

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Susan C. Fargo

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 passage of the accompanying bill:

An Act further regulating the development of underused state owned real property and the disposition of state owned surplus real property.

PETITION OF:

NAME:

Susan C. Fargo

DISTRICT/ADDRESS:

Third Middlesex

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. S00039 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

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

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority
of the same, as follows:*

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 2006 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 39A, the
5 following terms shall have the following meanings, unless the context clearly requires otherwise:

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

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

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

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

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

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

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

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

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

27 (2) determined to be surplus to current and foreseeable state needs under section 548 of chapter
28 26 of the acts of 2003; or

29 (3) declared to be surplus under this section. This term shall not include property subject to

30 Article 97 of the Amendments to the Constitution and shall not include any parcel of real
31 property which exceeds 25 acres as existing on May 1, 2005.

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

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

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

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

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

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

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

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

82 (c) In order to determine whether specified real property is surplus to the current and foreseeable
83 needs of the commonwealth, the commissioner shall provide written notice and inquiry to the
84 executive heads of state agencies and secretaries of the executive offices, who shall have 30 days
85 to submit a written response stating that the property is necessary for a specific current or
86 foreseeable need of the agency. If no agency or executive office submits such a response within
87 30 days of the notice, the commissioner, in consultation with the surplus land coordination
88 committee, may declare the property as surplus and dispose of it under this section.

89 Alternatively, if a written response is timely received specifying a current or foreseeable need for
90 the property or any part thereof, the commissioner shall, in consultation with the secretary, the
91 surplus land coordination committee and with those responding affirmatively and the written
92 approval of the secretary, determine whether the real property or part thereof, shall: (1) be
93 retained and made available on account of a current or foreseeable use by a state agency, or (2)
94 be recommended for disposal as surplus property on a temporary or permanent basis.

95 If the commissioner recommends that property be disposed as surplus, the authority of the
96 commissioner to proceed with the disposition shall be subject to the written affirmation of the
97 governor.

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

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

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

117 (e) When notice is required under subsection (c) before declaring specified property surplus, the
118 commissioner shall provide the following written notice to all parties under clause (1) of
119 subsection (h): (1) a statement that the property is currently being considered by the
120 commissioner for disposal on a temporary or permanent basis as surplus; (2) a brief description
121 of the surplus process and the right of first refusal by a municipality to acquire the property
122 should the commonwealth seek to dispose of the property whether on a temporary or permanent
123 basis; (3) a general description of the property under consideration for disposal including as
124 applicable, a description of the land, buildings, appurtenant structures and equipment and the
125 current use and square footage of such property; and (4) a legal description of the property
126 including approximate metes and bounds and other information identifying any existing
127 easements, restrictions or other conditions.(f) There shall be a surplus land coordination
128 committee. The committee shall consist of 1 representative appointed by each of the following:
129 the commissioner, the secretary of the executive office of environmental affairs, the chairman of
130 the commonwealth development coordinating council, the director of the department of housing
131 and community development, the executive director of the Massachusetts Association of
132 Regional Planning Agencies, the president of the Massachusetts Association of Community
133 Development Corporations, and the executive director of the Massachusetts Municipal
134 Association. The secretary of transportation and or his designee shall serve as a non-voting
135 member of the committee and advise the committee. At any committee meeting, a majority of
136 the members of the board entitled to vote must be present to constitute a quorum. The committee
137 shall meet at such times as the committee chairman shall set, but no less than once every 3
138 months to consider the future re-uses of any surplus property. The committee shall provide a

139 written recommendation to the commissioner on the appropriate future re-use of surplus
140 property.

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

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

161 the municipality where the parcel is located; remediation of contamination; and other smart
162 growth implications. Within 90 days after the request by the commissioner for a smart growth
163 review, the regional planning agency shall complete and submit the review in writing to the
164 commissioner, the surplus land coordination committee, and the house and senate chairs of the
165 joint committee on bonding, capital expenditures and state assets, and make the review available
166 to all parties listed under clause (1) of subsection (h). Reasonable costs incurred by the regional
167 planning agency shall be considered part of the disposition expenses paid for by the division, and
168 reimbursed from the total proceeds of the sale or lease of surplus property received by the
169 commonwealth not to exceed \$6,000 per parcel reviewed. If the smart growth review is not
170 completed within 90 days after the commissioner's request for the review, the commissioner may
171 dispose of the surplus property in accordance with this section.

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

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

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

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

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

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

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

251 (k) Before disposing of the surplus real property, the commissioner shall provide to each city or
252 town in which the property is located a written right of first refusal to acquire the surplus real
253 property located within such municipality, on the terms and conditions as offered by the
254 commissioner whether by sale or lease, and on the restrictions established in clause (4) of
255 subsection (h) and at 80 per cent of the value established in subsection (j); but, if the surplus real
256 property is restricted for use as open space, affordable housing or both, then the municipality
257 shall have the right of first refusal to acquire such property at 75 per cent of the established value
258 except, a municipality shall have the right to acquire such property at 50 per cent of the
259 established value with an additional restriction that the municipality retain the parcel for its own
260 use for a term of not less than 25 years. Section 14 of chapter 40 shall apply to the purchase of
261 surplus real property by a city or town under this section; excepting any applicable restriction
262 based on average assessed valuation. The commissioner may accept flexible payment schedule at
263 his discretion. A host municipality exercising a right of first refusal as provided in this subsection
264 may engage the services of the Massachusetts Development Finance Agency to perform
265 planning, feasibility, marketing, and other studies or to provide project management services in
266 connection with any re-use or redevelopment of the real property. This right of first refusal must
267 be exercised, if at all, by the town or city or its assignee within 120 days after this notice by
268 giving written notification to the commissioner. Upon exercise of the right of first refusal, the
269 city or town shall have an additional 180 days to close on the purchase or lease of the property
270 on such terms, conditions and restrictions as previously offered by the commissioner. The
271 commissioner may grant a city or town additional time to close on the purchase or lease of the
272 property. If a city or town has held a vote for debt exclusion under section 21C of chapter 59 to
273 finance the surplus real property purchase, the date by which the host municipality shall exercise

