4) a legal description of the property
125 including approximate metes and bounds and other information identifying any existing
126 easements, restrictions or other conditions.

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

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

147 (g) For each specific surplus property greater than 2 acres in size or initially valued by
148 the commissioner at \$1,000,000 or more, or when the committee considers it otherwise
149 necessary, the commissioner shall, as provided in clause (3) of subsection (h), request that the
150 regional planning agency serving the community in which the surplus property is located
151 conduct a smart growth review regarding the local and regional implications of disposing of the
152 parcel for a variety of prospective uses. If the surplus property is located in more than 1
153 municipality served by more than 1 regional planning agency, the commissioner shall select 1
154 regional planning agency to conduct the smart growth review for the entire property. In each
155 smart growth review, the regional planning agency shall consider the need for a variety of
156 housing options, jobs, and open space; current and prospective zoning of the site; need for
157 municipal capital facilities and public uses; impacts on traffic and transit; impacts on the
158 environment and natural resources, and on agricultural lands; existence of historically
159 significant structures; availability of infrastructure, including water supply, waste water and
160 storm water run-off; fiscal impacts of development on the municipality where the parcel is
161 located; remediation of contamination; and other smart growth implications. Within 75 days
162 after the request by the commissioner for a smart growth review, the regional planning agency

163 shall complete and submit the review in writing to the commissioner, the members of the
164 surplus land coordination committee, and the house and senate chairs of the joint committee on
165 bonding, capital expenditures and state assets, and make the review available to all parties listed
166 under clause (1) of subsection (h). Reasonable costs incurred by the regional planning agency
167 shall be considered part of the disposition expenses paid for by the division, and reimbursed
168 from the total proceeds of the sale or lease of surplus property received by the commonwealth
169 not to exceed \$6,000 per parcel reviewed. If the smart growth review is not completed within 75
170 days after the commissioner's request for the review, the commissioner may dispose of the
171 surplus property in accordance with this section.

172 (h) If the commissioner determines that the property is surplus, the commissioner
173 shall: (1) within 10 days of such declaration, provide written notice for each city or town in
174 which the property is located to the city manager of a city under Plan E form of government, the
175 mayor and city council of all other cities, the chairman of the board of selectmen of a town, the
176 county commissioners, the regional planning agency and the members of the general court
177 representing the city or town in which the property is located as well as surrounding cities or
178 towns that the property has been declared surplus and provide a specific description of the
179 property as required in clauses (3) and (4) of subsection (e); (2) if the surplus property exceeds 2
180 acre or is initially valued by the commissioner at \$1,000,000 or more, or the municipality in
181 which the property is located requests a hearing within 30 days of the surplus declaration, or the
182 commissioner so decides in his discretion, provide reasonable public notice and written notice
183 of the hearing to all parties listed under clause (1) of subsection (h) not less than 10 days before
184 such hearing, and conduct the public hearing in each municipality in which the surplus property
185 is located for the purpose of receiving public comment on the potential re-uses and appropriate

186 restrictions upon the use of the property. All oral testimony received at a public hearing shall
187 be recorded, and the commissioner shall provide to the committee any oral or written testimony
188 received at such hearing; (3) declare it available for disposition and identify any restrictions or
189 conditions on such property's re-use and development necessary to comply with the
190 recommendation of the surplus land coordination committee and the policies and principles
191 established by the commonwealth development coordinating council and take into consideration
192 established state, regional and local plans and policies, and any recommendations or comments
193 from a city or town in which the surplus property is located and from any member of the general
194 court representing the city or town where the property is located; and (4) ensure that any deed,
195 lease or other disposition agreement sets forth all such re-use restrictions, provides for effective
196 remedies on behalf of the commonwealth and provides, in the event of a failure to comply with
197 the re-use restrictions by the grantee, lessee or other recipient, that the title or lesser interest
198 conveyed shall revert to the commonwealth upon the recording of a notice in the appropriate
199 registry of deeds.

200 (i) Upon declaration of a parcel of property as surplus and available for disposition,
201 and after any required public hearing and smart growth review, the committee shall consider all
202 available information, and shall provide a written recommendation to the commissioner on the
203 appropriate disposition, for such parcel, including the smart growth review and information
204 derived from the public hearing when available, and recommend a variety of appropriate uses,
205 restrictions, and future obligations for the disposition of each surplus parcel including, but not
206 limited to, its suitability for housing, economic development or preservation as open space, the
207 parcel's historical significance, a community's master plan, and what restrictions, if any, should
208 be imposed on its use and development. The committee in making recommendations to the

209 commissioner on the re-uses, restrictions and development of the surplus property shall
210 consider any: (1) testimony received at a public hearing held under clause (2) of subsection (h);
211 (2) testimony, recommendations or comments, from a city or town in which the property is
212 located including any recommendation or comment from a local re-use committee established
213 by such city or town to advise on the future reuse of land, buildings or structures; (3) testimony,
214 recommendations or comments from immediate surrounding communities and from any
215 member of the general court representing the city or town where the surplus property is located;
216 (4) smart growth review conducted under subsection (g); (5) comments and recommendations
217 by the commissioner; (6) applicable policies and principles established by the commonwealth
218 development coordinating council under section 8B of chapter 6A and (7) established state and
219 local plans and policies. The committee may also consider any other testimony and necessary
220 and relevant information received with respect to the surplus property.

