SENATE No. 2041

The Commonwealth of Massachusetts

PRESENTED BY:

Sal N. DiDomenico

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 of the former Lee Pool Complex located in the city of Boston.

PETITION OF:

NAME:DISTRICT/ADDRESS:Sal N. DiDomenicoMiddlesex and Suffolk

SENATE DOCKET, NO. 2353 FILED ON: 2/19/2021

SENATE No. 2041

By Mr. DiDomenico, a petition (accompanied by bill, Senate, No. 2041) of Sal N. DiDomenico for legislation to authorize the lease of the former Lee Pool Complex located in the city of Boston. State Administration and Regulatory Oversight.

[SIMILAR MATTER FILED IN PREVIOUS SESSION SEE SENATE, NO. 2770 OF 2019-2020.]

The Commonwealth of Massachusetts

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

An Act authorizing the lease of the former Lee Pool Complex 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. (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 and a 10-year extension thereof with the Esplanade 5 Association, Inc. to design, build, use, maintain, operate, program and repair 1 or more facilities 6 and fields at the site of the former Lee Pool Complex, which contains 2 acres of land, more or 7 less, and is located south of the State Police Barracks, east and northeast of the Teddy Ebersol's 8 Red Sox Fields complex, and west and northwest of Storrow Drive on the Charles River 9 Esplanade in the city of Boston (hereinafter "the Property.") No lease of the Property pursuant to 10 this section shall be valid unless such lease provides that the Property shall be used only for

11 purposes which relate to the operation, public use and programming of the Charles River 12 Esplanade Park or the public use of the fields and facilities within the Property site, which may 13 include but not be limited to: (i) for a public building with publicly-accessible lobby/visitors 14 center and public restrooms open at no charge, with permanent historical design elements 15 reflecting the site's social, recreational, and economic importance; (ii) newly-constructed 16 maintenance and operations space; (iii) horticultural operations space including mechanical 17 space; (iv) an operations work yard; (v) compost area; (vi) building operations and park 18 programs offices; (vii) outdoor covered porch space; (viii) outdoor performing arts or outdoor 19 learning space; (ix) removal and landscaping of existing parking areas and widespread landscape 20 enhancements that promote natural terrain and nature play; (x) river edge pedestrian pathway 21 reconnections; (xi) climate change adaptation and resiliency planning features; (xii) storage 22 space for materials and equipment supporting the buildings, fields, park and related activities; 23 (xiii) public and community meeting space; (xiv) indoor/outdoor roof deck programmatic and 24 event space; (xv) indoor or indoor/outdoor café space; (xvi) enhanced landscaping for a newly-25 constructed synthetic turf field with lighting for the entire parcel; and (xvii) for a newly-26 constructed multi-use indoor recreational facility. The 1-time 10-year extension shall be granted 27 if Esplanade Association, Inc. makes a significant investment in the facility within the final years 28 of the lease, as determined by the department of conservation and recreation.

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(b) The department of conservation and recreation shall maintain any pathways created or reconnected through the project.

31 (c) The division of capital asset management, in consultation with the department of
 32 conservation and recreation, and the board of directors of the Esplanade Association, Inc. may

enter into an agreement authorizing the Esplanade Association, Inc. to manage and oversee the
 construction, refurbishment, repair and improvement to the fields and facilities of the Property.

