

**HOUSE . . . . . No. 4051**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

*Jay Livingstone*

*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 authorizing the lease, license, and conveyance of certain Commonwealth property located in the City of Boston.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Jay Livingstone</i>	<i>8th Suffolk</i>	<i>4/11/2014</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>4/14/2014</i>
<i>Aaron Michlewitz</i>	<i>3rd Suffolk</i>	<i>4/14/2014</i>
<i>Anthony W. Petrucci</i>	<i>First Suffolk and Middlesex</i>	<i>4/14/2014</i>
<i>William N. Brownsberger</i>	<i>Second Suffolk and Middlesex</i>	<i>4/14/2014</i>

**HOUSE . . . . . No. 4051**

By Mr. Livingstone of Boston, a petition (subject to Joint Rule 12) of Jay Livingstone and others relative to the conveyance of certain state owned land in the city of Boston. State Administration and Regulatory Oversight.

**The Commonwealth of Massachusetts**

**In the Year Two Thousand Fourteen**

An Act authorizing the lease, license, and conveyance of certain Commonwealth property 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 WHEREAS, the demand for medical services offered by the Massachusetts Eye and Ear  
2 Infirmary (MEEI) located at 243 Charles Street, Boston, Massachusetts presents the need to  
3 expand its current facility capacity to maintain the highest level of medical care; and

4 WHEREAS, the Massachusetts Eye and Ear Infirmary desires to undertake capital  
5 improvements at and around its main campus consisting of the construction of an approximately  
6 1,065 space subsurface parking facility below two existing surface parking lots located in the  
7 Esplanade park, the conversion of the two existing surface parking lots into relocated roadways  
8 and perennially maintained park space and garden(s), and the construction and fit-out of an  
9 approximately 240,000 square foot addition to the Massachusetts Eye and Ear Infirmary’s  
10 existing 15-floor facility located at 243 Charles Street that will accommodate administrative,  
11 medical, clinical, research operations; and

12 WHEREAS, the Commonwealth has determined that it is feasible and convenient to  
13 relocate the Storrow Drive roadways as a component of the reconstruction of the Longfellow  
14 Bridge, and resulting in a configuration which will place both directions of the relocated Storrow  
15 Drive under the southernmost arch of the Longfellow Bridge, where the eastbound lanes of  
16 Storrow Drive are presently, resulting in a straighter and safer roadway, and the restoration to  
17 park use of the land currently under the westbound direction of Storrow Drive, including the  
18 entirety of the land under the arch adjacent to the Charles River which currently accommodates  
19 the westbound lanes of Storrow Drive, which land will again be part of the Esplanade in  
20 permanent park use; and

21 WHEREAS, this restoration of parkland will contribute substantially to complying with  
22 the requirement for all possible planning to mitigate damage to park and historic features in light  
23 of the reconstruction of the Longfellow Bridge; and

24 WHEREAS, the public open space proposed by MEEI described herein as well as the  
25 replacement of roadway ramps into and out of Charles Circle from Storrow Drive will contribute  
26 to the restoration of the Esplanade parkland; and

27 WHEREAS, in order to relocate Storrow Drive to make it safer and straighter, and to  
28 provide for a restoration of a broader Esplanade, the westbound and eastbound lanes of Storrow  
29 Drive will require temporary relocation, so that both lane directions are under the westbound  
30 arch of the Longfellow Bridge to permit MassDOT to construct the permanent two-way Storrow  
31 Drive under the eastbound arch of the Longfellow Bridge, which will simultaneously provide  
32 space for construction of the MEEI capital improvements; and

33 WHEREAS, the Project relies upon the timely relocation of Storrow Drive in order to  
34 construct and operate the underground garage, and must be coordinated with the proposed  
35 improvements to Storrow Drive and the roadway ramps associated of the adjoining MassDOT  
36 reconstruction of the Longfellow Bridge and the ramps into and out of Charles Circle; and

37 WHEREAS, portions of the Esplanade parkland were used for the purpose of  
38 constructing Storrow Drive and portions in between the eastbound and westbound lanes of  
39 Storrow Drive were converted to surface parking lots owned by the Commonwealth, which lots  
40 were historically leased to MEEI and that the Project, in conjunction with MassDOT Project,  
41 presents the opportunity to restore parkland; and

