

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1569 Session of
2017

INTRODUCED BY O'BRIEN, JUNE 16, 2017

REFERRED TO COMMITTEE ON STATE GOVERNMENT, JUNE 16, 2017

AN ACT

1 Authorizing the Department of General Services, with the
2 concurrence of the Department of Environmental Protection, to
3 lease to Pier 35 1/2 LLC, or its nominee, land within the bed
4 of the Delaware River in the City of Philadelphia; affirming
5 the authority of the General Assembly to enact certain
6 conveyances; authorizing the Department of General Services,
7 with the concurrence of the Department of Environmental
8 Protection, to lease to Penn Treaty Views LLC, or its
9 nominee, land within the bed of the Delaware River in the
10 City of Philadelphia; and affirming the authority of the
11 General Assembly to enact certain conveyances.

12 The General Assembly of the Commonwealth of Pennsylvania
13 hereby enacts as follows:

14 Section 1. Land within the Delaware River bed and 709-711 Penn
15 Street, City of Philadelphia.

16 (a) Authorization.--The Commonwealth owns the lands within
17 the bed of the Delaware River, a portion of which lands are
18 located in the 5th Ward of the City of Philadelphia, and
19 includes lands commonly known as 709 - 711 Penn Street, Pier No.
20 35 1/2 North. The Department of General Services, with the
21 concurrence of the Department of Environmental Protection,
22 acting on behalf of the Commonwealth, is authorized and directed
23 to lease, for the consideration as shall be agreed upon by the

parties, to Pier 35 1/2 LLC, or its nominee (hereinafter "lessee") for an initial term of 99 years, land within the bed of the Delaware River in the City of Philadelphia, and to extend the period for all or any portion of the leased premises for an additional term of up to 99 years.

(b) Description of property.--The land to be leased is more particularly described as follows:

ALL THAT CERTAIN lot or piece of ground together with the improvements thereon erected, situate in the 5th Ward of the City of Philadelphia, Pennsylvania and shown on a Boundary and Topographic Survey made for Pier 35 1/2, LLC, Penn Street & Fairmount Avenue, Pier 35 N, Lot 9, Map 5 N 4, 5th Ward, City & County of Philadelphia, Commonwealth of Pennsylvania by Control Point Associates, Inc., dated February 3, 2005 and more particularly described as follows to wit:

Beginning at a point on the dividing line Between Lot 9, Map 5 N 4, lands now or formerly Berman and Lot 16, Map 6 N 6, lands now or formerly Isle of Capri Associates, L.P., Said point being distant the following two (2) courses and distances from the intersection and southeasterly right-of-way line of Penn Street (60 foot wide right-of-way, legally open) and the easterly right-of-way line of Delaware Avenue (A.K.A. Christopher Columbus Boulevard, A.K.A. SR. 2001, 150 foot wide right-of-way, legally open):

A. Along the southeasterly right-of-way of Penn Street, North 43 degrees 30 minutes 00 seconds East, a distance of 140.229 feet to a drill hole, THENCE;

B. Along the dividing line between Lot 9, Map 5 N 4 and Lot 16, Map 6 N 6, South 47 degrees 02 minutes 00 seconds east, a distance of 194.573 feet to the true point and place

1 of beginning and from said point of beginning running,

2 THENCE;

3 The following two (2) courses and distances along the dividing
4 line between Lot 9, Map 5 N 4 AND Lot 16, Map 6 N 6:

5 1. South 67 degrees 54 minutes 00 seconds East, a
6 distance of 125.667 feet to a point, THENCE;

7 2. South 46 degrees 04 minutes 40 seconds East, a
8 distance of 361.500 feet to a point on the northeasterly
9 right-of-way line of Fairmount Avenue (62 foot 2 inch wide
10 right-of-way, not open, not on the city tax registry), said
11 point is 53.976 feet on a bearing North 71 degrees 40 minutes
12 00 seconds West from the pierhead line of the Delaware River
13 (established January 5, 1894, Approved by the Secretary of
14 War September 10, 1940), THENCE;

