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Section 86 - Senate FY06 Budget **(released 5/16/05, revised and adopted 5/24/05)**

Floor Number: 586 Clerk Number: 694

SURPLUS PROPERTY DISPOSITION

[[TERMINOLOGY]]

"Section 86. (a) For the purposes of this section, the following terms shall have the following meanings, unless the context clearly requires otherwise:

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

"Net cash proceeds", all payments paid to the commonwealth as and when paid, less any transaction-related expenses incurred by the division of capital asset management and maintenance for which it is not otherwise reimbursed, and less any amounts that may be owing to the federal government as a result of the disposition.

"Real property", as defined in section 39A of chapter 7 of the General Laws.

"State agency", as defined in said section 39A(v) of said chapter 7.

"Surplus land coordination committee", the committee established by subsection (e).. c

"Surplus real property", real property of the commonwealth: (1) previously determined to be surplus to current and foreseeable state needs pursuant to sections 40F or 40F1/2 of said chapter 7, but excluding real property for which there is an established local reuse plan; or (2) determined to be surplus to current and foreseeable state needs pursuant to this section or to section 548 of chapter 26 of the acts of 2003. This term shall not include property subject to **Article 97** of the Amendments to the Constitution and **shall not include any parcel of property which exceeds 25 acres** as existing on May 1, 2005 and shall not include any parcel which, after May 1, 2005 ,

is acquired or is acquired and contiguous with other property owned by the commonwealth, which combined, exceeds 25 acres.

[[SALE, LEASE, OR TRANSFER]]

(b) Notwithstanding sections 40E to 40F1/2, inclusive, and 40H of said chapter 7, or any other general or special law to the contrary, the commissioner may **sell, lease for a term not to exceed 99 years**, transfer or otherwise dispose of surplus real property of the commonwealth, as specified in this section.

[[POSSIBLE STATE AGENCY USE]]

(c) In order to determine if specified real property is surplus to the current and foreseeable needs of the commonwealth, the commissioner shall provide written notice and inquiry to the executive heads of **state agencies** and secretaries of the **executive offices**, who shall have **30 days** to submit a written response indicating that the property is necessary for a specific current or foreseeable need of such agency. If no agency or executive office submits such a response within 30 days of the notice, the commissioner in consultation with the **surplus land coordination committee** may declare the property as surplus and dispose of it in accordance with this section. Alternatively, if a written response is timely received specifying a current or foreseeable need for the real property, the commissioner shall, in consultation with the secretary of administration and finance, the surplus land coordination committee and with those responding affirmatively, determine whether the real property shall: (1) be made available for current use by a state agency, (2) be retained on account of a foreseeable use by a state agency, or (3) be declared surplus real property which may be disposed of pursuant to this section.

(d) When real property is determined to be surplus to current state needs but not to

foreseeable state needs, the commissioner shall take such necessary action to ensure that any disposition of the real property is **temporary** and maintains the commissioner's ability to make such real property available to a state agency as needed.

[[SURPLUS LAND COORD. COMMITTEE]]

(e) There shall be a **surplus land coordination committee**. The committee shall consist of representatives appointed as follows: one by the commissioner of the department of capital asset management and maintenance; one by the secretary of the executive office of environmental affairs, one by the Massachusetts association of regional planning agencies; one by the chairman of the commonwealth development coordinating council; and one by the executive director of the Massachusetts municipal association. All representatives shall serve for a renewable three year term. The committee shall meet at least quarterly and shall advise the commissioner on all real property being considered for surplus designation and on the appropriate disposition of such property, including but not limited to whether the property should be declared surplus, the potential uses for the property, including its suitability for housing development or preservation as open space, and what restrictions, if any, should be considered on its use and development. The commissioner shall send to the house and senate chairs of the committee on bonding, capital expenditures and state assets and the committees on ways and means, a detailed list of all property being considered for surplus by the surplus land coordination committee and recommendation for disposition of the property and its potential uses; the list shall be sent by the commissioner on a quarterly basis and within 14 days after any advisory meeting with the committee.

