

HOUSE No. 5144

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, July 30, 2022.

The committee on Ways and Means, to whom was referred the Senate Bill 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), reports recommending that the same ought to pass with an amendment striking out all after the enacting clause and inserting in place thereof the text contained in House document numbered 5144.

For the committee,

AARON MICHLEWITZ.

HOUSE No. 5144

Text of an amendment, recommended by the committee on Ways and Means, to the Senate Bill 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). July 30, 2022.

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

By striking out all after the enacting clause and inserting in place thereof the following:–

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 a building with its facilities and a field at the site of
6 the former Joseph Lee pool complex, which contains approximately 2 acres of land located south
7 of the department of state police barracks, east and northeast of the Teddy Ebersol’s Red Sox
8 fields complex and west and northwest of Storrow drive on the Charles River Esplanade in the
9 city of Boston. No lease of the property shall be valid unless the lease provides that the property
10 may be used only for the operation, public use and programming of the Charles River Esplanade
11 park or the public use of the field and facilities within the property, which may include, but shall
12 not be limited to: (i) a public building with a publicly-accessible lobby or visitors center and
13 public restrooms open at no charge, with permanent historical design elements reflecting the
14 social, recreational and economic importance of the property; (ii) newly-constructed
15 maintenance and operations space; (iii) horticultural operations space, including mechanical

16 space; (iv) an operations work yard; (v) compost area; (vi) building operations and park
17 programs offices; (vii) outdoor covered porch space; (viii) outdoor performing arts or outdoor
18 learning space; (ix) removal and landscaping of existing parking areas and widespread landscape
19 enhancements that promote natural terrain and nature play; (x) river edge pedestrian pathway
20 reconnections; (xi) climate change adaptation and resiliency planning features; (xii) storage
21 space for materials and equipment supporting the building, field and park and related activities;
22 (xiii) public and community meeting space; (xiv) indoor and outdoor roof deck program and
23 event space; (xv) indoor, or indoor and outdoor, café space; and (xvi) enhanced landscaping for a
24 newly-constructed multi-use synthetic turf field with lighting for the entire property. A 1-time,
25 10-year extension of the lease may be granted if the Esplanade Association, Inc. makes a
26 significant investment in the facility within the final years of the lease, as determined by the
27 commissioner 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 Esplanade Association, Inc. may enter into an agreement
32 authorizing the Esplanade Association, Inc. to manage and oversee the construction,
33 refurbishment, repair and improvement to the field 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 at its sole cost and expense that the Esplanade
39 Association, Inc.: (i) may provide oversight, programming, operations, maintenance and repair of
40 the property, including the land, facilities, field and appurtenances associated therewith during
41 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 during the term of the
46 lease and the proceeds from concessions associated with use of the property for the sole purpose
47 of the design, construction, operation, programming, maintenance and repair expenses of the
48 property over the course of the lease; provided, however, that the use of any excess funds shall,
49 with the approval of the department of conservation and recreation, be limited to the Esplanade
50 Association, Inc.'s ongoing revitalization, maintenance, enhancement and programming of the
51 Charles River Esplanade park; (iv) shall, not later than 3 months after the close of the calendar
52 year, prepare an annual report detailing its performance against the goals for the prior year,
53 detailing all revenues and expenditures of funds for the prior year pursuant to this section,
54 regardless of source, and specifying all usage and programming fee rates associated with planned
55 programs and activities, and submit the report to the commissioner of conservation and
56 recreation and the clerks of the senate and house of representatives; (v) shall not design or
57 construct any facilities on the property without the written approval of the commissioner of
58 capital asset management and maintenance and the commissioner of conservation and recreation;
59 (vi) shall be responsible for all utility costs, except those for which a fee is charged under
60 regulation by the department of conservation and recreation; and (vii) may be responsible for

61 outreach and stewardship with the written approval of the commissioner of capital asset
62 management and maintenance and the commissioner of conservation and recreation.

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

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

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

73 SECTION 2. (a) Except as provided in subsection (b), the lease may authorize the
74 Esplanade Association, Inc. to determine, schedule and program the use of the facilities, land and
75 appurtenances of the property, including the establishment of the published programming fees
76 described in section 1. The department of conservation and recreation shall retain control of the
77 scheduling and programming of the outdoor recreational facility in furtherance of its mission and
78 consistent with its policy to provide free use of the space for community based non-profit youth
79 groups and may allow for the scheduling and programming of the outdoor recreational facility by
80 the Esplanade Association, Inc. under a further agreement. The Esplanade Association, Inc. shall
81 ensure fair and reasonable use of the facilities, land and appurtenances associated therewith for

82 practice and games based upon the needs of the general public, youth sports leagues and other
83 interested users, in consultation with the department of conservation and recreation.