15 3. Along the northeasterly right-of-way line of
16 Fairmount Avenue, North 71 degrees 40 minutes 00 seconds
17 West, a distance of 527.937 feet to a point on the Bulkhead
18 line of the Delaware River, (established January 5, 1894,
19 approved by the Secretary of War September 10, 1940), THENCE;

20 4. Along the Bulkhead line of the Delaware River, North
21 43 degrees 17 minutes 06 seconds East, a distance of 181.316
22 feet to the point and place of BEGINNING.

23 CONTAINING 51,839 SQUARE FEET OR 1.19006 ACRES

24 (c) Lease agreement.--The lease and any other documents
25 provided for under this act shall be approved as to form and
26 legality by the Attorney General and Office of General Counsel
27 and shall be executed by the Department of General Services,
28 with the concurrence of the Department of Environmental
29 Protection, in the name of the Commonwealth. The approvals shall
30 not be unreasonably withheld, the lease shall grant the lessee,

1 and the successors, assigns and sublessees, the right to use the
2 premises described in subsection (b), or to assign the lease or
3 sublease or permit the sublease of premises described in
4 subsection (b) for the purposes of the proposed development of
5 41 townhouses, each with parking for two cars, 21 of which
6 parking spaces are in the leased area.

7 (d) Sublease.--The Department of General Services, with the
8 concurrence of the Department of Environmental Protection,
9 acting on behalf of the Commonwealth, is also authorized to
10 enter into one or more nondisturbance agreements with any
11 sublessee of the premises described in this section pursuant to
12 which the Commonwealth will agree that, if the Commonwealth
13 succeeds to the interest of the sublessor under a sublease, it
14 will not terminate the sublease unless the sublessee is in
15 default.

16 (e) Land use restriction.--The leases authorized or referred
17 to under this section shall be made under and subject to the
18 condition, which shall be contained in the lease documents, that
19 no portion of the parcels may be used as a licensed facility as
20 defined in 4 Pa.C.S. § 1103 (relating to definitions) or any
21 other similar type of facility authorized under the laws of this
22 Commonwealth. This condition shall be a covenant running with
23 the land and shall be binding upon the lessee and sublessees and
24 their respective successors and assigns. Should a portion of a
25 parcel authorized to be leased under this act be used in
26 violation of this subsection, the lease shall terminate
27 immediately.

28 (f) Improvements.--

29 (1) The Department of General Services is authorized to
30 execute, on behalf of the Commonwealth, any declaration or

1 other document necessary to submit the premises described in
2 subsection (b) or a portion of the premises and any
3 improvements on the premises to the provisions of 68 Pa.C.S.
4 Pt. II Subpt. D (relating to planned communities) as a
5 leasehold condominium.

6 (2) The lessee, the sublessees and their respective
7 successors and assigns, shall provide and maintain at least
8 the following free public access to the riverfront, for
9 fishing and other recreational activities and free public
10 parking in connection with the access:

11 (i) A minimum of 10 free public parking spaces
12 available at all times located proximate to the public
13 walkway near the water edge and signage indicating the
14 free public parking.

15 (ii) Public walkways on the riverfront, providing
16 free public access to the water and allowing for passive
17 and active recreational activities year-round and signage
18 indicating the walkways are open to the general public.

19 (iii) Public access to the Delaware River in
20 accordance with the Delaware River Waterfront Corporation
21 Plan that is consistent with the Waterfront Setback
22 requirements set forth in Section 14-216(6)(g) of the
23 Philadelphia Code (enacted into law by an Ordinance
24 enacting Bill No. 050465, passed by the City Council on
25 June 16, 2005, and signed by the Mayor on July 8, 2005).

