

SENATE No. 3004

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Second General Court
(2021-2022)

SENATE, July 14, 2022.

The committee on Senate Ways and Means, to whom was referred the Senate Bill authorizing the lease of the former Lee Pool Complex located in the city of Boston (Senate, No. 2041),- reports, recommending that the same ought to pass with an amendment substituting a new draft entitled "An Act authorizing the commissioner of capital asset management and maintenance to lease the former Joseph Lee Pool Complex located in the city of Boston" (Senate, No. 3004).

For the committee,
Michael J. Rodrigues

SENATE No. 3004

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act authorizing the commissioner of capital asset management and maintenance to lease the former Joseph Lee Pool Complex located in the city of Boston.

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. (a) Notwithstanding sections 32 to 37, inclusive, of chapter 7C of the
2 General Laws or any other general or special law to the contrary, the commissioner of capital
3 asset management and maintenance, in consultation with the commissioner of conservation and
4 recreation, may enter into a 30-year lease with the Esplanade Association, Inc. to design, build,
5 use, maintain, operate, program and repair any facilities and fields at the site of the former
6 Joseph Lee Pool complex, which contains approximately 2 acres of land located south of the
7 department of state police barracks, east and northeast of the Teddy Ebersol's Red Sox fields
8 complex and west and northwest of Storrow drive on the Charles River Esplanade in the city of
9 Boston. No lease of the property shall be valid unless the lease provides that the property shall be
10 used only for the operation, public use and programming of the Charles River Esplanade park or
11 the public use of the fields and facilities within the property, which may include, but shall not be
12 limited to: (i) a public building with a publicly-accessible lobby or visitors center and public
13 restrooms open at no charge, with permanent historical design elements reflecting the social,

14 recreational and economic importance of the property; (ii) newly-constructed maintenance and
15 operations space; (iii) horticultural operations space, including mechanical space; (iv) an
16 operations work yard; (v) compost area; (vi) building operations and park programs offices; (vii)
17 outdoor covered porch space; (viii) outdoor performing arts or outdoor learning space; (ix)
18 removal and landscaping of existing parking areas and widespread landscape enhancements that
19 promote natural terrain and nature play; (x) river edge pedestrian pathway reconnections; (xi)
20 climate change adaptation and resiliency planning features; (xii) storage space for materials and
21 equipment supporting the buildings, fields and park and related activities; (xiii) public and
22 community meeting space; (xiv) indoor and outdoor roof deck program and event space; (xv)
23 indoor, or indoor and outdoor, café space; (xvi) enhanced landscaping for a newly-constructed
24 multi-use synthetic turf field with lighting for the entire property; and (xvii) a newly-constructed
25 multi-use indoor recreational facility. A 1-time, 10-year extension may be granted if the
26 Esplanade Association, Inc. makes a significant investment in the facility within the final years
27 of the lease, as determined by the department of conservation and recreation.

28 (b) The department of conservation and recreation shall maintain any pathways created or
29 reconnected under subsection (a).

30 (c) The division of capital asset management, in consultation with the department of
31 conservation and recreation, and the board of directors of the Esplanade Association, Inc. may
32 enter into an agreement authorizing the Esplanade Association, Inc. to manage and oversee the
33 construction, refurbishment, repair and improvement to the fields and facilities of the property.

34 (d) The 30-year lease, 10-year lease extension and any other agreements executed under
35 this act shall be on terms, conditions and nominal consideration acceptable to the commissioner

36 of capital asset management and maintenance, in consultation with the commissioner of
37 conservation and recreation; provided, however, that the 30-year lease, 10-year lease extension
38 and any other agreements shall provide that, at its sole cost and expense, the Esplanade
39 Association, Inc.: (i) shall provide general oversight, programming, operations, maintenance and
40 repair of the property, including the land, facilities, fields and appurtenances associated therewith
41 during the term of the lease; (ii) shall carry comprehensive general liability insurance naming the
42 commonwealth as a co-insured, protecting the commonwealth against all claims for personal
43 injury or property damage arising from the use of the land and appurtenances associated
44 therewith during the term of the lease and any extension thereof; (iii) may retain revenues from
45 usage and programming fees, special events, naming rights sponsorships and the proceeds from
46 concessions associated with use of the property for the sole purpose of the design, construction,
47 operation, programming, maintenance and repair expenses of the property over the course of the
48 lease; provided, however, that the use of any excess funds shall, with the approval of the
49 department of conservation and recreation, be limited to the Esplanade Association, Inc.'s
50 ongoing revitalization, maintenance, enhancement and programming of the Charles River
51 Esplanade park; (iv) shall, not later than 3 months after the close of the calendar year, prepare an
52 annual report detailing its performance against the goals for the prior year, detailing all revenues
53 and expenditures of funds for the prior year pursuant to this section, regardless of source, and
54 specifying all usage and programming fee rates associated with planned programs and activities,
55 and submit the report to the commissioner of conservation and recreation and the clerks of the
56 senate and house of representatives; (v) shall not, under section 4, design or construct any
57 facilities on the property without the written approval of the commissioner of capital asset
58 management and maintenance and the commissioner of conservation and recreation; (vi) shall be

