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INSPECTOR GENERAL

The Commonwealth of Massachusetts

Office of the Inspector General

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September 15, 2015

The Honorable Joan B. Lovely, Senate Chair
Joint Committee on State Administration and Regulatory Oversight
State House, Room 413A
Boston, MA 02133

The Honorable Peter V. Kocot, House Chair
Joint Committee on State Administration and Regulatory Oversight
State House, Room 22
Boston, MA 02133

Dear Chairwoman Lovely and Chairman Kocot:

As you know, the Office of the Inspector General has an interest in the property disposition bills that come before your committee. I therefore am writing to outline the Office's position on dispositions of publicly-owned real property.

This Office regularly reviews special legislation seeking to exempt dispositions of public property from competition as required by the state's real property law, M.G.L. c. 7C, §§ 32-40 ("Chapter 7C"). Under the law, the state may sell or lease property only after the Division of Capital Asset Management and Maintenance ("DCAMM") has determined that the property is surplus to the current and foreseeable needs of state agencies and to the needs of other public agencies for direct public uses. DCAMM is required to dispose of surplus state property through an advertised, competitive process; to provide written notification of the transaction to the affected city, town, county, or regional planning agency, as well as to members of the General Court prior to the sale or lease; and to publish a disclosure if the disposition price is lower than the appraised value of the property.

In general, this Office strongly supports the principle that dispositions of publicly-owned property should be handled through a transparent and competitive process, which guarantees accountability and protects the taxpayers' interest in an open and fair deal. This Office recognizes, however, that under some circumstances, the state may view a competitive disposition as impracticable and may deem it preferable to exempt the transaction from provisions of Chapter 7C. If this is the case, and the sale is to a private party, this Office

recommends including the following elements in the exempting legislation:

- Identification of the property to be conveyed or leased, including the precise location and total acreage;
- A statement of the purpose of the disposition and all use restrictions, if any;
- A requirement that DCAMM obtain an independent appraisal establishing the property's fair market value;
- A requirement that the private party pay the Commonwealth no less than the fair market value of the property, as determined by an independent appraisal;
- A provision that the private party acquiring the property pay all direct transaction costs, including appraisal fees, survey costs, recording fees and, if the legislation requires this Office to review or approve the appraisal, any costs associated with this Office's review; and
- A requirement that the disposition be subject to M.G.L. c. 7C, § 37 (notice to local governmental bodies) and § 38 (beneficial interest disclosures).

Also, in certain instances where the use of property is restricted, we recommend that a reverter clause be included as an additional safeguard.

In the case of legislation authorizing the state to convey surplus property to another governmental entity, sometimes for less than fair market value, the Office recommends that the legislation direct DCAMM to determine the value of the property for both the highest and best use of the property and for the purposes described in the legislation. If DCAMM disposes of the property for less than the determined value, DCAMM should then publish in the *Central Register* a notice of the conveyance, the amount of the transaction and the difference between the determined value and the price received.

For some surplus properties, legislation has authorized DCAMM to convey property through an agreed-upon negotiated sale to a governmental entity that will then sell or lease the property and pay future net proceeds to DCAMM. For such transactions, the Office recommends the legislation include a provision that requires DCAMM to publish in the *Central Register*, within 30 days of receipt a notice of the terms of the sale or lease, any incentives authorized by DCAMM and any net proceeds received from the governmental entity. Following these procedures will provide greater transparency in the disposition of state assets.

Additionally, legislation often directs the Office to review appraisals related to state property dispositions. Many times the Office is restricted by the legislation and is not provided enough time to properly review the appraisal. The Office would greatly benefit from having 60 days to review the appraisals and provide its opinion on them.

Chairwoman Lovely and Chairman Kocot
September 15, 2015
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I hope this information is helpful. As always, if you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "Glenn A. Cunha". The signature is fluid and cursive, with a long horizontal stroke at the end.

Glenn A. Cunha
Inspector General