35 (d) The 30-year lease, 10-year lease extension, and other agreements executed under this 36 section shall be on terms, conditions and consideration acceptable to the commissioner of capital 37 asset management and maintenance, in consultation with the commissioner of conservation and recreation; provided, however, that the 30-year lease, 10-year extension, and other agreements 38 39 shall provide that: (i) the Esplanade Association, Inc. shall provide at its sole cost general 40 oversight, programming, operations, maintenance and repair of the Property, inclusive of the 41 land, facilities, fields and appurtenances associated therewith during the term of the 30-year lease 42 and the 10-year extension; (ii) the Esplanade Association, Inc. shall carry comprehensive general 43 liability insurance naming the commonwealth as a co-insured, protecting the commonwealth 44 against all claims for personal injury or property damage arising from or on land and 45 appurtenances associated therewith during the term of the lease; provided, however, that the 46 Esplanade Association, Inc. shall be responsible for all costs and expenses associated with 47 carrying comprehensive general liability insurance; (iii) the Esplanade Association, Inc. may 48 retain revenues from usage and programming fees, special events, naming rights sponsorships, 49 and concessions proceeds associated with use of the Property for the sole purpose of the design, 50 construction, operation, programming, maintenance, and repair expenses of the Property over the 51 course of the lease with any excess funds being limited to being used, with the approval of the 52 department of conservation and recreation, towards the Esplanade Association, Inc.'s ongoing 53 revitalization, maintenance, enhancement and programming of the Charles River Esplanade 54 Park; (iv) not later than 3 months after the close of the calendar year, the Esplanade Association, 55 Inc. shall prepare an annual report describing its performance against the goals for the prior year,

56 detailing all revenues and expenditures of funds for the prior year pursuant to this section, 57 regardless of source, and specifying all usage and programming fee rates associated with planned 58 programs and activities, and shall submit said report to the commissioner of the department of 59 conservation and recreation and the clerks of the house and senate; (v) the Esplanade 60 Association, Inc. under section 5, shall not design or construct any facilities on the Property 61 without the written approval of the commissioner of capital asset management and maintenance 62 and the commissioner of conservation and recreation; (vi) the Esplanade Association, Inc. shall 63 be responsible for all utility costs in connection with the 30-year lease and any 10-year 64 extension, except those for which a fee is charged under regulation by the department of 65 conservation and recreation; (vii) and the lessee shall be responsible for outreach and 66 stewardship.

67 (e) The 30-year lease and any lease extension under this act shall be reviewed by the68 inspector general for comment and recommendation.

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

(g) Before entering into the 30-year lease, any lease extension, or other agreement
pursuant to this act, the commissioner of capital asset management and maintenance shall, in
consultation with the commissioner of conservation and recreation, determine the exact
boundaries of the Property after completion of a survey.

SECTION 2. The Esplanade Association, Inc. shall prioritize programming and use for
the Property that promotes public access through community, recreational, cultural, or civic uses
or through the revitalization, enhancement, maintenance, care, and programming of the Charles
River Esplanade Park, subject to the terms of the lease negotiated pursuant to section 1.

82 SECTION 3. Except as hereinafter provided, the Esplanade Association, Inc. shall 83 determine, schedule and program the use of the fields, facilities, land and appurtenances of the 84 Property, including the establishment of the published programming fees described in section 1. 85 The Esplanade Association, Inc. shall ensure fair and reasonable use of the fields, facilities, land 86 and appurtenances for practice and games based upon the needs of the general public, youth 87 sports leagues and other interested users, in consultation with the department of conservation and 88 recreation. The Esplanade Association, Inc. shall make reasonable efforts to program use by the 89 general public during the times the fields and recreational facilities are not being used by 90 scheduled programs. During all times when the Esplanade Association, Inc. does not schedule 91 programmed usage of the field or facilities, the field and field and recreational facilities shall 92 remain open and accessible for informal recreational use by the general public.

93 SECTION 4. Pursuant to any agreement executed pursuant to section 1, the Esplanade 94 Association, Inc. shall be responsible for all costs and expenses, including costs associated with 95 engineering, surveys, appraisals and lease preparation related to the 30-year lease, any lease 96 extension, or any other agreements under this act.

97 SECTION 5. Esplanade Association, Inc. shall be responsible for all costs and expenses
 98 associated with any engineering, surveys, appraisals, construction, refurbishment, repair and
 99 improvements to the Property; provided, however, that Esplanade Association, Inc. shall expend

a minimum of at least \$10,000,000 on the planning, design, construction, refurbishment, repair
and improvements. In no event shall the commonwealth be required to contribute to any of those
costs. The department of conservation and recreation shall have approval authority over the
design, construction, refurbishment, repair and improvements to the Property and the Charles
River path described in section 1 to ensure that Esplanade Association, Inc. satisfies the
requirements of this act.

