

House No. 4377

Message from His Excellency the Governor recommending legislation relative to Message from His Excellency the Governor returning with recommendation of amendment the engrossed Bill relative to the leasing of certain parcels of land in the city of Boston (see House, No. 4356)..

The Commonwealth of Massachusetts



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DEVAL L. PATRICK
GOVERNOR

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LIEUTENANT GOVERNOR

11/24/2009

To the Honorable Senate and House of Representatives:

Pursuant to Article LVI, as amended by Article XC, Section 3 of the Amendments to the Constitution of the Commonwealth of Massachusetts, I am returning to you for amendment House Bill No. 4356, “An Act Relative to the Leasing of Certain Parcels of Land in the City of Boston”.

This bill directs the Massachusetts Division of Capital Asset Management and Maintenance, in consultation with the Massachusetts Department of Conservation and Recreation, to lease land in the City of Boston to the Joseph M. Smith Community Health Center for a term of 50 years for \$1.00 per year.

I recognize that community health centers like the Joseph M. Smith Community Health Center provide important services to the citizens of the Commonwealth, particularly in these difficult economic times. I am supportive of the Center’s desire to expand its outreach and services in the community. As drafted, however, this legislation may deprive the Commonwealth of a very valuable asset and potentially violates the anti-aid amendment to the Massachusetts constitution, since it would provide a substantial benefit to a non-profit entity in the form of public property to be used to further the purposes of the entity. In other instances, legislation authorizing the lease of state property to non-profit entities has required the payment of market value consideration to the Commonwealth. This legislation falls short of this requirement.

The needs of this valued community center to expand must be balanced against the needs of the Commonwealth, including protecting the public fisc. Requiring the state to lease extremely valuable property for \$1.00 per year does not strike that balance.

Accordingly, I am returning this bill for amendment to avoid any violations of the anti-aid amendment and to provide a fiscally responsible transaction. The amendment provides for the lease to be at fair market value based on an independent appraisal.

For these reasons, I recommend that House Bill No. 4356 be amended by striking out the text and inserting in place thereof the following text:-

SECTION 1. Notwithstanding sections 40F to 40I of chapter 7 of the General Laws or any other general or special law to the contrary, the commissioner of capital asset management and maintenance, in consultation with the commissioner of conservation and recreation, shall lease, for a period of 50 years, with 2 10-year options to renew, and pursuant to such additional terms and conditions as the commissioner of capital asset management and maintenance may prescribe, a portion of 3 parcels of land, to the Joseph M. Smith Community Health Center, Inc., a 501(c)(3) not for profit organization, in the North Brighton/Allston section of the city of Boston, with sufficient space to be used for construction of a new community health center building of approximately 40,000 square feet and related parking. The 3 parcels are shown on the city of Boston assessor's maps as Parcel #1, parcel identification number 2200574000, 487 Western Avenue Boston, MA 02135, lot size 7, 642 square feet; Parcel #2, parcel identification number 2200572000, 495 Western Avenue Boston, MA 02135, lot size 84,939 square feet; and Parcel #3, parcel identification number 2200573000 at an unnumbered location on Western Avenue, lot size 2,483 square feet. A portion of these 3 parcels that will provide sufficient space for the construction of a new 12,000 square foot building shall remain with the commonwealth and not be conveyed to the health center. The exact boundaries of the property so leased to the Joseph M. Smith Community Health Center and the property remaining with the commonwealth shall be determined by the commissioner of the division of capital asset management and maintenance, in consultation with the commissioner of the department of conservation and recreation, and representatives of the Joseph M. Smith Community Health Center, after completion of a survey. The lease agreement authorized by this section shall permit the leasehold financing of the improvements to be constructed by the Joseph M. Smith Community Health Center and shall contain provisions to protect such leasehold lender and such other terms and conditions as the commissioner of the division of capital asset management and maintenance may prescribe, in consultation with the commissioner of the department of conservation and recreation.

