

HOUSE No. 4370

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 SECTION 1. The following words, whenever used in this act shall, unless context
2 clearly indicates otherwise, have the following meanings:

3 “MEEI Supplemental Development Parcel”, a certain parcel of land adjacent to the
4 existing MEEI Facility, including a portion of the current layout of Charles Street, as may be
5 necessary or desirable to facilitate the expansion of the MEEI Facility to add approximately
6 240,000 square feet in fifteen floors or more and to provide pedestrian and vehicular access
7 between such expansion and the subsurface parking garage described herein, together with
8 additional rights described in section 7 of this act. MEEI Supplemental Development Parcel will
9 be developed in a manner which assures continued safe and convenient access to Blossom Street
10 from Charles Street and Charles Street from Fruit Street after the realignment of Charles Street
11 and which does not involve building in the air space over the realigned Charles Street. MEEI
12 shall seek all necessary commonwealth and city of Boston approvals for the realignment of
13 Charles Street.

14 “Department”, the department of conservation and recreation.

15 “DCAMM”, the division of capital asset management and maintenance.

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

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

22 “MassDOT”, the department of transportation.

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

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

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

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

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

44 SECTION 2. Notwithstanding sections 32 to 38, inclusive, of chapter 7C of the General
45 Laws or any other general or special law to the contrary, the commissioner of the division of
46 capital asset management and maintenance, in consultation with the department, is hereby
47 authorized to: (i) lease, for not more than 99 years, the Lease Parcel, upon terms and conditions
48 as DCAMM determines to be in the best interest of the commonwealth, to the Massachusetts Eye
49 and Ear Infirmary for the purpose of developing a subsurface parking garage and grade level
50 open space and relocating certain roadways; (ii) lease, for not more than 99 years, or convey or
51 grant to the Massachusetts Eye and Ear Infirmary the MEEI Supplemental Development Parcel;
52 (iii) lease, for not more than 99 years, only the minimum real property interests owned or
53 acquired by the commonwealth to the Massachusetts Eye and Ear Infirmary as are necessary to
54 permit pedestrian and vehicular access to such subsurface parking garage and to provide

appropriate access, foundations and support for the proposed expansion of the MEEI Facility; and (iv) lease, for not more than 99 years, or convey or grant the minimum real property interests owned or acquired by the commonwealth to the Massachusetts Eye and Ear Infirmary as are necessary to permit pedestrian and vehicular access to the MEEI Facility and to provide appropriate access. Any parcel conveyed to MEEI shall include a deed restriction limiting the use of the property to non-profit use, including but not limited to medical or educational use.

SECTION 3. MassDOT may relocate a portion of Storrow Drive and its access ramps to Charles Circle as necessary to consolidate the westbound lanes of Storrow Drive with the eastbound lanes under one arch of the Longfellow Bridge (the arch closest to Charles Circle). DCAMM working with the department is authorized to permit MEEI access to the Lease Parcel and the MEEI Supplemental Development Parcel and the department is authorized to permit access to its roadways of the commonwealth in a timely manner to permit construction of its subsurface parking garage, provide access ramps to the subsurface parking garage and to permit construction of a building on the MEEI Supplemental Development Parcel. In order to expedite the construction of the Project and to minimize disruption to the roadways, MassDOT, notwithstanding any general law or special act to the contrary, may enter into a memorandum of understanding and construction contract permitting MEEI or its designee to construct a portion of the MassDOT Project if it determines that such action would facilitate construction of the projects described in this act and would minimize disruption to the public. Subject to department review and approval, MassDOT may enter a construction coordination agreement with MEEI or its designee to minimize public disruption of the MassDOT Project and the Project, which will address the timing and coordination of construction, the sharing and allocation of responsibilities for construction, the feasibility of placing the ramps between Charles Circle and Storrow Drive underground as well as the allocation of any joint construction costs for shared components of the projects. In order to expedite the construction of the MEEI improvements, and notwithstanding the negotiation of the construction coordination agreement, MassDOT is authorized to relocate both directions of Storrow Drive under one arch of the Longfellow Bridge, in order to facilitate construction access for the Project. The relocation of Storrow Drive and such access ramps shall be determined by MassDOT using the department's parkway design standards as approved by the department, provided, that MEEI or its designee shall pay all costs related to placing the ramps between Charles Circle and Storrow drive underground. The design and specifications for all improvements under this section shall be subject to the review and approval of the department.

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

. No lease or conveyance shall be made under this act unless the department is compensated for the full value of the present and future revenue the department would have

otherwise realized from continued parking operations on the two existing surface lots or another agreed upon commercial arrangement that is deemed satisfactory by the department.

