

**HOUSE . . . . . No. 1710**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

*Jeffrey Sánchez*

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act providing for disposition of surplus state real property based on smart growth land use policies.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Jeffrey Sánchez</i>	<i>15th Suffolk</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Bristol</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>Jack Lewis</i>	<i>7th Middlesex</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>
<i>Daniel J. Hunt</i>	<i>13th Suffolk</i>

**HOUSE . . . . . No. 1710**

By Mr. Sánchez of Boston, a petition (accompanied by bill, House, No. 1710) of Jeffrey Sánchez and others for legislation to provide for the disposition of certain state property based on smart growth land use policies. State Administration and Regulatory Oversight.

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 2815 OF 2015-2016.]

**The Commonwealth of Massachusetts**

\_\_\_\_\_  
**In the One Hundred and Ninetieth General Court  
(2017-2018)**  
\_\_\_\_\_

An Act providing for disposition of surplus state real property based on smart growth land use policies.

*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 7C of the General Laws is hereby amended by striking out  
2 sections 33 and 34, and inserting in place thereof the following section:-

3                   Section 33. (a) For the purposes of this section, in addition to terms defined in  
4 section 1, the following terms shall have the following meanings, unless the context clearly  
5 requires otherwise:

6                   “Affordable housing”, housing that is affordable for rental or purchase by  
7 families or individuals whose income at initial occupancy is equal to or less than 100 per cent of  
8 the median area income as determined by the United States secretary of housing and urban  
9 development for federal housing programs.

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

12 “Direct public use”, use of real property by a host municipality for the  
13 municipality’s own operations and, with respect to any use of real property by a private non-  
14 profit organization, any use of the real property for affordable housing production, community  
15 economic development, historic preservation or for open space acquisition or preservation.

16 “Division”, the division of capital asset management and maintenance.

17 “Emergency,” any situation caused by unforeseen circumstances which render  
18 currently used real property unusable or unavailable for the purposes intended and which creates  
19 an immediate need for other real property to preserve the health or safety of persons or property.

20 “Host municipality”, the municipality or municipalities within which state-  
21 owned real property conveyed, leased or otherwise transferred pursuant to this chapter is located.

22 “Net cash proceeds”, all payments paid to the commonwealth as and when paid,  
23 less any transaction-related expenses and expenses incurred in connection with the custody of the  
24 property by the division, and the regional planning agency under clause (ii) of subsection (g) for  
25 which it is not otherwise reimbursed, including, but not limited to, costs associated with the  
26 disposal or pre-development of the property from which the funds originated including, but not  
27 limited to, appraisals, surveys, site evaluation, site preparation, plans, recordings, smart growth  
28 review and feasibility and other marketing studies and any other expenses relating to the disposal  
29 or project management services in connection with any reuse or redevelopment of the surplus  
30 real property under this chapter, and less any amounts that may be owing to the federal  
31 government as a result of the disposition.

32 “Property”, real property owned by the commonwealth.

33 “Secretary”, the secretary of administration and finance.

34 “Surplus land coordination committee” or “committee”, the committee  
35 established by subsection (c).

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

37 (1) previously determined to be surplus to current and foreseeable state needs  
38 under section 33; or

39 (2) declared to be surplus under this section.

40 This term shall not include property subject to Article 97 of the Amendments to  
41 the Constitution or any court facilities vacated and determined to be surplus by the commissioner  
42 and the chief justice for administration and management as a result of or in anticipation of the  
43 construction of new court facilities or the consolidation of court facilities in the city of  
44 Cambridge, Lowell, Salem or Worcester.

45 (b) (1) The commissioner shall be responsible for the acquisition, control and  
46 disposition of real property in the manner and to the extent provided in this chapter. The  
47 commissioner may delegate such responsibility to an administrator within the division, who has  
48 10 years of experience in the management of commercial, industrial, institutional or public real  
49 property. When responsibility is delegated to an administrator, the written approval of the  
50 secretary shall be required before the transaction is finalized. The commissioner shall acquire an  
51 interest in real property on behalf of the commonwealth for the use of state agencies by gift,  
52 purchase, devise, grant, eminent domain, rental, lease, rental-purchase or otherwise.