59 responsible for all utility costs, except those for which a fee is charged under regulation by the
60 department of conservation and recreation; and (vii) shall be responsible for outreach and
61 stewardship.

62 (e) The 30-year lease and the 1-time 10-year lease extension thereof shall be reviewed by
63 the inspector general for comment and recommendation.

64 (f) The division of capital asset management and maintenance shall file a record of any
65 proposed construction or repairs to any facilities on the property with the clerks of the senate and
66 house of representatives and the clerks shall forward the same to the joint committee on state
67 administration and regulatory oversight 60 days before the effective date of the proposed
68 construction, repair, lease extension or any other agreement.

69 (g) Before entering into the 30-year lease, the commissioner of capital asset management
70 and maintenance shall, in consultation with the commissioner of conservation and recreation,
71 determine the exact boundaries of the property after completion of a survey.

72 (h) The Esplanade Association, Inc. shall be responsible for all costs and expenses,
73 including costs and expenses associated with engineering, surveys, appraisals and lease
74 preparation related to the 30-year lease, any lease extension and any other agreements under this
75 act.

76 SECTION 2. (a) Except as provided in subsection (b), the Esplanade Association, Inc.
77 shall determine, schedule and program the use of the fields, facilities, land and appurtenances of
78 the property, including the establishment of the published programming fees described in section
79 1. The Esplanade Association Inc. shall ensure fair and reasonable use of the fields, facilities,
80 land and appurtenances associated therewith for practice and games based upon the needs of the

81 general public, youth sports leagues and other interested users, in consultation with the
82 department of conservation and recreation.

83 (b) The Esplanade Association, Inc. shall establish priority programming and uses that
84 promote public access through community, recreational, cultural or civic uses, in consultation
85 with the department of conservation and recreation, and subject to the terms of the lease
86 negotiated pursuant to section 1. Such uses shall have meeting rooms and outdoor space made
87 available at the lowest fee rate and in no case shall an hourly access fee be assessed for the
88 ordinary use of meeting rooms or outdoor space exceeding \$50 per hour or any greater amount
89 consistent with the prevailing fee charged by the department of conservation and recreation for
90 similar activities pursuant to regulations promulgated under section 3B of chapter 7 of the
91 General Laws.

92 (c) The Esplanade Association Inc. shall make reasonable efforts to program use by the
93 public during the times the outdoor fields and facilities are not being used by scheduled
94 programs. During all times in which the Esplanade Association, Inc. has not scheduled
95 programmed usage of the outdoor areas, the outdoor areas shall remain open and accessible for
96 informal passive or recreational use by the public.

97 (d) The Esplanade Association may schedule special events of 8 or more hours of
98 substantial usage of the fields or facilities on a single day, subject to the terms of the lease
99 negotiated pursuant to section 1; provided, however, that the Esplanade Association Inc. shall not
100 schedule special events more than 15 days per year to ensure public access to the fields and
101 facilities described in section 1 on all other days.

102 SECTION 3. The Esplanade Association, Inc. shall determine, schedule and program the
103 use of the fields, facilities, land and appurtenances of the property, including the establishment of
104 the published programming fees described in section 1; provided, however, the Esplanade
105 Association, Inc. shall ensure fair and reasonable use of the fields, facilities, land and
106 appurtenances for practice and games based upon the needs of the general public, youth sports
107 leagues and other interested users, in consultation with the department of conservation and
108 recreation. The Esplanade Association, Inc. shall make reasonable efforts to program use by the
109 general public during the times the fields and recreational facilities are not being used by
110 scheduled programs. During all times when the Esplanade Association, Inc. does not schedule
111 programmed usage of the field or facilities, the field and recreational facilities shall remain open
112 and accessible for informal recreational use by the general public.

