

HOUSE No. 4213

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, November 19, 2019.

The committee on State Administration and Regulatory Oversight to whom was referred the petition (accompanied by bill, House, No. 3750) of David M. Nangle and others (with the approval of the city council) that the city of Lowell be authorized to transfer and have air rights over certain parcels of park and state land, reports recommending that the accompanying bill (House, No. 4213) ought to pass [Local Approval Received].

For the committee,

DANIELLE W. GREGOIRE.

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**In the One Hundred and Ninety-First General Court
(2019-2020)**

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 from the care and custody of the Board of Parks certain air rights over and
3 above the following parcels of land currently used for park, open space, or recreational purposes,
4 to the care and custody of the Lowell School Department for the construction of pedestrian
5 bridges for a new high school. The dimensional boundaries over which the air rights are located
6 is as follows:

7 (i) Lucy Larcom Park, located between the Merrimack Canal and Anne Street,
8 Lowell, approximately shown on Plan 1176-17 as Parcel No. 5, being part of land described in
9 the deed at 450-431 (Lowell Copies 46-138).

10 SECTION 2. Notwithstanding sections 32 to 37 of chapter 7C of the General Laws or
11 any general or special law to the contrary, the commissioner of capital asset management and
12 maintenance, in consultation with the commissioner of conservation and recreation, may grant or
13 release such real property interests owned by the commonwealth as may be necessary to permit

14 the City of Lowell to acquire rights over and above the following artificial waterway for the
15 purpose of constructing, renovating, repairing and maintaining pedestrian bridges under the care
16 and control of the Lowell School Department for a new high school, subject to such additional
17 terms and conditions as the commissioner of capital asset management and maintenance, in
18 consultation with the commissioner of conservation and recreation, may prescribe. The
19 commonwealth's interests in land are under the care, custody and control of the department of
20 conservation and recreation and presently held for conservation and recreation purposes. The
21 dimensional boundaries over which the air rights are located are described as follows:

22 (i) North Pedestrian Bridge Easement: a certain parcel of dimensional air space
23 located in the Commonwealth of Massachusetts, Middlesex (North) County, City of Lowell, and
24 being described as follows:

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

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

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

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

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

31 Thence S33°08'37"W, a distance of 19.61 feet to a point on the northerly sideline of
32 French Street;

33 Thence S33°08'10"W, a distance of 83.65 feet to a point on the southerly sideline of
34 Father Morrissette Boulevard;

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

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

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

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

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

45 And located between the elevations of 34.00 and 74.00 North American Datum
46 (NAVD88).

47 The above described parcel of dimensional air space containing 5,836 +/- square feet.

48 (ii) South Pedestrian Bridge Easement: a certain parcel of dimensional air space
49 located in the Commonwealth of Massachusetts, Middlesex (North) County, City of Lowell, and
50 being described as follows:

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

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

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

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

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

57 Thence S33°08'37"W, a distance of 19.61 feet to a point on the northerly sideline of
58 French Street;

59 Thence S33°08'10"W, a distance of 83.65 feet to a point on the southerly sideline of
60 Father Morrisette Boulevard;

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

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

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

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

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

71 And located between the elevations of 34.00 and 74.00 North American Datum
72 (NAVD88).

73 The above described parcel of dimensional air space containing 5,845 +/- square feet.

74 The rights of the Commonwealth are described in an order of taking recorded in the
75 Middlesex North district registry of deeds in book 3830, page 70. The exact boundaries shall be
76 determined by the commissioner of capital asset management and maintenance, in consultation
77 with the commissioner of conservation and recreation, after completion of a final survey.

78 SECTION 3. An independent appraisal of the fair market value and value in use of the
79 rights described in section 2 shall be prepared in accordance with the usual and customary
80 professional appraisal practices by a qualified appraiser commissioned by the commissioner of
81 capital asset management and maintenance. Consideration for the rights granted or released shall
82 be the full and fair market value or the value in proposed use, whichever is greater, as
83 determined by the commissioner of capital asset management and maintenance and calculated
84 with regard to its full development potential as assembled with other lands owned or otherwise
85 controlled by the grantee. The commissioner of capital asset management and maintenance shall
86 submit any appraisals to the inspector general for review and comment. The inspector general
87 shall review and approve any such appraisals and the review shall include an examination of the
88 methodology utilized for the appraisals. The inspector general shall prepare a report of such
89 review and file the report with the commissioner of capital asset management and maintenance
90 for submission by the commissioner to the house and senate committees on ways and means and
91 the joint committee on state administration and regulatory oversight. The commissioner shall
92 submit copies of any appraisals and the inspector general's review and approval and comments,
93 if any, to the house and senate committees on ways and means and the joint committee on state
94 administration and regulatory oversight at least 15 days prior to the execution of any documents
95 effecting the transfers authorized in said section 1.

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

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

115 SECTION 6. No instrument executed by the commissioner of capital asset management
116 and maintenance pursuant to this act shall be valid unless it provides that the grants or releases
117 authorized in section 2 shall be used solely for the purposes described in section 2. The
118 instrument authorized pursuant to said section 2 shall include a reversionary clause that stipulates

119 the air rights granted or released shall revert to the commonwealth and be assigned to the care,
120 custody and control of the department of conservation and recreation, upon such terms and
121 conditions as the commissioner of capital asset management and maintenance may determine, if
122 the air rights cease to be used for the express purposes authorized in said section 2. If any
123 interest reverts to the commonwealth, any further disposition shall be subject to sections 34 to
124 37, inclusive, of chapter 7C of the General Laws and the prior approval of the general court.

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