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

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

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

71                   (5) The commissioner, in consultation with the secretaries of the executive  
72 offices or the chief justice of the administrative office of the trial court as the commissioner  
73 deems appropriate and with the written approval of the secretary, may transfer and change the  
74 use of, and transfer responsibility for maintenance of, land, buildings and other real property of

75 the commonwealth (other than the state house) within or between state agencies including,  
76 without limitation, to the division, and the judiciary. No such transfer within or between state  
77 agencies or executive offices which involves either a change in the purposes for which such  
78 building is currently used or a change in use in excess of 50 per cent of the usable floor space,  
79 shall be made without the prior approval of the general court. Such a transfer shall be based on a  
80 determination, made by the commissioner with the advice of the executive heads of affected  
81 agencies and secretaries of the executive offices in which such agencies are located, that such  
82 property or any part thereof, is not needed or not being put to optimum use under current  
83 conditions. The commissioner shall notify the chairs of house and senate committees on ways  
84 and means, the chairs of the joint committee on state administration and regulatory oversight and  
85 the representatives to the general court from the city or town in which such real property is  
86 located not less than 30 days prior to the final authorization of any transfer which does not  
87 require the approval of the general court, and such transfer shall only be made when the general  
88 court is in session except as provided hereafter. Such transfer may be made when the general  
89 court is not in session, and the thirty day notification requirement may be waived, only if the  
90 commissioner certifies in writing that an emergency exists; provided, however, that any such  
91 transfer may be authorized for a period not to exceed 6 months; and provided, further, that the  
92 commissioner shall submit his certification to and notify the chairs of house and senate ways and  
93 means committees and the chairs of the joint committee on state administration and regulatory  
94 oversight, and the representatives to the general court from the city or town in which such real  
95 property is located of such transfer at the earliest possible opportunity. An agency shall not be  
96 required to purchase or make payment, whether directly or indirectly to acquire property or part  
97 thereof, which is made available for that agency's use. As a condition of the transfer of property

98 to a state agency, the commissioner may require that the agency be financially responsible for  
99 any outstanding lease, contractual or debt obligations previously incurred by the commonwealth  
100 to acquire or improve the property and for any future maintenance, security and improvement  
101 costs for the property.

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

106 (c) There shall be a surplus land coordination committee. The committee shall  
107 consist of 1 representative appointed by each of the following: the secretary, the commissioner,  
108 the secretary of energy and environmental affairs, the secretary of housing and economic  
109 development, the secretary of transportation, the director of housing and community  
110 development, the executive director of the Massachusetts Association of Regional Planning  
111 Agencies, the president of the Massachusetts Association of Community Development  
112 Corporations, and the executive director of the Massachusetts Municipal Association. The  
113 representative appointed by the secretary shall chair the committee. At any committee meeting, a  
114 majority of the members of the board entitled to vote must be present to constitute a quorum. The  
115 committee shall meet at such times as the committee chair shall set, but no less than once every 3  
116 months to consider the future re-uses of any surplus property. The committee shall provide a  
117 written recommendation to the commissioner on the appropriate future re-use of surplus  
118 property, as set forth in subsection (g).

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

126                   (d) In order to determine whether specified real property is surplus to the current  
127 and foreseeable needs of the commonwealth, the commissioner shall, within 30 days after receipt  
128 of a completed transfer request, provide written notice and inquiry to the executive heads of state  
129 agencies and secretaries of the executive offices, who shall have 30 days to submit a written  
130 response stating that the property is necessary for a specific current or foreseeable need of the  
131 agency. If no agency or executive office submits such a response within 30 days of the notice,  
132 the commissioner shall proceed with further actions required before declaring a parcel surplus as  
133 provided in subsections (e) and (f). Alternatively, if a written response is timely received  
134 specifying a current or foreseeable need for the property or any part thereof, the commissioner  
135 shall, in consultation with the secretary, the surplus land coordination committee and with those  
136 responding affirmatively and the written approval of the secretary, determine whether the real  
137 property or part thereof, shall: (1) be retained and made available on account of a current or  
138 foreseeable use by a state agency, or (2) be recommended for disposal as surplus property on a  
139 temporary or permanent basis. Preference shall be given to ensuring that real property is made  
140 available for state needs and not permanently disposed, where a state agency has submitted a  
141 timely written response specifying a current or foreseeable need for the property. When the