[[REVIEW BY REGIONAL PLANNING AGENCY]]

The regional planning agency will have **60 days** from notification by the commissioner to submit in writing, the review to the commissioner, the surplus land coordination committee, and the Chairs of the Joint Committee on Bonding, Capital Expenditures and State Assets, and to make the review available to all parties listed under subsection (f) subparagraph (1). Reasonable costs incurred by the regional planning agency shall be considered part of sale expenses paid for by the division, and reimbursed from total commonwealth real property sale proceeds not to exceed **\$3,000 per parcel reviewed**.

[[SURPLUS DECLARATION]]

(f) If the commissioner or, for parcels greater than 2 acres in size or initially valued at \$2,000,000 or more, determines that the real property is surplus, the commissioner shall: (1) provide written notice for each city or town in which the property is located to the city manager in the case of a city under Plan E form of government, the mayor and city council in the case of all other cities, the chairman of the board of selectmen in the case of a town, the county commissioners, the regional planning agency and the members of the general court representing the city or town in which the property is located as well as surrounding cities or towns; (2) declare it available for disposition and identify any restrictions on its use and development necessary to comply with the policies and principles established by the commonwealth development coordinating council established in section 8B of chapter 6A of the General Laws and take into consideration other established state and local plans and policies and any recommendations or comments, from a city or town in which the property is located and from any member of the general court representing the city or town where the property is located;

[[PUBLIC HEARING]]

(3) conduct a **public hearing** in the municipality in which the property is located to consider potential reuses and appropriate restrictions if the property parcels exceeds 2 acres or if the commissioner determines or the city or town in which the property is located requests that a hearing should be held for a smaller parcel and provide reasonable public notice and written notice to all parties listed under subsection (f) subparagraph (1); and

[[DEED RESTRICTIONS]]

(4) ensure that any deed, lease or other disposition agreement sets forth all such **reuse restrictions**, provides for effective remedies on behalf of the commonwealth and provides, in the event of a failure to comply with the reuse restrictions by the grantee, lessee or other recipient, that such title or lesser interest as may have been conveyed shall immediately revert to the commonwealth.

[[APPRAISAL]]

(g) The commissioner shall establish the value of surplus real property using customarily accepted appraisal methodologies. The value shall be calculated both: (1) for the highest and best use of the property as may be encumbered, and (2) subject to uses, restrictions and encumbrances defined by the commissioner. In no instance in which the commonwealth retains responsibility for maintaining the said property shall the terms provide for payment of less than the annual maintenance costs.

[[RIGHT OF FIRST REFUSAL]]

(h) Before disposing of the surplus property, the commissioner shall provide to each city or town in which the property is located a written **right of first refusal** to purchase the surplus property on the conditions established in section (f) and at **85 per cent** of the value established in subsection (g). A city or town that has a right of first refusal or otherwise has a right to close on the property, at its own expense, **may enter upon the property** and any of its agents or contractors may enter upon the property, to conduct inspections, surveys, or tests customarily performed in real estate transactions for the type and nature of the property specified as surplus; provided, the commissioner is notified and consents to such inspection, survey or test, which consent shall not be unreasonably withheld. A city or town shall be responsible to the commonwealth for any damage to the property, and shall hold harmless the commonwealth from all losses arising out of a claim of any nature from a third party, which resulted from conducting any such inspection, survey or test.

[[PAYMENT SCHEDULE]]

The commissioner shall have the authority to accept flexible payment schedule at his discretion. This right of first refusal must be exercised, if at all, by the town or city or its assignee within 120 days after this notice by giving written notification to the commissioner except that if a town meeting or city council has approved to hold a vote for debt exclusion pursuant to section 21C of chapter 59 of the General Laws, commonly known as Proposition 2 1/2 debt exclusion, to finance the surplus real property purchase the date by which the town must exercise its option to purchase will be extended until seven days after the vote; provided that said final vote relative to debt exclusion take place within 180 days from the date of the town meeting or city council approval of said vote. Upon exercise of the right of first

refusal, the city or town or its assignee shall have an additional 150 days to close the purchase of such property.

[[PENALTY FOR FAILURE TO CLOSE]]

If the city or town or its assignee fails to close the purchase of such property within that time, the sole remedy of the commonwealth against the city or town for this failure shall be to proceed with the disposition of the surplus property without further right of purchase by the city or town and the **elimination of any requirement to share proceeds** of the sale with the city or town as provided in subsection (p).

