

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:

Sal N. DiDomenico

DISTRICT/ADDRESS:

Middlesex and Suffolk

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.

29 (b) The department of conservation and recreation shall maintain any pathways created or
30 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

33 enter into an agreement authorizing the Esplanade Association, Inc. to manage and oversee the
34 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
38 recreation; provided, however, that the 30-year lease, 10-year extension, and other agreements
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 the
68 inspector general for comment and recommendation.

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

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

78 SECTION 2. The Esplanade Association, Inc. shall prioritize programming and use for
79 the Property that promotes public access through community, recreational, cultural, or civic uses
80 or through the revitalization, enhancement, maintenance, care, and programming of the Charles
81 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

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

106 SECTION 6. Notwithstanding any general or special law or rule or regulation to the
107 contrary, any agreements authorized in this act relating to the advertising, bidding or awarding of
108 contracts, the procurement of services or to the construction and design of improvements shall
109 not be subject to chapter 149, section 30M of chapter 30 or other applicable law, except
110 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
133 land for conservation and recreation purposes.

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.