

**HOUSE . . . . . No. 4353**

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

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

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

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

29 WHEREAS, the Project relies upon the timely relocation of Storrow Drive in  
30 order to construct and operate the underground garage, and must be coordinated with the  
31 proposed improvements to Storrow Drive and the ramps into and out of Charles Circle; and

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

37 WHEREAS, the Project and the MassDOT Project will in combination be in  
38 furtherance of the creation of a public benefit, the restoration and enhancement of open space,  
39 and the protection of public safety; and

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

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

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

52 "MEEI Supplemental Development Parcel", a certain parcel of land adjacent to  
53 the existing MEEI Facility, including a portion of the current layout of Charles Street, as may be  
54 necessary or desirable to facilitate the expansion of the MEEI Facility to add approximately  
55 240,000 square feet in fifteen floors or more and to provide pedestrian and vehicular access  
56 between such expansion and the subsurface parking garage described herein, together with  
57 additional rights described in section 7 of this act. MEEI Supplemental Development Parcel will  
58 be developed in a manner which assures continued safe and convenient access to Blossom Street

59 from Charles Street and Charles Street from Fruit Street after the realignment of Charles Street  
60 and which does not involve building in the air space over the realigned Charles Street. MEEI  
61 shall seek all necessary Commonwealth and city of Boston approvals for the realignment of  
62 Charles Street.

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

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

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

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

73 “MassDOT”, the Massachusetts Department of Transportation.

74 “MassDOT Project”, the planning, design, development and construction of the  
75 relocation of a portion of Storrow Drive and its access ramps to Charles Circle as necessary to  
76 consolidate the westbound lanes of Storrow Drive with the eastbound lanes under a single arch  
77 of the Longfellow Bridge and the restoration to parkland and garden(s) to standards approved by  
78 the Department of the open space created by the consolidation that is contiguous with the  
79 Esplanade parkland.

80 “MEEI Facility”, the Massachusetts Eye and Ear Infirmary facility located at  
81 243 Charles Street in the City of Boston.

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

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

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

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

113 SECTION 3. MassDOT shall relocate a portion of Storrow Drive and its access  
114 ramps to Charles Circle as necessary to consolidate the westbound lanes of Storrow Drive with  
115 the eastbound lanes under one arch of the Longfellow Bridge (the arch closest to Charles Circle).  
116 DCAMM working with the Department is authorized to permit MEEI access to the Lease Parcel  
117 and the MEEI Supplemental Development Parcel and the Department is authorized to permit  
118 access to its roadways of the Commonwealth in a timely manner to permit construction of its  
119 subsurface parking garage, provide access ramps to the subsurface parking garage and to permit  
120 construction of a building on the MEEI Supplemental Development Parcel. In order to expedite  
121 the construction of the Project and to minimize disruption to the roadways, MassDOT,  
122 notwithstanding any general law or special act to the contrary, may enter into a memorandum of  
123 understanding and construction contract permitting MEEI or its designee to construct a portion  
124 of the MassDOT Project if it determines that such action would facilitate construction of the  
125 projects described in this act and would minimize disruption to the public. Subject to  
126 Department review and approval, MassDOT may enter a construction coordination agreement  
127 with MEEI or its designee to minimize public disruption of the MassDOT Project and the  
128 Project, which will address the timing and coordination of construction, the sharing and  
129 allocation of responsibilities for construction, the feasibility of placing the ramps between  
130 Charles Circle and Storrow Drive underground as well as the allocation of any joint construction  
131 costs for shared components of the projects. In order to expedite the construction of the MEEI  
132 improvements, and notwithstanding the negotiation of the construction coordination agreement,

133 MassDOT is authorized and directed to relocate both directions of Storrow Drive under one arch  
134 of the Longfellow Bridge, in order to facilitate construction access for the Project. The  
135 relocation of Storrow Drive and such access ramps shall be determined by MassDOT using the  
136 Department's parkway design standards as approved by the Department, provided, that MEEI or  
137 its designee shall pay all costs related to placing the ramps between Charles Circle and Storrow  
138 drive underground. The design and specifications for all improvements under this section shall  
139 be subject to the review and approval of the Department.

140 SECTION 4. The consideration for the lease, grant and conveyance authorized  
141 and described in Section 2 shall be based on the full and fair market value of the parcels to be  
142 leased, granted or conveyed, as determined by DCAMM based upon an independent professional  
143 appraisal, as defined in section 10 of this act.