221 If space within a state-owned, building or structure, but not the land, has been declared
222 surplus, the commissioner may temporarily dispose of such space by lease or rental without a
223 public hearing, smart growth review or surplus land committee recommendation under clauses
224 (2), (3) and(4) of subsection (h), if: (i) the term of the lease or rental period, including any
225 extension or renewal, does not exceed a cumulative period of 5 years, except where a lease or
226 rental is entered into with a municipality that has exercised a right of first refusal under
227 subsection (k) then such cumulative period may not be greater than 10 years; and (ii) the rental
228 or lease shall not be for more than 10,000 square feet within such building or structure, and (iii),
229 notwithstanding any provision of this section to the contrary, the lease or rental agreement or
230 tenancy cannot be assigned or sublet.

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

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

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

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

281 (l) A municipality that exercises the right of first refusal set forth in subsection (k) and
282 purchases the surplus real property shall not transfer the property to a for-profit organization for
283 5 years unless the transfer is for not less than the current fair market value of the property and
284 the municipality has used an amount equal to 15 per cent of the value of the parcel established
285 in subsection (j) for smart growth purposes.

286 The municipality may assign its right of first refusal to a not-for-profit organization,
287 which shall be a community development corporation as defined in section 1 of chapter 40F,
288 affordable housing non-profit or a non-profit conservation organization. The assignee shall be
289 entitled to acquire the property for the same price and according to the same terms which would
290 apply to a sale to a municipality under this section, having 180 days to close on the purchase or
291 lease of the property on such terms, conditions and restrictions as previously offered by the
292 commissioner. An assignment shall not be valid unless the municipality provides the
293 commissioner with identity of the assignee and date of assignment within 10 days from the date
294 of transfer. No further assignment of the right of first refusal shall be permitted unless the
295 assignee is a not-for-profit community development corporation as defined in section 1 of
296 chapter 40F or affordable housing non-profit or a non-profit conservation organization. A lease

297 or rental agreement that provides for periodic future payments to the commonwealth may
298 require the municipality to be a guarantor or the assignee to provide surety for any such
299 payments and, further, may restrict the assignment, sublease or other transfer of the property
300 interest without the written approval of the commissioner. If the municipality or its assignee
301 acquires any portion of the surplus real property for open space purposes, or if any portion of
302 the property is restricted for open space purposes, a conservation restriction under chapter 184
303 shall be retained by the commonwealth on that parcel. A city or town that has exercised its right
304 of first refusal or otherwise has a right to close on the property, at its own expense, may enter
305 upon the property and any of its agents or contractors may enter upon the property, to conduct
306 inspections, surveys, or tests customarily performed in real estate transactions for the type and
307 nature of the property specified as surplus as long as the commissioner is notified and consents
308 to the inspection, survey or test, which consent shall not be unreasonably withheld. A city or
309 town shall be responsible to the commonwealth for any damage to the property, and shall hold
310 harmless the commonwealth from all losses arising out of a claim of any nature from a third
311 party, which resulted from conducting any such inspection, survey or test.

312 (m) If the city or town has failed to exercise or assign its right of first refusal, or the city
313 or town or its assignee has failed to close in a timely manner if such right was exercised or
314 assigned, the commissioner shall file a report of the recommended disposition of the surplus
315 property with the joint committee on bonding, capital expenditures and state assets. For parcels
316 larger than five contiguous acres, and if the city or town has not successfully exercised or
317 assigned its right of first refusal, the commissioner shall be authorized to proceed with
318 disposition of the property only after the General Court has accepted and authorized the
319 recommended disposition of the surplus property as contained in the report to the joint

320 committee on bonding, capital expenditures and state assets through a vote of both chambers in
321 formal or informal session, provided that in instances where the General Court has failed to act
322 upon the recommended disposition within 120 days of the disposition having been
323 recommended to said committee, the commissioner shall be deemed authorized to proceed with
324 the disposition as recommended. For parcels equal to or less than five contiguous acres, or if
325 the city or town has successfully exercised or assigned its right of first refusal, the
326 commissioner shall be deemed authorized to proceed with the disposition as recommended.