142 commissioner determines that real property is surplus to current state needs but not to  
143 foreseeable state needs, the commissioner shall take all necessary action to ensure that any  
144 disposition of the real property is temporary and maintains the commissioner's ability to make  
145 such real property available to a state agency as needed.

146 (e) Before making a determination that any real property larger than 2 acres or  
147 valued at more than \$1,000,000 is surplus to current and foreseeable state uses, the commissioner  
148 shall file a report with the joint committee on state administration and regulatory oversight that  
149 shall include the commissioner's recommendation as to the proposed designation of the real  
150 property as surplus. Within 30 days of such filing, the joint committee shall hold a public hearing  
151 on the commissioner's proposed designation. The joint committee shall report its findings to the  
152 general court together with legislation within 30 days of the public hearing and provide a copy of  
153 its findings and legislation to the commissioner. Before the commissioner may determine that the  
154 real property should be declared surplus to current and foreseeable state uses, there shall be an  
155 affirmative vote of the general court enacting legislation; provided, however, that if the general  
156 court does not enact such legislation within 60 days of the report of the joint committee, the  
157 commissioner shall be authorized to proceed with a determination whether the real property  
158 should be declared surplus to current and foreseeable uses.

159 (f) Before making a determination that the real property should be declared  
160 surplus to current and foreseeable state uses, the commissioner shall, within 10 days of the  
161 general court's action as required by subsection (e), provide simultaneous written notification to  
162 the host municipality and the regional planning agency for the region where the real property is  
163 located indicating that the real property is available. For parcels of real property larger than 2  
164 acres or valued at more than \$1,000,000, the commissioner shall commission the regional

165 planning agency for the region where the real property is located to conduct a smart growth reuse  
166 review. If the surplus property is located in more than 1 municipality served by more than 1  
167 regional planning agency, the commissioner shall select 1 regional planning agency to conduct  
168 the smart growth review for the entire property. In each smart growth review, the regional  
169 planning agency shall consider the need for a variety of housing options, including but not  
170 limited to the development of supportive and affordable housing for the physically and  
171 cognitively disabled and the mentally ill, economic development and jobs, open space  
172 preservation; current and prospective zoning of the site; need for municipal capital facilities and  
173 public uses; impacts on traffic and transit; impacts on the environment and natural resources, and  
174 on agricultural lands; existence of historically significant structures; availability of infrastructure,  
175 including water supply, waste water and storm water run-off; fiscal impact of the development  
176 on the host municipality; remediation of contamination; and other smart growth implications.  
177 Within 60 days after the request by the commissioner for a smart growth review, the regional  
178 planning agency shall complete and submit the review in writing to the commissioner and to the  
179 surplus land coordination committee, and shall make the review available to all parties listed in  
180 subsection (e). Reasonable costs incurred by the regional planning agency shall be considered  
181 part of the disposition expenses paid for by the division, and reimbursed from the total proceeds  
182 of the sale or lease of surplus property received by the commonwealth not to exceed \$6,000 per  
183 parcel reviewed. If the smart growth review is not completed within 60 days after the  
184 commissioner's request for the review, the commissioner may dispose of the surplus property in  
185 accordance with this section.

186                   If the surplus property is 2 acres or less or valued at \$1,000,000 or less but the  
187 commissioner, in consultation with the committee, makes a determination that a smart growth

188 review is necessary, the smart growth review shall be conducted in accordance with this  
189 subsection.