113 SECTION 4. The Esplanade Association, Inc. shall be responsible for all costs and
114 expenses associated with any engineering, surveys, appraisals, construction, refurbishment,
115 repair and improvements to the property; provided, however, that the Esplanade Association, Inc.
116 shall expend not less than \$10,000,000 on the planning, design, construction, refurbishment,
117 repair and improvements to the property; provided, however, that the commonwealth shall not be
118 required to contribute to any such costs. The department of conservation and recreation shall
119 have approval authority over the design, construction, refurbishment, repair and improvements to
120 the property and the Charles River path described in subsection (a) of section 1 to ensure that the
121 Esplanade Association, Inc. complies with this act.

122 SECTION 5. Notwithstanding any general or special law to the contrary, any agreements
123 authorized in this act relating to the advertising, bidding or awarding of contracts, the
124 procurement of services or to the construction and design of improvements shall not be subject to

125 section 39M of chapter 30 of the General Laws or sections 26 to 27F, inclusive, and sections
126 44A to 44J, inclusive, of chapter 149 of the General Laws; provided, however, that all
127 construction, reconstruction, installation, alteration or repair shall be performed at the wage rate
128 established in sections said section 26 and section 27 of said chapter 149.

129 SECTION 6. To ensure a no-net-loss of lands protected for conservation and recreation
130 purposes and as a condition of the leasehold interests authorized in this act, the Esplanade
131 Association, Inc. shall make a payment of funds or a transfer of land or a conservation restriction
132 upon land to the department of conservation and recreation, which payment or transfer or
133 restriction on land shall be of a value equal to or greater than the full and fair market value of its
134 leasehold interest under this act as determined by an independent appraisal prepared in
135 accordance with the usual and customary professional appraisal practices by a qualified appraiser
136 commissioned by the commissioner of capital asset management and maintenance, in
137 consultation with the commissioner of conservation and recreation, less any credits as provided
138 in this section. Any such land or interest in land, including any conservation restriction, shall be
139 subject to approval by the department of conservation and recreation. The appraisal shall include
140 an examination of the value of the physical capital improvements to be constructed by the
141 Esplanade Association, Inc., the relative value associated with the exclusive private use of the
142 improvements by the Esplanade Association, Inc. or any other party, any associated revenues and
143 the relative value associated with the use of the improvements by the general public to be
144 scheduled by the Esplanade Association, Inc. In determining the funds due to ensure a no-net-
145 loss of protected land for conservation and recreation purposes, the division of capital asset
146 management and maintenance, in consultation with the department of conservation and
147 recreation, may determine a credit on account of the relative value associated with the public use

148 of the improvements. Any sums due under this section shall be paid by the Esplanade
149 Association Inc. to the department of conservation and recreation for deposit into the
150 Conservation Trust established in section 1 of chapter 132A of the General Laws to be used to
151 acquire land or interests in land for conservation and recreation purposes.

152 SECTION 7. The commissioner of capital asset management and maintenance shall
153 submit the proposed lease and any appraisals completed under section 6 to the inspector general
154 for review and comment. The inspector general shall review and approve the appraisals and the
155 review shall include an examination of the methodology utilized for the appraisals. The inspector
156 general shall prepare a report of such review and file the report with the commissioner of capital
157 asset management and maintenance. The commissioner shall submit copies of the appraisals and
158 the inspector general's review and approval and any comments to the senate and house
159 committees on ways and means and the joint committee on state administration and regulatory
160 oversight at least 15 days before the execution of any lease or other agreements described in
161 section 1.

162 SECTION 8. If the land, facilities, fields and appurtenances comprising the property shall
163 cease to be used by the Esplanade Association, Inc. for the purposes and in the manner described
164 in this act or if the Esplanade Association, Inc. ceases to be the lessee at any time before the
165 conclusion of the lease term, the property shall revert to the commonwealth upon such terms and
166 conditions as the commissioner of capital asset management and maintenance may determine,
167 and shall be assigned to the care, custody and control of the department of conservation and
168 recreation; provided, however, that any further disposition thereof shall be subject to sections 32
169 to 38, inclusive, of chapter 7C of the General Laws.

170 SECTION 9. If the commissioner of capital asset management and maintenance, in
171 consultation with the commissioner of conservation and recreation, fails to enter into a lease with
172 the Esplanade Association, Inc. pursuant to section 1 before December 31, 2023, this act shall
173 expire on December 31, 2023.