42 WHEREAS, the Project and the MassDOT Project will in combination be in furtherance  
43 of the creation of a public benefit, the restoration and enhancement of open space, and the  
44 protection of public safety; and

45 WHEREAS, the MEEI capital improvements will be undertaken in coordination with the  
46 development review procedures of the City of Boston including review of the Massachusetts Eye  
47 and Ear Infirmary's Institutional Master Plan with no construction of the Project permitted until  
48 after approval of such Institutional Master Plan review and approval under Article 80 of the  
49 Boston Zoning Code, completion of the Massachusetts Environmental Policy Act review process  
50 and compliance with all other legal requirements; and

51 WHEREAS, the MEEI capital improvements will be undertaken after a thorough study of  
52 traffic in adjacent neighborhoods, particularly with respect to Leverett Circle and Charles Circle,  
53 and in a manner which assures continued convenient access to Blossom Street from Charles  
54 Street and Fruit Street to Charles Street.

55 SECTION 1. The following words, whenever used in this act shall, unless a different  
56 meaning clearly appears from the context, have the following meanings:

57 “MEEI Supplemental Development Parcel”, a certain parcel of land adjacent to the  
58 existing MEEI Facility, including a portion of the current layout of Charles Street, as may be  
59 necessary or desirable to facilitate the expansion of the MEEI Facility to add approximately  
60 240,000 square feet in fifteen floors or more and to provide pedestrian and vehicular access  
61 between such expansion and the subsurface parking garage described herein, together with  
62 additional rights described in section 7 of this act. MEEI Supplemental Development Parcel will  
63 be developed in a manner which assures continued safe and convenient access to Blossom Street  
64 from Charles Street and Charles Street from Fruit Street after the realignment of Charles Street  
65 and which does not involve building in the air space over the realigned Charles Street. MEEI  
66 shall seek all necessary Commonwealth and city of Boston approvals for the realignment of  
67 Charles Street.

68 “Department”, the Massachusetts Department of Conservation and Recreation.

69 “DCAMM”, the Massachusetts Division of Capital Asset Management and Maintenance.

70 “Lease Parcel”, a certain parcel of land bounded generally by the existing westbound lane  
71 of Storrow Drive to the northwest and west, the Longfellow Bridge to the south, and the existing  
72 boundary of Charles Street to the east and northeast and any improvements thereon.

73 “MEEI” and “Massachusetts Eye and Ear Infirmary”, means the Massachusetts Eye and  
74 Ear Infirmary, or its designee created for the purpose of undertaking the Project, together with  
75 any successors and permitted assigns.

76 “MassDOT”, the Massachusetts Department of Transportation.

77 “MassDOT Project”, the planning, design, development and construction of the  
78 relocation of a portion of Storrow Drive and its access ramps to Charles Circle as necessary to  
79 consolidate the westbound lanes of Storrow Drive with the eastbound lanes under a single arch  
80 of the Longfellow Bridge and the restoration to parkland and garden(s) to standards approved by  
81 the Department of the open space created by the consolidation that is contiguous with the  
82 Esplanade parkland. As part of the MassDOT Project, MassDOT will evaluate the  
83 appropriateness of any design of the proposed pedestrian bridge at Charles Circle (BKF-B-16-  
84 438) and will make all efforts to make any necessary changes as a result of the relocation of  
85 Storrow Drive. Any design that spans from Charles Circle over the land that contains the  
86 existing westbound lanes of Storrow Drive is inappropriate as spanning over too much of the  
87 Esplanade parkland.

88 “MEEI Facility”, the Massachusetts Eye and Ear Infirmary facility located at 243 Charles  
89 Street in the City of Boston.

90 “Private entity”, a natural person, corporation, general partnership, limited liability  
91 company, limited partnership, joint venture, business trust, public benefit corporation, non-profit  
92 entity or other business entity.