190 (g) If the commissioner, in consultation with the committee and the secretary,  
191 and after any required smart growth review as provided in subsection (f) or any required  
192 legislative approval as provided in subsection ( ), declares that real property is surplus to current  
193 or foreseeable state needs, the commissioner shall, within 10 days after such determination,  
194 provide written notice for each host municipality to the chief executive officer of the city or  
195 town, the county commissioners, the regional planning agency and the members of the general  
196 court representing the host municipality as well as adjoining cities or towns. Such written notice  
197 shall include: (1) a statement that the property is currently being considered by the commissioner  
198 for disposal on a temporary or permanent basis as surplus; (2) a general description of the  
199 property under consideration for disposal including as applicable, a description of the land,  
200 buildings, appurtenant structures and equipment and the current use and square footage of such  
201 property; (3) a legal description of the property including approximate metes and bounds and  
202 other information identifying any existing easements, restrictions or other conditions, to the  
203 extent available; (4) a statement that the municipality in which any portion of the property is  
204 located has a right of first refusal to acquire the property and the right to assign such right as set  
205 forth in subsection (h); and (5) an invitation to make written comments about the future use of  
206 the property.

207 (h) Each host municipality shall have a right of first refusal to acquire the surplus  
208 real property located within such municipality for a direct public use on the terms and conditions  
209 as offered by the commissioner pursuant to this subsection at 80 per cent of the value established  
210 pursuant to subsection (k). The host municipality shall have the right of first refusal to purchase

211 the real property for a purpose other than a direct public use at fair market value as established  
212 pursuant to this chapter. Section 14 of chapter 40 shall apply to the purchase of surplus real  
213 property by a host municipality under this section; excepting any applicable restriction based on  
214 average assessed valuation. The commissioner may accept a flexible payment schedule at his  
215 discretion, provided, that all payments shall be made within 5 fiscal years of the sale or lease of  
216 the surplus real property to the host municipality. This right of first refusal must be exercised, if  
217 at all, by the host municipality giving written notice of the municipality's intention to acquire the  
218 property for a direct public use to the commissioner within 180 days after the written notice  
219 given by the commissioner pursuant to subsection (g). If the host municipality does give such  
220 written notice, the host municipality shall have until the date which is 180 days after its written  
221 notice to the commissioner to close on the purchase or lease of the property on such terms,  
222 conditions and restrictions as previously offered by the commissioner, provided, that the  
223 commissioner may grant a host municipality additional time to close on the purchase or lease of  
224 the property. If a host municipality has held a vote for debt exclusion under section 21C of  
225 chapter 59 to finance the surplus real property purchase, the date by which the host municipality  
226 shall exercise its option to purchase shall be extended until 7 days after the vote, but the vote  
227 shall take place at the next municipal election after the host municipality voted to put the debt  
228 exclusion on the ballot. If the host municipality fails to close the purchase of the property within  
229 the allowed time, the sole remedy of the commonwealth against the host municipality for such  
230 failure is to proceed with the disposition of the property without further right of purchase by the  
231 host municipality; but, if the failure to close on the purchase of the property was in bad faith as  
232 determined by the commissioner, the commonwealth shall not be required to share proceeds of  
233 the sale of the real property with the host municipality as required by subsection (q). The

234 commissioner shall ensure that any deed, lease or other disposition agreement conveying surplus  
235 real property to the host municipality provides that the use of the property shall be limited to the  
236 direct public use specified by the host municipality and provides for effective remedies on behalf  
237 of the commonwealth as deemed appropriate by the commissioner, which remedies may include,  
238 without limitation, that the title or lesser interest conveyed may revert to the commonwealth  
239 upon the recording of a notice in the appropriate registry of deeds, in the event of a failure to  
240 comply such use restriction.