327 The commissioner shall dispose of surplus real property using appropriate competitive
328 processes and procedures, subject to the notification and advertising provisions of section 40H,
329 and further, the terms restrictions, conditions and type of disposition for such re-use previously
330 established by the commissioner under clause (4) of subsection (h). These competitive processes
331 may include, but are not limited to, auction, sealed bids and requests for price and development
332 proposals. All auctions, sealed bids or other competitive process shall be with reserve, and the
333 commissioner shall retain the right to withdraw any surplus property offered for sale or lease by
334 such competitive process before accepting any bid, proposal, offer or contract. At least 30 days
335 before the date of an auction or the date on which bids, proposals or other offers to purchase or
336 lease surplus real property are due, the commissioner shall place a notice in the central register
337 published by the state secretary under section 20A of chapter 9 stating the availability of such
338 property, the nature of the competitive process and other information deemed relevant,
339 including the time and location of the auction, the submission of bids or proposals and the
340 opening thereof.

341 (n) If there is no plan to develop housing on the real property formerly used as a
342 department of mental health state hospital or department of mental retardation facility for

343 individuals with mental retardation, not less than 15% of the sale price shall be placed within a
344 dedicated account under control of the department which operated the property to support the
345 development of affordable community-based supported housing at another location for
346 individuals who are clients, or former clients of the department of mental health or the
347 department of mental retardation.

348 (o)The commissioner shall place a notice in the central register and notify in writing all
349 parties listed under clause (1) of subsection (h), identifying the individual or firm selected as
350 party to the real property transaction, along with the amount of the transaction. If the
351 commissioner accepts an amount below the value calculated under subsection (i), he shall
352 include the justification for doing so, specifying the difference between the calculated value and
353 the price received.

354 No agreement for the sale, lease, transfer or other disposition of surplus real property,
355 and no deed executed by or on behalf of the commonwealth, shall be valid unless the agreement
356 or deed contains the following certification, signed by the commissioner:

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

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

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

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

369 (i) Not more than 10 per cent of the net cash proceeds from the sale or lease of each
370 such property shall be paid to the host municipality where the real property is located; but if the
371 commissioner certifies that the municipality has expedited permitting, has adopted an approved
372 smart growth zoning district under chapter 40R, or has taken other affirmative actions to further
373 the commonwealth's objectives for the parcel consistent with the commonwealth development
374 coordinating council's smart growth principles, and the smart growth review when available,
375 then the host municipality shall be eligible for up to a total of 25 per cent of the net cash
376 proceeds from the sale or lease of the particular parcel under a schedule and regulations to be
377 promulgated by the commissioner. A municipality that exercises its right of first refusal shall
378 not receive a percentage of the net cash proceeds.

379 If a city or town fails to close on a surplus real property due solely to a failure to receive an
380 affirmative vote on a debt exclusion ballot question to raise funds to acquire a particular parcel
381 under section 21 C of chapter 59, the city or town shall remain eligible to receive its share of the
382 net cash proceeds.

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

385 50 per cent of the monies deposited in the Smart Growth Housing Trust Fund under
386 clause (ii), but not more than \$2,800,000 in any fiscal year, shall be transferred pursuant to
387 Section 2XXX of Chapter 29 of the General Laws to be administered by the department of
388 housing and community development for regional planning agencies to provide technical
389 assistance to municipalities. The remaining 50 per cent, plus any funds in excess of \$2,800,000,
390 shall be used by the Smart Growth Housing Trust Fund to pay for financial incentives and other
391 payments to communities under chapter 40R.

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

400 (t) Section 43I shall not apply to surplus real property disposed by the commissioner
401 under this section. Notwithstanding any provision of this section to the contrary, the
402 commissioner, in an emergency situation which poses a threat to the public safety or health and
403 upon request by a municipality, may permit, license, rent or otherwise allow occupancy to such
404 municipality of any surplus real property, not disposed, on a temporary and at-will basis and on

405 such other appropriate and consistent terms as established by the commissioner; but this
406 occupancy shall not exceed a period of 6 months, and the commissioner, within 10 days of any
407 permitted municipal use, shall certify in writing that an emergency exists and submits the
408 certification to the governor and the house and senate chairmen of the ways and means
409 committees.

410 SECTION 2. Section 35AA of chapter 10 of the General Laws, as so appearing, is
411 hereby amended by inserting after the word “section”, in line 11, the following words:-

412 and in subsection (p) of section 40F of chapter 7.

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

416 Unless otherwise provided by the state building code, the local inspector shall enforce
417 the state building code as to any building or structure within the city or town from which he is
418 appointed, including any building or structure owned by any authority established by the
419 general court but not owned in whole or in part by the commonwealth, and the state building
420 code shall be the code for all buildings and structures within the city or town. In the event of a
421 conflict between the code and a statute, ordinance or by-law regulating any historic district,
422 regional historic district or architecturally controlled district, any such statute, ordinance or by-
423 law regulating exterior architectural features within that district shall prevail. The inspector shall
424 enforce the state building code as to any building or structure within any city or town that is
425 owned in whole or in part by the commonwealth or any departments, commissions, agencies or

426 authorities of the commonwealth. The inspector shall have all the powers of a local inspector
427 under this chapter and under the state building code as to such buildings or structures that are
428 owned in whole or in part by the commonwealth or any of its departments, agencies,
429 commissions or authorities.

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

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

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