93 “Project”, the planning, design, development and construction of: (i) a subsurface parking  
94 garage at the Lease Parcel with direct access to and from Storrow Drive; (ii) grade level open  
95 space (to the extent the surface footprint is not required by the MassDOT Project) designed,  
96 landscaped, and maintained restored parkland and garden(s) to standards approved by the  
97 Department at the Lease Parcel for the enjoyment of the public; (iii) the expansion of the MEEI  
98 Facility onto the MEEI Supplemental Development Parcel; (iv) the realignment of and  
99 replacement of the access ramps connecting Charles Circle and Storrow Drive; and (v) the  
100 realignment of Charles Street north of Charles Circle to allow for the development of the MEEI  
101 Supplemental Development Parcel.

102 “Storrow Drive”, James J. Storrow Drive.

103 SECTION 2. Notwithstanding sections 32 to 38, inclusive, of chapter 7C of the General  
104 Laws or any other general or special law to the contrary, the Commissioner of the Massachusetts  
105 Division of Capital Asset Management and Maintenance, in consultation with the Department, is  
106 hereby authorized, on behalf of the Commonwealth and the Department, to: (i) lease, for not  
107 more than 99 years, the Lease Parcel, upon terms and conditions as DCAMM determines to be in  
108 the best interest of the Commonwealth, to the Massachusetts Eye and Ear Infirmary for the  
109 purpose of developing a subsurface parking garage and grade level open space and relocating  
110 certain roadways; (ii) lease, for not more than 99 years, or convey or grant to the Massachusetts  
111 Eye and Ear Infirmary the MEEI Supplemental Development Parcel; (iii) lease, for not more  
112 than 99 years, only the minimum real property interests owned or acquired by the  
113 Commonwealth to the Massachusetts Eye and Ear Infirmary as are necessary to permit  
114 pedestrian and vehicular access to such subsurface parking garage and to provide appropriate  
115 access, foundations and support for the proposed expansion of the MEEI Facility; and (iv) lease,  
116 for not more than 99 years, or convey or grant the minimum real property interests owned or  
117 acquired by the Commonwealth to the Massachusetts Eye and Ear Infirmary as are necessary to  
118 permit pedestrian and vehicular access to the MEEI Facility and to provide appropriate access.  
119 Any parcel conveyed to MEEI shall include a deed restriction limiting the use of the property to  
120 non-profit use, including but not limited to medical or educational use.

121 SECTION 3. MassDOT shall relocate a portion of Storrow Drive and its access ramps to  
122 Charles Circle as necessary to consolidate the westbound lanes of Storrow Drive with the  
123 eastbound lanes under one arch of the Longfellow Bridge (the arch closest to Charles Circle).  
124 DCAMM working with the Department is authorized to permit MEEI access to the Lease Parcel  
125 and the MEEI Supplemental Development Parcel and the Department is authorized to permit  
126 access to its roadways of the Commonwealth in a timely manner to permit construction of its  
127 subsurface parking garage, provide access ramps to the subsurface parking garage and to permit

128 construction of a building on the MEEI Supplemental Development Parcel. In order to expedite  
129 the construction of the Project and to minimize disruption to the roadways, MassDOT,  
130 notwithstanding any general law or special act to the contrary, may allow MEEI or its designee  
131 to construct all or a portion of the MassDOT Project if it determines that such action would  
132 facilitate construction of the projects described in this act and would minimize disruption to the  
133 public. Subject to Department review and approval, MassDOT may enter a construction  
134 coordination agreement with MEEI or its designee to minimize public disruption of the  
135 MassDOT Project and the Project, which will address the timing and coordination of  
136 construction, the sharing and allocation of responsibilities for construction, the feasibility of  
137 placing the ramps between Charles Circle and Storrow Drive underground as well as the  
138 allocation of any joint construction costs for shared components of the projects. In order to  
139 expedite the construction of the MEEI improvements, and notwithstanding the negotiation of the  
140 construction coordination agreement, MassDOT is authorized and directed to immediately  
141 commence the relocation of both directions of Storrow Drive under one arch of the Longfellow  
142 Bridge, in order to facilitate construction access for the Project. The relocation of Storrow Drive  
143 and such access ramps shall be determined by MassDOT using the Department's parkway design  
144 standards as approved by the Department. The design and specifications for all improvements  
145 under this section shall be subject to the review and approval of the Department.