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

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

161 SECTION 5. Each of MassDOT, DCAMM and the Department are hereby  
162 authorized to work with the Massachusetts Eye and Ear Infirmary to support implementation of  
163 the Project described in this act in furtherance of the creation of a public benefit, the creation,  
164 restoration, or enhancement of open space, improved treatment of storm water, such as the  
165 creation of a well designed, context sensitive gravel wetland system that blends with the  
166 parkland uses, the protection of public safety and the expansion of the MEEI Facility, and to  
167 coordinate the construction of the Project with the relocation of a portion of Storrow Drive at the  
168 Longfellow Bridge, described in section 3. To the extent practical, any storm water treatment  
169 shall be located on the southern side of Storrow Drive.

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

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

193 SECTION 8. The leases authorized in this act shall provide, among other things,  
194 that the lessee shall assume the care, custody, control and management of the property or  
195 portions thereof, subject to a requirement that the grade level open space shall be deemed public  
196 parkland and subject to the rules and regulations of the Department. Said leases may include,  
197 without limitation, obligations to (i) build structures approved by the Department, and maintain,  
198 manage, repair the grade level open space that is designed, landscaped, and maintained parkland  
199 and garden(s), and (ii) provide discounted public parking for events and programs at the  
200 Esplanade parkland. Preferential, discounted parking may be provided to residents of the  
201 Beacon Hill and West End neighborhoods during periods when primary provision of non-profit  
202 medical services is not significantly affected. The design and specifications for all open space  
203 improvements shall be subject to the review and approval of the Department.

204 SECTION 9. Notwithstanding the provisions of any general or special law to  
205 the contrary, the Project described in this act and any design and construction services  
206 contemplated by MEEI or its designees under the provisions of this act, may be procured without  
207 such procurement being subject to the competitive bid process set forth in section 62 to 73,  
208 inclusive, of chapter 6C, sections 39A through 39S, inclusive, and section 39M of chapter 30, or

209 sections 44A to 44M, inclusive, of chapter 149 of the General Laws, any other public  
210 construction procurement law, any other public procurement law, or any other general or special  
211 law, regulation, ordinance or bylaw providing for the advertising, bidding, or awarding of  
212 contracts; provided, that MASSDOT, the department and all Commonwealth entities procuring  
213 design and construction services related to the provisions of this act shall adhere to all applicable  
214 procurement and public bid statutes and regulations, provided further, that the Massachusetts  
215 Eye 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  
232 appraisal required by this act shall be subject to the review and approval of the inspector general,  
233 and such review shall include an examination of the methodology utilized for the appraisal.  
234 Within 30 days after receiving an appraisal, the inspector general shall prepare a report of his  
235 review and file the report with DCAMM. Within 15 days of receiving the inspector general's  
236 report but not later than 30 days before the execution of any agreement or other document  
237 relating to the lease, DCAMM shall submit the report to the house and senate committees on  
238 ways and means and the joint committee on bonding, capital expenditures and state assets.

239 SECTION 11. Notwithstanding any general or special law to the contrary, the  
240 grantees of the parcels and the lessees of the leasehold parcels shall be responsible for all costs  
241 and expenses including, but not limited to, costs associated with any engineering, surveys,  
242 appraisals, deed preparation, easement preparation and lease preparation related to the  
243 conveyance, leases and grants of easements authorized in this act as those costs may be  
244 determined by DCAMM. Upon conveyance of the respective parcels, the grantees shall be  
245 solely responsible for all costs, liabilities and expenses of any nature and kind for the  
246 development, maintenance, use and 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, east of Charles Circle (after relocating it), the advisability  
259 to changes to intersection designs, including traffic lights and signals on the streets around the  
260 MEEI Facility, including but not limited to Cambridge Street, Blossum Street, Charles Street,  
261 and Fruit Street, as well as improved access for pedestrians and bike cyclists. To the extent any  
262 regulatory approvals are necessary for the MassDOT Project, MassDOT may engage in  
263 regulatory processes for the MassDOT Project separate from any regulatory approval of the  
264 Project.

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

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

285 whole of the Project or MassDOT Project or both, provided that this prohibition will not apply to  
286 the improvements to be constructed on the MEEI Supplemental Development Parcel.

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

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

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