241           A host municipality that has exercised its right of first refusal or otherwise has a  
242 right to close on the property, at its own expense, may enter upon the property and any of its  
243 agents or contractors may enter upon the property, to conduct inspections, surveys, or tests  
244 customarily performed in real estate transactions for the type and nature of the property specified  
245 as surplus as long as the commissioner is notified and consents to the inspection, host  
246 municipality shall be responsible to the commonwealth for any damage to the property, and shall  
247 hold harmless the commonwealth from all losses arising out of a claim of any nature from a third  
248 party, which resulted from conducting any such inspection, survey or test.

249           A host municipality exercising a right of first refusal as provided in this  
250 subsection may engage the services of the Massachusetts Development Finance Agency to  
251 perform planning, feasibility, marketing, and other studies or to provide project management  
252 services in connection with any re-use or redevelopment of the real property.

253           A host municipality shall be permitted to assign its right of first refusal to  
254 purchase the real property for a direct public use at 80 per cent of the fair market value of the real  
255 property as established pursuant to this chapter to a non-profit organization for a direct public

256 use of such organization. The host municipality must make the assignment, if at all, within 180  
257 days of receipt of notification pursuant to subsection (g), the assignee non-profit organization  
258 must exercise said right, if at all, within 90 days of its assignment by the host municipality by  
259 providing written notice to the commissioner of the assignee non-profit organization's intent to  
260 purchase the real property. The assignee non-profit organization shall then have an additional 90  
261 days from its exercise of said assignment by the host municipality to close on the purchase of the  
262 real property. In the event that the assignee non-profit organization fails to close on the purchase  
263 of the real property within such time, the sole remedy of the commonwealth against the host  
264 municipality for such failure is to proceed with the disposition of the real property without  
265 further right of purchase by the host municipality; provided, however, that if said failure to close  
266 on the purchase of the real property was in bad faith, the commonwealth shall not be required to  
267 share proceeds of the sale of said real property with the host municipality as required by  
268 subsection (q).

269 (i) If the host municipality does not elect to exercise its right of first refusal by  
270 giving written notice of its intention to acquire the surplus real property or notice of its election  
271 to assign its right of first refusal within 180 days in accordance with subsection (k), or if the host  
272 municipality timely makes such election but fails to close the purchase, lease or other disposition  
273 of the property or to make the assignment within the allowed time, or the assignee fails to close  
274 the purchase, lease or other disposition of the property, the host municipality shall be deemed to  
275 have waived its right of first refusal and the commissioner may dispose of the surplus property in  
276 accordance with this section, as follows:

277 (i) If the surplus property exceeds 2 acres or is valued at \$1,000,000 or more, the  
278 commissioner shall, within 45 days after the waiver and after reasonable public notice, conduct a

279 public hearing in each municipality in which the surplus property is located for the purpose of  
280 receiving public comment on the potential re-uses and appropriate restrictions upon the use of  
281 the property. The commissioner shall, within 30 days after such hearing, prepare a written report  
282 of all oral or written testimony received at a public hearing, and shall submit such report to the  
283 committee and to the regional planning agency serving the community in which the surplus  
284 property is located (ii) If the surplus property is 2 acres or less or valued at \$1,000,000 or less but  
285 the commissioner, in consultation with the committee, makes a determination within 60 days  
286 after the waiver that a hearing is necessary, the public hearing shall be conducted in accordance  
287 with this section.

288 (iii) Within 60 days after its receipt of the commissioner's report of any public  
289 hearing held, and after the completion of any smart growth study undertaken pursuant to  
290 subsection (f) above, the committee shall provide a written recommendation to the commissioner  
291 on the appropriate disposition for any parcel, and recommend a variety of appropriate uses,  
292 restrictions, and future obligations for the disposition of each surplus parcel including, but not  
293 limited to, its suitability for housing, , including but not limited to the development of supportive  
294 and affordable housing for the physically and cognitively disabled and the mentally ill, economic  
295 development or preservation as open space, the parcel's historical significance, a community's  
296 master plan, and what restrictions, if any, should be imposed on its use and development;  
297 provided, however, that provided, however, that in the case of real property formerly used as a  
298 department of mental health state hospital or department of mental retardation in patient care  
299 facility, the committee shall place a reuse restriction on land ensuring that at least 15% of any  
300 housing units developed on the real property be affordable supported housing for individuals  
301 who are clients, or former clients of the respective department; provided further, that such