SECTION 6. Notwithstanding any general or special law or rule or regulation to the contrary, any agreements authorized in this act relating to the advertising, bidding or awarding of contracts, the procurement of services or to the construction and design of improvements shall not be subject to chapter 149, section 30M of chapter 30 or other applicable law, except provisions of law pertaining to payment of prevailing wages.

111 SECTION 7. To ensure a no-net-loss of lands protected for conservation and recreation 112 purposes and as a condition of the leasehold interests authorized in this act, the Esplanade 113 Association, Inc. shall compensate the commonwealth through the payment of funds or the 114 transfer of land or a conservation restriction upon land to the department of conservation and 115 recreation, which shall be equal to or greater than the full and fair market value of its leasehold 116 interest under this act as determined by independent appraisal prepared in accordance with the 117 usual and customary professional appraisal practices by a qualified appraiser commissioned by 118 the commissioner of capital asset management and maintenance, in consultation with the 119 commissioner of conservation and recreation, minus any credits as provided in this section. Any 120 land or interest in land, including any conservation restriction, shall be acceptable to the 121 department of conservation and recreation. The appraisal shall include an examination of the 122 value of the physical capital improvements to be constructed by Esplanade Association, Inc., the

123 relative value associated with the exclusive private use of the improvements by Esplanade 124 Association, Inc. or any other party, any revenues associated therewith, and the relative value 125 associated with use of the improvements by the general public to be scheduled by the department 126 of conservation and recreation. In determining the funds due to ensure a no-net-loss of protected 127 land for conservation and recreation purposes, the division of capital asset management and 128 maintenance, in consultation with the department of conservation and recreation, may determine 129 a credit on account of the relative value associated with the public use of the improvements. Any 130 sums due under this section shall be paid by the lessee to the department of conservation and 131 recreation for deposit into the Conservation Trust, established in section 1 of chapter 132A of the 132 General Laws, as appearing in the 2018 Official Edition, to be used to acquire land or interests in land for conservation and recreation purposes. 133

134 SECTION 8. The commissioner of capital asset management and maintenance shall 135 submit the proposed lease and any appraisals completed under section 7 to the inspector general 136 for review and comment. The inspector general shall review and approve the appraisals and the 137 review shall include an examination of the methodology utilized for the appraisals. The inspector 138 general shall prepare a report of such review and file the report with the commissioner of capital 139 asset management and maintenance for submission by the commissioner to the house and senate 140 committees on ways and means and the senate and house chairs of the joint committee on state 141 administration and regulatory oversight. The commissioner shall submit copies of the appraisals 142 and the inspector general's review and approval and comments to the house and senate 143 committees on ways and means and the senate and house chairs of the joint committee on state 144 administration and regulatory oversight at least 15 days before the execution of any documents 145 effecting the lease or other agreements described in section 1.

146 SECTION 9. If the land, facilities, fields and appurtenances comprising the Property shall 147 cease to be used by the Esplanade Association, Inc. for the purposes and in the manner described 148 in this act or if the Esplanade Association, Inc. ceases to be the lessee at any time before the 149 conclusion of the lease term, the Property shall revert to the commonwealth upon such terms and 150 conditions as the commissioner of capital asset management and maintenance may determine, 151 and shall be assigned to the care, custody and control of the department of conservation and 152 recreation. Should the Property revert to the commonwealth, any further disposition thereof shall 153 be subject to sections 32 to 38, inclusive, of chapter 7C of the General Laws.

154 SECTION 10. If no lease is entered into with the Esplanade Association, Inc. pursuant to 155 section 1 before December 31, 2026, this act shall expire on December 31, 2026.