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

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

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

103 SECTION 3. The Esplanade Association, Inc. shall be responsible for all costs and
104 expenses associated with any engineering, surveys, appraisals, construction, refurbishment,
105 repair and improvements to the property and lease preparation related to the 30-year lease, any
106 lease extension and any other agreements under this act; provided, however, that the Esplanade
107 Association, Inc. shall expend not less than \$10,000,000 on the planning, design, construction,
108 refurbishment, repair and improvements to the property; provided, however, that the
109 commonwealth shall not be required to contribute to any such costs. The department of
110 conservation and recreation shall have approval authority over the design, construction,
111 refurbishment, repair and improvements to the property and the Charles River path described in
112 subsection (a) of section 1 to ensure that the Esplanade Association, Inc. complies with this act.

113 SECTION 4. Notwithstanding any general or special law to the contrary, any agreements
114 authorized in this act relating to the advertising, bidding or awarding of contracts, the
115 procurement of services or to the construction and design of improvements shall not be subject to
116 section 39M of chapter 30 of the General Laws or sections 26 to 27F, inclusive, and sections
117 44A to 44J, inclusive, of chapter 149 of the General Laws; provided, however, that all
118 construction, reconstruction, installation, alteration or repair shall be performed at the wage rate
119 established in section 26 and section 27 of said chapter 149.

120 SECTION 5. To ensure a no-net-loss of lands protected for conservation and recreation
121 purposes and as a condition of the leasehold interests authorized in this act, the Esplanade
122 Association, Inc. shall make a payment of funds or a transfer of land or a conservation restriction
123 upon land to the department of conservation and recreation, which payment or transfer or
124 restriction on land shall be of a value equal to or greater than the full and fair market value of its
125 leasehold interest under this act as determined by an independent appraisal prepared in

126 accordance with the usual and customary professional appraisal practices by a qualified appraiser
127 commissioned by the commissioner of capital asset management and maintenance, in
128 consultation with the commissioner of conservation and recreation, less any credits as provided
129 in this section. Any such land or interest in land, including any conservation restriction, shall be
130 subject to approval by the department of conservation and recreation. The appraisal shall include
131 an examination of the value of the physical capital improvements to be constructed by the
132 Esplanade Association, Inc., the relative value associated with the exclusive private use of the
133 improvements by the Esplanade Association, Inc. or any other party, any associated revenues and
134 the relative value associated with the use of the improvements by the general public to be
135 scheduled by the Esplanade Association, Inc. In determining the funds due pursuant to this
136 section, the division of capital asset management and maintenance, in consultation with the
137 department of conservation and recreation, may determine a credit on account of the relative
138 value associated with the public use of the improvements. Any sums due under this section shall
139 be paid by the Esplanade Association, Inc. to the department of conservation and recreation for
140 deposit into the Conservation Trust established in section 1 of chapter 132A of the General Laws
141 to be used to acquire land or interests in land for conservation and recreation purposes.

142 SECTION 6. The commissioner of capital asset management and maintenance shall
143 submit the proposed lease and the appraisals completed under section 5 to the inspector general
144 for review and comment. The inspector general shall review and approve the appraisals and the
145 review shall include an examination of the methodology utilized for the appraisals. The inspector
146 general shall prepare a report of such review and file the report with the commissioner of capital
147 asset management and maintenance. The commissioner shall submit copies of the appraisals and
148 the inspector general's review and approval and any comments to the senate and house

149 committees on ways and means and the joint committee on state administration and regulatory
150 oversight at least 15 days before the execution of any lease or other agreements described in
151 section 1.

152 SECTION 7. If the land, building and facilities, field and appurtenances comprising the
153 property shall cease to be used by the Esplanade Association, Inc. for the purposes and in the
154 manner described in this act or if the Esplanade Association, Inc. ceases to be the lessee at any
155 time before the conclusion of the lease term, the property shall revert to the commonwealth upon
156 such terms and conditions as the commissioner of capital asset management and maintenance
157 may determine, and shall be assigned to the care, custody and control of the department of
158 conservation and recreation; provided, however, that any further disposition thereof shall be
159 subject to sections 32 to 38, inclusive, of chapter 7C of the General Laws.

160 SECTION 8. If the commissioner of capital asset management and maintenance, in
161 consultation with the commissioner of conservation and recreation, fails to enter into a lease with
162 the Esplanade Association, Inc. pursuant to section 1 before December 31, 2026 this act shall
163 expire on December 31, 2026.