302 housing shall be made affordable and available to such individuals with incomes of 15% of  
303 average median income or below. The committee in making recommendations to the  
304 commissioner on the re-uses, restrictions and development of the surplus property shall consider  
305 any: (1) , written report from any public hearing pursuant to clause (i) above; (2) testimony,  
306 recommendations or comments, from a host municipality including any recommendation or  
307 comment from a local re-use committee established by such host municipality to advise on the  
308 future reuse of land, buildings or structures; (3) testimony, recommendations or comments from  
309 immediate surrounding communities and from any member of the general court representing the  
310 host municipality where the surplus property is located; (4) smart growth review conducted  
311 under subsection (f) above; (5) comments and recommendations by the commissioner; and (6)  
312 established state and local plans and policies. The committee may also consider any other  
313 testimony and necessary and relevant information received with respect to the surplus property.  
314 If the committee does not recommend appropriate uses for the property within that 60 day  
315 period, the commissioner may dispose of the property without a recommendation from the  
316 committee in a manner consistent with this section.

317 (iv) Before disposing of surplus real property, the commissioner (1) shall  
318 identify any restrictions or conditions on such property's re-use and development which the  
319 commissioner considers appropriate to reflect the recommendation of the surplus land  
320 coordination committee and take into consideration established state, regional and local plans  
321 and policies, any recommendations or comments from a host municipality including, without  
322 limitation, recommendations or comments submitted at a hearing held pursuant to clause (i), and  
323 from any member of the general court representing the host municipality; and (2) shall ensure  
324 that any deed, lease or other disposition agreement sets forth all such re-use restrictions, provides



325 for effective remedies on behalf of the commonwealth and provides, in the event of a failure to  
326 comply with the re-use restrictions by the grantee, lessee or other recipient, that the title or lesser  
327 interest conveyed shall revert to the commonwealth upon the recording of a notice in the  
328 appropriate registry of deeds.

329 (j) The commissioner shall on a quarterly basis send to the house and senate  
330 chairs of the joint committee on state administration and regulatory oversight and the  
331 house and senate committees on ways and means a detailed list of all property which has been  
332 determined to be surplus to current and foreseeable state needs pursuant to subsections (d)  
333 through (f) and is being considered for disposition by the commissioner and the surplus land  
334 coordination committee, together with recommendations for disposition of each parcel of  
335 property and its potential uses and restrictions to the extent they have been developed and  
336 approved pursuant to this section.

337 (k) The commissioner shall establish the value of surplus real property using  
338 customarily accepted appraisal methodologies, including without limitation, a written appraisal  
339 by an independent professional real estate appraiser, licensed by the commonwealth, with 5 or  
340 more years of experience in the appraisal of commercial or industrial real estate. The value shall  
341 be calculated both: (1) for the highest and best use of the surplus real property; and (2) subject to  
342 uses, restrictions, encumbrances and other conditions and terms for the type of disposition,  
343 whether by sale or lease, as defined in writing by the commissioner. Notwithstanding the  
344 foregoing, the value of any property to be sold or leased to a host municipality for a direct public  
345 use shall be calculated subject to the restriction to direct public use and to such other uses,  
346 restrictions, encumbrances and other conditions and terms as defined in writing by the

347 commissioner. In no instance in which the commonwealth retains responsibility for maintaining  
348 the property shall the terms provide for payment of less than the annual maintenance costs.