SECTION 2. Notwithstanding any general or special law to the contrary, the parcel described in section 1 of this act shall be leased subject to a restriction limiting the use of the parcel to construction and operation of a community health center and the provision of related services. If

for any reason the property ceases to be used solely for the purposes described in this act, the commissioner of capital asset management and maintenance, in consultation with the commissioner of conservation and recreation, shall give written notice to the Joseph M. Smith Community Health Center of the unauthorized use. The Joseph M. Smith Community Health Center shall, upon receipt of the notice, have 30 days to respond and a reasonable time to establish an authorized use of the property. If an authorized use of the property is not thereafter established, the lease of the property, upon the recording of a notice thereof by the commissioner of the division of capital asset management and maintenance in the appropriate registry of deeds, shall terminate and the property shall revert to the commonwealth under the care and control of the department of conservation and recreation, and any further disposition of the property shall be subject to chapter 7 of the General Laws.

SECTION 3. Notwithstanding any general or special law to the contrary, any lease or other agreement made pursuant to this act shall contain a provision that requires the Joseph M. Smith Community Health Center to carry comprehensive general liability insurance with the commonwealth named as a co-insured, to protect the commonwealth against all personal injury or property damage on the facilities during the term of the lease or other agreement. The Joseph M. Smith Community Health Center shall indemnify and hold the commonwealth harmless for all personal injury or property damage caused or suffered by the Joseph M. Smith Community Health Center, its clients or agents.

SECTION 4. Notwithstanding any general or special law to the contrary, the Joseph M. Smith Community Health Center, Inc. shall be responsible for all costs and expenses, including but not limited to, costs associated with any engineering, surveys, appraisals, and lease preparation related to the leasing of the property to it authorized pursuant to this act as such costs may be determined by the commissioner of the division of capital asset management and maintenance for the portion of the 3 parcels that it leases. Upon the execution of the lease, the Joseph M. Smith Community Health Center, Inc. shall be solely responsible for all costs, liabilities and expenses of any nature and kind for the development, maintenance, use and operation of its portion of parcels.

SECTION 5. Notwithstanding any general or special law to the contrary, the Joseph M. Smith Community Health Center, Inc. shall be responsible for all costs and expenses, including but not limited to, costs associated with any engineering, surveys, appraisals, construction, renovation, operation, maintenance and repair costs, to rehabilitate and maintain the former headquarters of the Speedway race track and stables, which are listed on the State and National Registers of Historic Places, located on parcels of land near the premises described in section 1 of this act, all in a manner acceptable to the commissioner of capital asset management and maintenance, the commissioner of conservation and recreation and the secretary of the commonwealth.

SECTION 6. Consideration for the lease of the property described in section 1 shall be based on the full and fair market value of the property for its use consistent with this act as determined by

an independent appraisal. Prior to the execution and delivery of any lease authorized by this act, the inspector general shall review and approve such appraisal and the inspector general's review shall include a review of the methodology utilized for the appraisal. The inspector general shall prepare a report of his review and file the report with the commissioner of capital asset management and maintenance for submission to the house and senate committees on ways and means and the house and senate chairs of the joint committee on state administration. In determining the rental to be paid by the Joseph M. Smith Community Health Center, the commissioner of capital asset management and maintenance may take any expenses and obligations incurred by said center pursuant to section 5 into account.

SECTION 7. The commissioner of capital asset management and maintenance, 30 days before the execution of any lease or agreement authorized by this act, or any subsequent amendment thereof, shall submit the lease, agreement or amendment and a report thereon to the inspector general for his review and comment. The inspector general shall issue his review and comment within 15 days of receipt of any lease, agreement or amendment. The commissioner shall submit the lease, agreement and any subsequent amendments thereof, the reports, and the comments of the inspector general, if any, to the house and senate committees on ways and means and the house and senate chairmen of the joint committee on state administration at least 15 days before execution of the lease, agreement or amendment.

SECTION 8. The Joseph M. Smith Community Health Center Building shall be LEED certified.

Respectfully submitted,

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DEVAL L. PATRICK,

Governor.