146 SECTION 4. The consideration for the lease, grant and conveyance authorized and  
147 described in Section 2 shall be based on the full and fair market value of the parcels to be leased,  
148 granted or conveyed, as determined by DCAMM based upon an independent professional  
149 appraisal.

150 All proceeds from the lease, grant or conveyance shall be deposited in the Division of  
151 State Parks and Recreation Trust Fund, established by section 34 of chapter 92 of the General  
152 Laws. No lease or conveyance shall be made under this act unless the Department is  
153 compensated for the full value of the present and future revenue the Department would have  
154 otherwise realized from continued parking operations on the two existing surface lots or another  
155 agreed upon commercial arrangement that is deemed satisfactory by the Department.

156 Any lease to the Massachusetts Eye and Ear Infirmary granted under this act may contain  
157 provisions granting cure rights, step in rights and rights with respect to novation or substitution  
158 to the Massachusetts Eye and Ear Infirmary's lenders or any private entity that is party to an  
159 agreement described in section 14. In addition, any lease to the Massachusetts Eye and Ear  
160 Infirmary granted under this act may, under terms determined by DCAMM and set out in said  
161 lease, be assigned, pledged or mortgaged and the lien of such pledge or mortgage may be  
162 enforced or foreclosed by appropriate action, except that any lease assignment or mortgage and  
163 the lien of such pledge or mortgage will ensure that rights of the public to occupy or use any and  
164 all land surface areas that are currently or in the future located above the proposed subsurface  
165 parking garage, subject to the location of roadways, ramps and other vertical entry points to the  
166 subsurface parking garage and the construction thereof as may be approved by MassDOT.

167 SECTION 5. Each of MassDOT, DCAMM and the Department are hereby authorized to  
168 work with the Massachusetts Eye and Ear Infirmary to support implementation of the Project  
169 described in this act in furtherance of the creation of a public benefit, the creation, restoration, or  
170 enhancement of open space, the protection of public safety and the expansion of the MEEI  
171 Facility, and to coordinate the construction of the Project with the relocation of a portion of  
172 Storrow Drive at the Longfellow Bridge, described in section 3.

173 SECTION 6. The exact boundary of the Lease Parcel, including the grade level open  
174 space boundary and subsurface parking garage boundary, shall be determined by DCAMM in  
175 consultation with the Department and the Massachusetts Eye and Ear Infirmary after completion  
176 of a survey, but will be within the generally triangular area bounded by the existing westbound  
177 lane of Storrow Drive to the northwest and west, the Longfellow Bridge to the south, and the  
178 existing boundary of Charles Street to the east and northeast. In no event shall the Project  
179 described in this act encroach into or upon the existing Esplanade parkland or sidewalks located  
180 west of the existing westbound lane of Storrow Drive, except to provide pedestrian access from  
181 the Esplanade parkland to the underground garage. Any structure on the Esplanade parkland  
182 shall be the minimum size necessary for such access, shall be built to be consistent with the  
183 designs of existing Esplanade structures, and shall be approved by the Department prior to  
184 construction. Taken together, the Project and the DOT Project shall not result in any net loss of  
185 public green space and parkland.

186 SECTION 7. The exact boundary of the MEEI Supplemental Development Parcel,  
187 including the grade level open space boundary, shall be determined by the Department in  
188 consultation with MassDOT and the Massachusetts Eye and Ear Infirmary after completion of a  
189 survey, but will be within the general rectangular area bounded by the current width of the  
190 MEEI's Facility along Charles Street, the boundary of the existing MEEI Facility and the  
191 existing eastbound lane of Storrow Drive, excluding sufficient space to relocate Charles Street  
192 such that it will be located outside the boundaries of the MEEI Supplemental Development  
193 Parcel. It shall contain the minimum amount of real property necessary for the proposed 240,000  
194 square foot, 15-story expansion of the current Facility with any necessary real property needed  
195 for access.