274 its option to purchase shall be extended until 7 days after the vote, but the vote shall take place at
275 the next municipal election after the city or town voted to put the debt exclusion on the ballot. If
276 the city or town fails to close the purchase of the property within the allowed time, the sole
277 remedy of the commonwealth against the host municipality for such failure is to proceed with the
278 disposition of the property without further right of purchase by the host municipality; but, if the
279 failure to close on the purchase of the property was in bad faith as determined by the
280 commissioner, the commonwealth shall not be required to share proceeds of the sale of the real
281 property with the host municipality as required by subsection (q).

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

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

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

311 (m) If the city or town has not exercised or assigned its right of first refusal, or has failed to close
312 in a timely manner if such right was exercised, the commissioner shall dispose of surplus real
313 property using appropriate competitive processes and procedures, subject to the notification and
314 advertising provisions of section 40H, and further, the terms restrictions, conditions and type of
315 disposition for such re-use previously established by the commissioner under clause (4) of
316 subsection (h) . These competitive processes may include, but are not limited to, auction,
317 sealed bids and requests for price and development proposals. All auctions, sealed bids or other
318 competitive process shall be with reserve, and the commissioner shall retain the right to

319 withdraw any surplus property offered for sale or lease by such competitive process before
320 accepting any bid, proposal, offer or contract. The commissioner shall not accept any offer, bid
321 or contract which is less than 75 percent of the value of the surplus real property originally
322 established in subsection (j). At least 30 days before the date of an auction or the date on which
323 bids, proposals or other offers to purchase or lease surplus real property are due, the
324 commissioner shall place a notice in the central register published by the state secretary under
325 section 20A of chapter 9 stating the availability of such property, the nature of the competitive
326 process and other information deemed relevant, including the time and location of the auction,
327 the submission of bids or proposals and the opening thereof.

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

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

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

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

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

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

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

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

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

364 50 per cent of the monies deposited in the Smart Growth Housing Trust Fund under clause (ii),
365 but not more than \$2,800,000 in any fiscal year, shall be used by the department of housing and
366 community development to provide grants to regional planning agencies for technical assistance
367 to municipalities. The department shall grant each regional planning district created under
368 chapter 40B or by special act a fixed base allocation of \$150,000, except that the Metropolitan
369 Area Planning Council shall receive a base allocation of \$200,000, the Martha's Vineyard
370 commission shall receive a full annual allocation of \$100,000, and the Nantucket Planning and
371 Economic Development Commission shall receive an annual allocation of \$50,000. One-half of
372 the remainder of the annual disbursement of net cash proceeds to the department of housing and
373 community development for technical assistance grants under this section shall be allocated
374 among said entities based on the percentage of the commonwealth's population served by each
375 entity, with the other half allocated based on the percentage of the commonwealth's communities
376 served by each entity. Technical assistance services funded by these grants shall be provided at
377 the request of a municipality in any subject within regional planning expertise, including but not
378 limited to: zoning and permitting; economic development; land use planning, conservation
379 planning, and water resources; municipal management; public safety planning and emergency

380 response; transportation; data management, information technology, geographic information
381 systems, statistical trends and modeling; and other land use and smart growth issues. Each
382 regional planning agency receiving such funds shall annually file with the department of housing
383 and community development, and with the house and senate committees on ways and means a
384 report detailing the use of said funds.

385 The remaining 50 per cent, plus any funds in excess of \$2,800,000, shall be used by the Smart
386 Growth Housing Trust Fund to pay for financial incentives and other payments to communities
387 under chapter 40R.

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

395 (s) Section 43I shall not apply to surplus real property disposed by the commissioner under this
396 section. Notwithstanding any provision of this section to the contrary, the commissioner, in an
397 emergency situation which poses a threat to the public safety or health and upon request by a
398 municipality, may permit, license, rent or otherwise allow occupancy to such municipality of any
399 surplus real property, not disposed, on a temporary and at-will basis and on such other
400 appropriate and consistent terms as established by the commissioner; but this occupancy shall
401 not exceed a period of 6 months, and the commissioner, within 10 days of any permitted

402 municipal use, shall certify in writing that an emergency exists and submits the certification to
403 the governor and the house and senate chairmen of the ways and means committees.

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

407 SECTION 3. Chapter 40B of the General Laws is hereby amended by adding the following
408 section:-

409 Section 30. There shall be within each regional planning district created under this chapter or by
410 special act a technical assistance center for the delivery of coordinated, comprehensive, and
411 continuing technical services at the request of a municipality. Technical assistance services may
412 be provided in any subject area within the capability of each technical assistance center including
413 but not limited to: zoning and permitting; economic development; land use planning,
414 conservation planning, and water resources; municipal management; public safety planning and
415 emergency response; transportation; data management, information technology, geographic
416 information systems, statistical trends, and modeling; and other land use and smart growth
417 issues.

418 SECTION 4. Section 3A of chapter 143 of the General Laws, as appearing in the 2004 Official
419 Edition, is hereby amended by striking out the first paragraph and inserting in place thereof the
420 following paragraph:-

421 Unless otherwise provided by the state building code, the local inspector shall enforce the state
422 building code as to any building or structure within the city or town from which he is appointed,

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

434 SECTION 5. Notwithstanding any general or special law to the contrary, section 1 shall not
435 apply to the disposition of real property that is the subject of a special act having an effective
436 date before the effective date of this act.

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