349 (l) For any disposition of surplus real property other than to a host municipality  
350 which has exercised its right of first refusal or right of assignment pursuant to subsection (k), the  
351 commissioner shall dispose of surplus real property using appropriate competitive processes and  
352 procedures, subject to the notification and advertising provisions of section 36. These  
353 competitive processes may include, but are not limited to, auction, sealed bids and requests for  
354 price and development proposals. At least 30 days before the date of an auction or the date on  
355 which bids, proposals or other offers to purchase or lease surplus real property are due, the  
356 commissioner shall place a notice in the central register published by the state secretary under  
357 section 20A of chapter 9 stating the availability of such property, the nature of the competitive  
358 process and other information deemed relevant, including the time and location of the auction,  
359 the submission of bids or proposals and the opening thereof. A host municipality which did not  
360 exercise its right of first refusal or right of assignment pursuant to subsection (k) to acquire  
361 surplus real property may submit a bid, proposal or other offer to purchase or lease surplus real  
362 property in response to such competitive process.

363 (m) The commissioner shall place a notice in the central register and notify in  
364 writing all parties listed in subsection (g), identifying the individual or firm selected as party to  
365 the real property transaction, along with the amount of the transaction. If the commissioner  
366 accepts an amount below the value calculated under subsection (k), he shall include the  
367 justification for doing so, specifying the difference between the calculated value and the price  
368 received.

369 (n) No agreement for the sale, lease, transfer or other disposition of surplus real  
370 property, and no deed executed by or on behalf of the commonwealth, shall be valid unless the  
371 agreement or deed contains the following certification, signed by the commissioner:

372 "I certify under penalties of perjury that I have fully complied with sections 33  
373 and 36 of the General Laws in connection with the property described in this document."

374 (o) No agreement for the sale, lease, transfer or other disposition of surplus real  
375 property shall be valid unless the purchaser or lessee has executed and filed with the  
376 commissioner the statement required by section 38.

377 (p) The grantee or lessee, including any host municipality or any assignee of a  
378 host municipality's right of first refusal, of any surplus real property shall be responsible for all  
379 costs including, but not limited to, appraisals, surveys, plans, recordings and any other expenses  
380 relating to the transfer, as shall be considered necessary by the commissioner.

381 (q) The division shall transfer the net cash proceeds of each sale or lease of  
382 surplus real property to the secretary within 45 days after the closing of such sale or lease. The  
383 secretary shall distribute such funds on at least a quarterly basis in the following order of priority  
384 each year, and the secretary shall annually report to the house and senate committees on ways  
385 and means detailing the total amount and distribution of these funds:-

386 (i) 15 per cent of the net cash proceeds from the sale or lease of each such  
387 property shall be paid to the host municipality; but if the host municipality has adopted for such  
388 property either an approved smart growth zoning district under chapter 40R or an approved  
389 priority development site under chapter 43D, 25 per cent of the net cash proceeds from the sale  
390 or lease of the particular parcel shall be paid to the host municipality. A municipality that

391 acquires a property either by exercise of its right of first refusal pursuant to subsection (h) or  
392 through a competitive process pursuant to subsection (l) shall not receive a percentage of the net  
393 cash proceeds.

394           If a host municipality fails to close on a surplus real property due solely to a  
395 failure to receive an affirmative vote on a debt exclusion ballot question to raise funds to acquire  
396 a particular parcel under section 21C of chapter 59, the host municipality shall remain eligible to  
397 receive its share of the net cash proceeds.

398           (ii) After distribution of net cash proceeds under clause (i), 50 per cent of the  
399 remaining net cash proceeds shall be deposited in the Smart Growth Housing Trust Fund and 50  
400 per cent shall be deposited in the Capital Projects Fund established by section 2YYY of chapter  
401 29.

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

412 (s) The disposition of any real property subject to section 7E of chapter 81 shall  
413 not be subject to subsections (c), (d), (e), (f), (g), (h),(i), (j) or (q) of this section. The division  
414 shall distribute funds from the net cash proceeds of any sale of such property to the department  
415 of highways.

416 (t) The commissioner may enter into agreements for the direct public use of  
417 surplus real property by public agencies other than state agencies, for a term not to exceed 5  
418 years. Such agreement shall prohibit subsequent conveyance of interest in the property by the  
419 public agency to another party. The commissioner shall notify the house and senate committees  
420 on ways and means and the joint committee on state administration 30 days prior to the final  
421 authorization of any such agreement. The notification shall include the commissioner's report on  
422 recommended reuse restrictions. In no event shall any such agreement be made when the general  
423 court is not in session.