196 SECTION 8. The leases authorized in this act shall provide, among other things, that the  
197 lessee shall assume the care, custody, control and management of the property or portions  
198 thereof, subject to a requirement that the grade level open space shall be deemed public parkland  
199 and subject to the rules and regulations of the Department. Said leases may include, without  
200 limitation, obligations to (i) build structures approved by the Department, and maintain, manage,  
201 repair the grade level open space that is designed, landscaped, and maintained parkland and  
202 garden(s), and (ii) provide discounted public parking for events and programs at the Esplanade  
203 parkland. Preferential, discounted parking may be provided to residents of the Beacon Hill and  
204 West End neighborhoods during periods when primary provision of non-profit medical services

205 is not significantly affected. The design and specifications for all open space improvements shall  
206 be subject to the review and approval of the Department.

207 SECTION 9. Notwithstanding the provisions of any general or special law to the  
208 contrary, the Project described in this act and any design and construction services contemplated  
209 by this act may be procured without such procurement being subject to the competitive bid  
210 process set forth in section 62 to 73, inclusive, of chapter 6C, sections 39A through 39S,  
211 inclusive, and section 39M of chapter 30, or sections 44A to 44M, inclusive, of chapter 149 of  
212 the General Laws, any other public construction procurement law, any other public procurement  
213 law, or any other general or special law, regulation, ordinance or bylaw providing for the  
214 advertising, bidding, or awarding of contracts; provided, however, that the Massachusetts Eye  
215 and Ear Infirmary shall not construct any facilities on the lease parcel without the written  
216 approval of DCAMM; provided further that DCAMM and the Department shall not approve any  
217 design or construction pursuant to this act unless it has determined that the Massachusetts Eye  
218 and Ear Infirmary has: (i) sufficient financial resources to complete the Project; and (ii) obtained  
219 insurance protecting the Commonwealth as specified by DCAMM and the Department; provided  
220 further, that prior to approval, all agreements shall include a requirement that the performance of,  
221 and payment for, improvements to the lease parcel shall be fully covered by bonds issued by  
222 bonding companies authorized to issue bonds in the Commonwealth as determined by DCAMM;  
223 provided further, that the Massachusetts Eye and Ear Infirmary shall have met any other terms  
224 and conditions to ensure completion of the public facilities in a timely manner; and provided  
225 further, that the Massachusetts Eye and Ear Infirmary shall pay the prevailing wages in  
226 accordance with sections 26 and 27 of chapter 149 of the General Laws in connection with any  
227 such construction. Upon completion of any such construction by the Massachusetts Eye and Ear  
228 Infirmary, the Commonwealth shall bear all maintenance and repair costs for the relocated  
229 roadways and access ramps to Charles Circle and any related land area used by MassDOT or the  
230 Department.

231 SECTION 10. Notwithstanding any general or special law to the contrary, the appraisal  
232 required by this act shall be subject to the review and approval of the inspector general, and such  
233 review shall include an examination of the methodology utilized for the appraisal. Within 30  
234 days after receiving an appraisal, the inspector general shall prepare a report of his review and  
235 file the report with DCAMM. Within 15 days of receiving the inspector general's report but not  
236 later than 15 days before the execution of any agreement or other document relating to the lease,  
237 DCAMM shall submit the report to the house and senate committees on ways and means and the  
238 joint committee on bonding, capital expenditures and state assets.

239 SECTION 11. Notwithstanding any general or special law to the contrary, the grantees  
240 of the parcels and the lessees of the leasehold parcels shall be responsible for all costs and  
241 expenses including, but not limited to, costs associated with any engineering, surveys, appraisals,  
242 deed preparation, easement preparation and lease preparation related to the conveyance, leases  
243 and grants of easements authorized in this act as those costs may be determined by DCAMM.

244 Upon conveyance of the respective parcels, the grantees shall be solely responsible for all costs,  
245 liabilities and expenses of any nature and kind for the development, maintenance, use and  
246 operation of such parcels.