26 (3) Should the lessee, a sublessee or any of their
27 respective successors or assigns wish to modify the public
28 access and parking required under this section, it must
29 obtain the prior written approval of the Department of
30 Environmental Protection and the Department of General

Services, which approval shall not be unreasonably withheld.
The public access and parking shall be completed and open to
the public no later than the date the first tenant or
resident occupies either the leasehold or the land adjacent
to the leasehold.

(4) The provisions of this section may not affect or
otherwise limit the requirements of the provisions of the act
of November 26, 1978 (P.L.1375, No.325), known as the Dam
Safety and Encroachments Act, which may require further
measures to provide for public access and use of the land and
adjacent water.

(5) The conditions set forth in this subsection shall be
covenants that run with the land and shall be binding upon
the lessee, any sublessee and their respective successors and
assigns. Should the lessee, any sublessee or any of their
respective successors or assigns permit the parcels
authorized to be leased under this section, or any portion of
the parcels, to be used in a manner inconsistent with the
conditions under this subsection, all rights and interests in
the lease authorized under this act shall terminate
immediately.

(g) Consideration.--The Department of General Services shall
lease the land within the bed of the Delaware River as described
in subsection (b) upon the terms and conditions and for the
other nonmonetary consideration as it shall establish in the
lease agreement with the concurrence of the Department of
Environmental Protection.

(h) Costs and fees.--Costs and fees incidental to the lease
authorized under this section shall be borne by the lessee,
including the costs incurred by the Department of General

1 Services and the Department of Environmental Protection in the
2 preparation, execution and review of the lease, nondisturbance
3 agreements and related documents.

4 Section 2. Land within the Delaware River bed and 1143-1151
5 North Delaware Avenue, City of Philadelphia.

6 (a) Authorization.--The Commonwealth owns the lands within
7 the bed of the Delaware River, a portion of which lands are
8 located in the 5th Ward of the City of Philadelphia, and
9 includes lands commonly known as 1143-1151 North Delaware Avenue
10 and Pier No. 53 North. The Department of General Services, with
11 the concurrence of the Department of Environmental Protection,
12 acting on behalf of the Commonwealth, is authorized and directed
13 to lease, for the consideration as shall be agreed upon by the
14 parties, to Penn Treaty Views LLC, or its nominee (hereinafter
15 "lessee") for an initial term of 99 years, land within the bed
16 of the Delaware River in the City of Philadelphia, and to extend
17 the period for all or any portion of the leased premises for an
18 additional term of up to 99 years.

19 (b) Description of property.--The land to be leased is more
20 particularly described as follows:

21 ALL THAT CERTAIN portion of property known as 1143-1151 North
22 Delaware Avenue and Pier 53 North lying between the Bulkhead
23 Line and the Pierhead Line of the Delaware River as established
24 by the Secretary of War on September 10, 1940; said portion
25 being situate on the southwesterly side of former Marlboro
26 Street (47 feet 6 inches wide - stricken and vacated by
27 Ordinance of Philadelphia City Council on September 19, 1982 and
28 confirmed by the Board of Surveyors on July 5, 1983, reserved as
29 a right of way for drainage, water main and public utility
30 purposes) in the Fifth (formerly the Eighteenth) Ward of the

