

HOUSE No. 4353

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.