247 SECTION 12. The construction or occupancy of any MEEI building or other  
248 improvement erected or subsurface parking garage erected or affixed under any lease, license,  
249 grant or conveyance or relocation of Charles Street pursuant to this act shall be subject to the  
250 fire, garage, health and zoning laws, ordinances, bylaws, rules and regulations applicable in the  
251 city of Boston, and no construction of any such building or other improvement shall be  
252 commenced until approval of such building or other improvement by the Boston Redevelopment  
253 Authority pursuant to its institutional master plan and Article 80 review processes. As part of the  
254 review processes described in this section, MEEI, in conjunction with MassDOT and the  
255 Department, shall conduct a thorough study of traffic in adjacent neighborhoods, particularly  
256 with respect to Leverett Circle and Charles Circle, and design the Project such that it minimizes  
257 any adverse impact on traffic. The traffic study shall include a study of the advisability of  
258 modifying the width of Charles Street (after relocating it), the advisability to changes to  
259 intersection designs, including traffic lights and signals on the streets around the MEEI Facility,  
260 including but not limited to Cambridge Street, Blossum Street, Charles Street, and Fruit Street, as  
261 well as improved access for pedestrians and bike cyclists. To the extent any regulatory approvals  
262 are necessary for the MassDOT Project, MassDOT may engage in regulatory processes for the  
263 MassDOT Project separate from any regulatory approval of the Project.

264 SECTION 13. Notwithstanding any general or special law to the contrary, including  
265 sections 5 through 14, inclusive, of chapter 293 of the acts of 2006, as subsequently amended,  
266 including, without limitation, by chapter 129 of the acts of 2008, and any regulations  
267 promulgated thereunder, the Project described in this act shall not count toward the number of  
268 economic development proposals, as defined in section 5 of chapter 293 of the acts of 2006, that  
269 may be approved by the secretary of the executive office of administration and finance,  
270 established pursuant to section 2 of chapter 7 of the General Laws, in any one (1) municipality,  
271 as defined in section 5 of chapter 293 of the acts of 2006.

272 SECTION 14. Notwithstanding any general or special law to the contrary, to facilitate  
273 the Project described in this act, the Massachusetts Eye and Ear Infirmary may enter into one or  
274 more concession agreements, development agreements, public-private agreements, project  
275 agreements, or any other agreements with one or more public and/or private entities in order to  
276 develop, design, build, finance, operate or maintain a subsurface parking garage at the Lease  
277 Parcel, the open space for the enjoyment of the public, the subsurface parking garage, the  
278 expansion of the MEEI Facility or the relocation of Storrow Drive in this vicinity. The  
279 Massachusetts Eye and Ear Infirmary shall determine the qualifications and select such private  
280 entity or entities, provided that no contractor suspended or debarred from work on public  
281 projects shall be selected for work on the MassDOT Project or open space improvements and it  
282 shall be required that said contractor is in good standing with MassDOT and the Department.

283 Both the Commonwealth and MEEI are prohibited from selling naming rights to any part or the  
284 whole of the Project or MassDOT Project or both, provided that this prohibition will not apply to  
285 the improvements to be constructed on the MEEI Supplemental Development Parcel.

286 SECTION 15. MassDOT, the Department and the Massachusetts Eye and Ear Infirmary  
287 are authorized to implement the combined projects described herein, including the restoration to  
288 park use of the land currently occupied by the westbound Storrow Drive roadway and any park  
289 land created on the roof of any garage constructed on the Lease Parcel as an integral part of the  
290 Esplanade in a condition suitable for park use, including suitable walking and running paths and  
291 a new portion of the Paul Dudley White Bikeway.

292 SECTION 16. MassDOT will make all efforts to complete the proposed pedestrian  
293 bridge at Leverett Circle prior to construction of the Project or the MassDOT Project.

294 SECTION 17. To ensure a no-net loss of lands for natural resource purposes, in the event  
295 that any aspect of the MEEI project impacts lands held for natural resource purposes, MEEI shall  
296 convey or cause to be conveyed to the Commonwealth, or provide funding to the department  
297 sufficient for such purposes, lands or interest in lands to be held by the department for  
298 conservation and recreation purposes. As part of the review of the MEEI project under the  
299 Massachusetts Environmental Policy Act (MEPA), in determining appropriate mitigation under  
300 this section to ensure a no net loss of lands held for natural resource purposes, the Secretary shall  
301 take into account the value of any new public greenspace and associated surface level park  
302 improvements funded and constructed by MEEI.