[[ASSIGNMENT OF RIGHT OF FIRST REFUSAL]]

(h)(i) The municipality shall also be able to **assign its right of first refusal** within the required time periods as established pursuant to subsection (h) to a not for profit organization who shall be entitled to purchase the property for the same price and according to the same terms which would apply to a sale to a municipality under this section. If the municipality or its assignee acquires any portion of the property for open space purposes, or if any portion of the property is restricted for open space purposes, a conservation restriction pursuant to chapter 184 of the General Laws shall be retained by the commonwealth on such parcels.

[[SALE OF PROPERTY]]

(i) If the city or town has not exercised or assigned its right of first refusal, or has failed to close in a timely manner if such right was exercised, the commissioner shall dispose of surplus real property utilizing appropriate **competitive processes** and procedures. Such competitive processes may include, but are not limited to, absolute auction, sealed bids and requests for price and development proposals. At least 30 days before the date of an auction or the date on which bids, proposals or other offers to purchase or lease surplus real property are due, the commissioner shall place a notice in the central register published by the state secretary pursuant to section 20A of chapter 9 stating the availability of such property, the nature of the competitive process and other information deemed relevant, including the time and location of the auction, the submission of bids or proposals and the opening thereof.

(j) The commissioner shall place a notice in the central register and notify in writing, all parties listed under subsection (f) subparagraph (1), identifying the individual or firm selected as party to such real property transaction, along with the amount of such transaction. If the commissioner accepts an amount below the value calculated under subsection (g), he shall include the justification therefore, specifying the difference between the calculated value and the price received.

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

"The undersigned certifies under penalties of perjury that I have fully complied with section ____ of chapter ____ of the acts of 2005 in connection with the property described herein."

(l) No agreement for the sale, lease, transfer or other disposition of surplus real property shall be valid unless the purchaser or lessee has executed and filed with the commissioner the statement required by section 40J of chapter 7 of the General Laws.

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

(n) This section shall not apply to the disposition of real property that is the subject of a special act having an effective date before July 1, 2003 .

[[SUNSET PROVISION]]

(o) The authority granted to the commissioner by this section shall cease as of **June 30, 2010** , but the commissioner may complete any transaction for which agreements have been signed and delivered on or before that date.

[[DISTRIBUTION OF PROCEEDS]]

(p) Funds from the net cash proceeds of dispositions of surplus property pursuant to this section shall be allocated as follows: (1) not less than **10 per cent** and not more than **25 per cent** of the net cash proceeds of each transaction may be paid to the city or town in which the property

is located if the city or town did not exercise or assign its right of first refusal, whether or not the transaction thereafter closed; provided, however, that to receive more than 10 per cent, the city or town must have taken affirmative actions to meet local and regional needs for affordable housing and open space by **adopting chapter 40R and implementing a comprehensive housing plan** certified by the department of housing and community development or implementing an **affordable housing plan** approved by the department of housing and community development or otherwise **furthering the commonwealth's objectives for the parcel**, consistent with smart growth and subject to regulations promulgated by the division in consultation with the commonwealth development coordinating council no later than October 1, 2005; (2) after distribution of net cash proceeds to cities and towns pursuant to clause (1), the first \$5 million shall be deposited in the **General Fund**; (3) 50 per cent of the next \$10 million shall be deposited in the **Smart Growth Housing Trust Fund** established in section 35AA of chapter 10 of the General Laws, and 50 per cent shall be deposited in the General Fund; and (4) the remaining net cash proceeds shall be deposited in the Smart Growth Housing Trust Fund. Funds governed pursuant to this section include any surplus property sale funds generated during the entire 5 year period that the law is effective, and shall not reset annually.

[[TRIGGERING OF THE PROCESS]]

(q) The commissioner shall, within 6 months of the effective date of this section, establish **a criteria that would enter property into the disposition process** under this section. Said criteria shall include an automatic notice and inquiry to the executive heads of state agencies and secretaries as established under subsection (c) regarding any parcel that is left unused or abandoned for a specified period of time."