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

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

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

SECTION 7. The exact boundary of the MEEI Supplemental Development Parcel, including the grade level open space boundary, shall be determined by the department in consultation with MassDOT and the Massachusetts Eye and Ear Infirmary after completion of a

survey, but will be within the general rectangular area bounded by the current width of the MEEI's Facility along Charles Street, the boundary of the existing MEEI Facility and the existing eastbound lane of Storrow Drive, excluding sufficient space to relocate Charles Street such that it will be located outside the boundaries of the MEEI Supplemental Development Parcel. It may contain the minimum amount of real property necessary for the proposed 240,000 square foot, 15-story expansion of the current Facility with any necessary real property needed for access.

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

SECTION 9. Notwithstanding the provisions of any general or special law to the contrary, the Project described in this act and any design and construction services contemplated by MEEI or its designees under the provisions of this act, may be procured without such procurement being subject to the competitive bid process set forth in section 62 to 73, inclusive, of chapter 6C, sections 39A through 39S, inclusive, and section 39M of chapter 30, or sections 44A to 44M, inclusive, of chapter 149 of the General Laws, any other public construction procurement law, any other public procurement law, or any other general or special law, regulation, ordinance or bylaw providing for the advertising, bidding, or awarding of contracts; provided, that MASSDOT, the department and all commonwealth entities procuring design and construction services related to the provisions of this act shall adhere to all applicable procurement and public bid statutes and regulations, provided further, that the Massachusetts Eye and Ear Infirmary shall not construct any facilities on the lease parcel without the written approval of DCAMM; provided further that DCAMM and the department shall not approve any design or construction pursuant to this act unless it has determined that the Massachusetts Eye and Ear Infirmary has: (i) sufficient financial resources to complete the Project; and (ii) obtained insurance protecting the commonwealth as specified by DCAMM and the department; provided further, that prior to approval, all agreements shall include a requirement that the performance of, and payment for, improvements to the lease parcel shall be fully covered by bonds issued by bonding companies authorized to issue bonds in the commonwealth as determined by DCAMM; provided further, that the Massachusetts Eye and Ear Infirmary shall have met any other terms and conditions to ensure completion of the public facilities in a timely manner; and provided

further, that the Massachusetts Eye and Ear Infirmary shall pay the prevailing wages in accordance with sections 26 and 27 of chapter 149 of the General Laws in connection with any such construction. Upon completion of any such construction by the Massachusetts Eye and Ear Infirmary, the commonwealth shall bear all maintenance and repair costs for the relocated roadways and access ramps to Charles Circle and any related land area used by MassDOT or the department.

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

SECTION 11. Notwithstanding any general or special law to the contrary, the grantees of the parcels and the lessees of the leasehold parcels shall be responsible for all costs and expenses including, but not limited to, costs associated with any engineering, surveys, appraisals, deed preparation, easement preparation and lease preparation related to the conveyance, leases and grants of easements authorized in this act as those costs may be determined by DCAMM. Upon conveyance of the respective parcels, the grantees shall be solely responsible for all costs, liabilities and expenses of any nature and kind for the development, maintenance, use and operation of such parcels.

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

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

SECTION 14. Notwithstanding any general or special law to the contrary, to facilitate the Project described in this act, the Massachusetts Eye and Ear Infirmary may enter into one or more concession agreements, development agreements, public-private agreements, project agreements, or any other agreements with one or more public and/or private entities in order to develop, design, build, finance, operate or maintain a subsurface parking garage at the Lease Parcel, the open space for the enjoyment of the public, the subsurface parking garage, the expansion of the MEEI Facility or the relocation of Storrow Drive in this vicinity. The Massachusetts Eye and Ear Infirmary shall determine the qualifications and select such private entity or entities, provided that no contractor suspended or debarred from work on public projects shall be selected for work on the MassDOT Project or open space improvements and it shall be required that said contractor is in good standing with MassDOT and the department. Both the commonwealth and MEEI are prohibited from selling naming rights to any part or the whole of the Project or MassDOT Project or both, provided that this prohibition will not apply to the improvements to be constructed on the MEEI Supplemental Development Parcel.

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

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

SECTION 17. To ensure a no-net loss of lands for natural resource purposes, in the event that any aspect of the MEEI project impacts lands held for natural resource purposes, MEEI shall convey or cause to be conveyed to the commonwealth, or provide funding to the department sufficient for such purposes, lands or interest in lands to be held by the department for conservation and recreation purposes. As part of the review of the MEEI project under the Massachusetts Environmental Policy Act (MEPA), in determining appropriate mitigation under this section to ensure a no net loss of lands held for natural resource purposes, the secretary shall

247 take into account the value of any new public greenspace and associated surface level park
248 improvements funded and constructed by MEEI.