

# **HOUSE . . . . . No. 4225**

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## The Commonwealth of Massachusetts

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HOUSE OF REPRESENTATIVES, November 20, 2019.

The committee on Ways and Means, to whom was referred the Bill authorizing the city of Lowell to transfer and have air rights over certain parcels of park and state land (House, No. 4213), reports recommending that the same ought to pass with an amendment substituting therefor the accompanying bill (House, No. 4225).

For the committee,

AARON MICHLEWITZ.

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**The Commonwealth of Massachusetts**

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**In the One Hundred and Ninety-First General Court  
(2019-2020)**  
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An Act authorizing the city of Lowell to transfer and have air rights over certain parcels of park and state land.

*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. Notwithstanding any general or special law to the contrary, the city of  
2 Lowell may transfer any part or portion of the air rights over and above a certain parcel of city  
3 owned land, currently used for park, open space or recreational purposes, from the care and  
4 custody of the Lowell board of parks to the care and custody of the Lowell public school  
5 department for the construction of pedestrian bridges for a new high school. The dimensions and  
6 boundaries over which the air rights are located are as follows:

7           Lucy Larcom park, located between the Merrimack Canal and Anne street, Lowell,  
8 shown as parcel 5 on a plan of land entitled “Canalway Easement Plan of Land in Lowell, MA  
9 Middlesex County Prepared for Lowell Historic Preservation Commission”, prepared by C.T.  
10 Male Associates, P.C., dated April 13, 1991 and recorded at the Middlesex north registry of  
11 deeds in book 176, page 17, and described in a deed on file with the Middlesex north registry of  
12 deeds in book 46, page 138.

13 SECTION 2. (a) Notwithstanding sections 32 to 37, inclusive, of chapter 7C of the  
14 General Laws or any general or special law to the contrary, the commissioner of capital asset  
15 management and maintenance, in consultation with the commissioner of conservation and  
16 recreation, may grant 2 easements in real property held by the commonwealth, described in an  
17 order of taking recorded in the Middlesex north registry of deeds in book 3830, page 70, to the  
18 city of Lowell to acquire rights over and above the following artificial waterway for the purpose  
19 of constructing, renovating, repairing and maintaining pedestrian bridges under the care and  
20 control of the Lowell public school department for a new high school. The commonwealth's  
21 interests in land are under the care, custody and control of the department of conservation and  
22 recreation and presently held for conservation and recreation purposes.

23 Each easement is described in a plan of land entitled "Pedestrian Bridge Easement Plan  
24 Lowell High School Lowell, Massachusetts" prepared for Perkins – Eastman and dated May 7,  
25 2019. The exact boundaries shall be determined by the commissioner of capital asset  
26 management and maintenance, in consultation with the commissioner of conservation and  
27 recreation, after completion of a final survey and subject to such additional terms and conditions  
28 as the commissioner of capital asset management and maintenance, in consultation with the  
29 commissioner of conservation and recreation, may prescribe. The final plan and grant of  
30 easement shall be recorded in the Middlesex north registry of deeds.

31 The dimensional boundaries over which the air rights are located are described in the plan  
32 of land and are bounded as follows:

33 (b) The first easement is shown as "North Pedestrian Bridge Easement" on the plan of  
34 land containing approximately 5,836 square feet, more or less, and is located between the

35 elevations of 34.00 and 74.00 North American Datum (NAVD88). The North Pedestrian Bridge  
36 Easement is bounded and described as follows:

37 Beginning at the remote point of beginning, a drill hole having a Mass. State Plane  
38 Coordinate of N: 3,061,322.2729, E: 707,243.2862;

39 Thence N69°20'37"W, a distance of 31.11 feet to a point;

40 Thence N87°41'15"W, a distance of 22.87 feet to a point;

41 Thence S32°39'17"W, a distance of 81.90 feet to a point;

42 Thence N57°01'17"W, a distance of 36.59 feet to a point;

43 Thence S33°08'37"W, a distance of 19.61 feet to a point on the northerly sideline of  
44 French street;

45 Thence S33°08'10"W, a distance of 83.65 feet to a point on the southerly sideline of  
46 Father Morrissette boulevard;

47 Thence S33°08'37"W, a distance of 153.71 feet to a point of beginning having a Mass.  
48 State Plane Coordinate N: 3,061,069.9631, E: 706,975.9523;

49 Thence S59°17'44"E, a distance of 145.84 feet to a point on the easterly sideline of  
50 former Anne street as it is now discontinued having a Mass. State Plane Coordinate N:  
51 3,060,995.4937, E:707,101.3508;

52 Thence S32°59'47"W, a distance of 40.03 feet along the easterly line of said street to a  
53 point having a Mass. State Plane Coordinate N: 3,060,961.9187, E: 707,079.5500;

54 Thence N59°17'44"W, a distance of 145.95 feet to a point having a Mass. State Plane  
55 Coordinate N: 3,061,036.4406, E: 706,954.0629;

56 Thence N33°08'37"E, a distance of 40.04 feet to the point of beginning.

57 (c) The second easement is shown as the "South Pedestrian Bridge Easement" on the plan  
58 of land and contains approximately 5,845 square feet, more or less, and is located between the  
59 elevations of 34.00 and 74.00 North American Datum (NAVD88). The South Pedestrian Bridge  
60 Easement is bounded and described as follows:

61 Beginning at the remote point of beginning, a drill hole having a Mass. State Plane  
62 Coordinate of N: 3,061,322.2729, E: 707,243.2862;

63 Thence N69°20'37"W, a distance of 31.11 feet to a point;

64 Thence N87°41'15"W, a distance of 22.87 feet to a point;

65 Thence S32°39'17"W, a distance of 81.90 feet to a point;

66 Thence N57°01'17"W, a distance of 36.59 feet to a point;

67 Thence S33°08'37"W, a distance of 19.61 feet to a point on the northerly sideline of  
68 French street;

69 Thence S33°08'10"W, a distance of 83.65 feet to a point on the southerly sideline of  
70 Father Morrissette boulevard;

71 Thence S33°08'37"W, a distance of 287.77 feet to a point of beginning having a Mass.  
72 State Plan Coordinate N: 3,060,957.7136, E:706,902.6561;

73           Thence S57°00'13"E, a distance of 146.07 feet to a point on the easterly sideline of  
74 former Anne street as it is now discontinued having a Mass. State Plane Coordinate  
75 N:3,060,878.1651, E:707,025.1674;

76           Thence S32°59'47"W, a distance of 40.00 feet along the easterly line of said street to a  
77 point having a Mass. State Plane Coordinate N: 3,060,844.6168, E: 707,003.3840;

78           Thence N57°00'13"W, a distance of 146.17 feet to a point having a Mass. State Plane  
79 Coordinate N: 3,060,924.2214, E: 706,880.7865;

80           Thence N33°08'37"E, a distance of 40.00 feet to the point of beginning.

81           SECTION 3. (a) An independent appraisal of the fair market value and value in use of the  
82 rights described in section 2 shall be prepared in accordance with the usual and customary  
83 professional appraisal practices by a qualified appraiser commissioned by the commissioner of  
84 capital asset management and maintenance. The commissioner of capital asset management and  
85 maintenance shall submit any appraisals to the inspector general for review and comment. The  
86 inspector general shall review and approve any such appraisals and the review shall include an  
87 examination of the methodology utilized for the appraisals. The inspector general shall prepare a  
88 report of such review and file the report with the commissioner of capital asset management and  
89 maintenance. The commissioner of capital asset management and maintenance shall submit  
90 copies of the appraisals, the report thereon and the inspector general's review and approval and  
91 comments, if any, to the house and senate committees on ways and means and the joint  
92 committee on state administration and regulatory oversight at least 15 days prior to the execution  
93 of any documents effecting the transfers authorized in said section 2.

94 (b) Consideration for the rights granted shall be the full and fair market value or the value  
95 in proposed use, whichever is greater, as determined by the commissioner of capital asset  
96 management and maintenance and calculated with regard to its full development potential as  
97 assembled with other lands owned or otherwise controlled by the grantee.

98 SECTION 4. As consideration for the grant of easement authorized in section 2, the city  
99 of Lowell shall transfer to the department of conservation and recreation: (i) land; (ii) an interest  
100 in land; or (iii) funding for the acquisition of land or an interest therein equal to or greater than  
101 the resource value of the land described in said section 2 and the highest appraised value as  
102 determined under section 3. The fair market value of any land or interest in land proposed to be  
103 conveyed by the city of Lowell to the department of conservation and recreation shall be  
104 included within the appraisal prepared under said section 3. The land, interest in land or funding  
105 for the acquisition of land or an interest therein shall be subject to the approval of the department  
106 of conservation and recreation and any land or interest in land, whether conveyed by the city of  
107 Lowell or acquired by the department of capital asset management and maintenance, shall be  
108 permanently held and managed for conservation and recreation purposes by the department of  
109 conservation and recreation. If the appraised value of any land or interests in land transferred to  
110 the department is greater than the appraised value of the interests in land described in said  
111 section 2, the commonwealth shall have no obligation to pay the difference to the grantee. All  
112 payments paid to the commonwealth as a result of the conveyances or grants authorized in this  
113 act shall be deposited in the Conservation Trust established in section 1 of chapter 132A of the  
114 General Laws.

115 SECTION 5. The city of Lowell shall assume all costs associated with engineering,  
116 surveys, appraisals, deed preparation and other expenses deemed necessary by the commissioner  
117 of capital asset management and maintenance to execute the grant authorized in section 2.

118 SECTION 6. No instrument executed by the commissioner of capital asset management  
119 and maintenance pursuant to this act shall be valid unless it provides that the grants authorized in  
120 section 2 shall be used solely for the purposes described in section 2. The instrument authorized  
121 pursuant to said section 2 shall include a reversionary clause that stipulates the air rights granted  
122 shall revert to the commonwealth and be assigned to the care, custody and control of the  
123 department of conservation and recreation, upon such terms and conditions as the commissioner  
124 of capital asset management and maintenance may determine, if the air rights cease to be used  
125 for the express purposes authorized in said section 2. If any interest reverts to the  
126 commonwealth, any further disposition shall be subject to sections 34 to 37, inclusive, of chapter  
127 7C of the General Laws and the prior approval of the general court.

128 SECTION 7. This act shall take effect upon its passage.