424 (u) Notwithstanding this section, leases for agricultural purposes on land owned  
425 by the commonwealth shall be made for a term of not more than 5 years, and the renewal date for  
426 such leases shall not be less than 1 year prior to the end of the lease period. Holders of such  
427 leases shall be given the opportunity to renew such leases for a consideration equal to the current  
428 lease amount plus an escalation amount to be established annually by the commissioner for  
429 application to all such leases.

430 (v) For bills which authorize the sale, transfer, or other disposition of any state-  
431 owned real property filed by persons other than the commissioner of capital asset management  
432 and maintenance, the clerk of the house of representatives and the clerk of the senate shall,  
433 within 10 days of the filing, forward a copy of the bill to the commissioner. Within 90 days of

434 the receipt of the copy, the commissioner shall submit in writing a report to the commissioner of  
435 administration, the legislative committee before which the bill is pending, and the joint  
436 committee on state administration together with a recommendation for either the approval or the  
437 disapproval of the bill and his reasons therefore.

438           If the commissioner is recommending the approval of a bill proposing the  
439 disposition of a parcel exceeding 2 acres, the report shall include: (1) a description of the  
440 property including its current use, structures, and approximate metes and bounds; (2) the value of  
441 the property, determined through procedures customarily accepted by the appraising profession  
442 as valid for such purposes, calculated both for (a) the highest and best use of the property as  
443 currently encumbered and (b) uses and encumbrances that would be imposed by the bill if  
444 enacted; (3) all current and foreseeable direct public uses identified by following the division's  
445 procedures for such purposes as they apply to the property to be disposed (4) other potential  
446 public and private uses of the property; and (5) any other information the general court may  
447 require.

448           The commissioner shall expeditiously review and recommend approval or  
449 disapproval of any proposal to the general court for the sale, rental or other disposition of real  
450 property acquired on behalf of state agencies, and shall dispose of real property as mandated by  
451 the general court. All legislation submitted to the general court by the division of capital asset  
452 management and maintenance requesting authorization to convey or transfer real property under  
453 its jurisdiction shall be accompanied by a full report outlining the division's reasons for pursuing  
454 the conveyance or transfer.

455 (w) The commissioner shall maintain, for a period of at least 6 years next  
456 following disposition of real property pursuant to this section, a file containing a copy of each  
457 document necessary to establish fulfillment of the requirements this section, provided, however,  
458 that any documents reflecting the value of the real property established by the commissioner and  
459 any independent appraisals used to establish that value, shall be exempted from the definition of  
460 “public records” appearing in section 7 of chapter 4 of the general laws until the disposition of  
461 the real property has been completed.

462 SECTION 2. Section 35AA of chapter 10 of the General Laws, as so appearing,  
463 is hereby amended by inserting after the word “section”, in line 11, the following words:- and in  
464 subsection (q) of section 33 of chapter 7C.

465 SECTION 3. Chapter 29 of the General Laws is hereby amended by inserting  
466 after section 2AAAA the following section:-

467 Section 2BBBB. There is hereby established and set up on the books of the  
468 commonwealth a separate fund, to be known as the Capital Projects Fund, in this section called  
469 the fund. The fund shall consist of the portion of net cash proceeds of the commonwealth’s  
470 disposition of surplus real property deposited under clause (ii) of subsection (q) of section 33 of  
471 chapter 7C, and all other monies credited or transferred to the fund from any other fund or source  
472 pursuant to law. The fund shall be expended, subject to appropriation, to meet the capital  
473 improvement needs of the commonwealth.

474 SECTION 4. Notwithstanding any general or special law to the contrary, section  
475 1 shall not apply to the disposition of real property that is the subject of a special act having an  
476 effective date before the effective date of this act.