1 City of Philadelphia, Commonwealth of Pennsylvania, bounded and
2 described in accordance with a Plan of Property by Allen J.
3 Bommentre, Jr., Surveyor and Regulator of the Third Survey
4 District, dated April 12, 2005, as follows:
5 BEGINNING at a point formed by intersection of the southeasterly
6 side of Delaware Avenue, (also known as Christopher Columbus
7 Boulevard-legally open on City Plan, 140' wide) and the
8 southwesterly side of former Marlborough Street (47 feet 6
9 inches wide-stricken and vacated by Ordinance of Council
10 9/29/1982, Confirmed by Board of Surveyors 7/5/1983, Reserved as
11 a Right-of-Way for Drainage, Water Main & Public Utility
12 Purposes);
13 1. FROM SAID POINT OF BEGINNING, extending S20°46'27"E along
14 the said Southwesterly side of former Marlborough Street,
15 crossing the Bulkhead line of the Delaware River at the distance
16 of 280.992', established by the Secretary of War September 10,
17 1940) the total distance of 870.298' to a point on the Pierhead
18 line of the Delaware River (established by the Secretary of War
19 September 10, 1940); THENCE,
20 2. Extending S54°04'10"W, along the said Pierhead line, the
21 distance of 57.397' to a point;
22 THENCE,
23 3. Extending N23°18'27"W (crossing the Bulkhead line of the
24 Delaware River at the distance of 589.344', established by the
25 Secretary of War September 10, 1940) the total distance of
26 877.385' to a point on the said southeasterly side of Delaware
27 Avenue;
28 THENCE,
29 4. Extending N63°51'33"E, along the said Southeasterly side of
30 Delaware Avenue (also known as Christopher Columbus Boulevard)

1 the distance of 93.833' to the first mentioned

2 POINT AND PLACE OF BEGINNING.

3 Containing: 65,226 Square Feet of land (1.49738 acres)

4 (c) Lease agreement.--The lease and any other documents
5 provided for under this act shall be approved as to form and
6 legality by the Attorney General and Office of General Counsel
7 and shall be executed by the Department of General Services,
8 with the concurrence of the Department of Environmental
9 Protection, in the name of the Commonwealth. The approvals shall
10 not be unreasonably withheld. The lease shall grant the lessee,
11 and the successors, assigns and sublessees, the right to use the
12 premises described in subsection (b), or to assign the lease or
13 sublease or permit the sublease of the premises described in
14 subsection (b) for the purposes of the proposed development of
15 19 townhouses, each with two car parking, five of which are in
16 the leased area, all consistent with public access.

17 (d) Sublease.--The Department of General Services, with the
18 concurrence of the Department of Environmental Protection,
19 acting on behalf of the Commonwealth, is also authorized to
20 enter into one or more nondisturbance agreements with any
21 sublessee of the premises described in this section pursuant to
22 which the Commonwealth will agree that, if the Commonwealth
23 succeeds to the interest of the sublessor under a sublease, it
24 will not terminate the sublease unless the sublessee is in
25 default.

26 (e) Land use restriction.--The leases authorized or referred
27 to under this section shall be made under and subject to the
28 condition, which shall be contained in the lease documents, that
29 no portion of the parcels may be used as a licensed facility as
30 defined in 4 Pa.C.S. § 1103 (relating to definitions) or any

1 other similar type of facility authorized under the laws of this
2 Commonwealth. This condition shall be a covenant running with
3 the land and shall be binding upon the lessee and sublessees and
4 their respective successors and assigns. Should a portion of a
5 parcel authorized to be leased under this act be used in
6 violation of this subsection, the lease shall terminate
7 immediately.

8 (f) Improvements.--

9 (1) The Department of General Services is authorized to
10 execute, on behalf of the Commonwealth, any declaration or
11 other document necessary to submit the premises described in
12 subsection (b) or any portion of the premises and any
13 improvements on the premises to the provisions of 68 Pa.C.S.
14 Pt. II Subpt. D (relating to planned communities) as a
15 planned community.

16 (2) The lessee, the sublessees and their respective
17 successors and assigns, shall provide and maintain at least
18 the following free public access to the riverfront, for
19 fishing and other recreational activities in connection with
20 the access:

21 (i) Free public access to the water and allowing for
22 passive and active recreational activities year-round and
23 signage indicating the walkways are open to the general
24 public.

25 (ii) A free public park area along the public
26 walkway near the water.

27 (iii) Public access to the Delaware River that is
28 consistent with the Waterfront Setback requirements set
29 forth in Section 14-216(6)(g) of the Philadelphia Code
30 (enacted into law by an Ordinance enacting Bill No.

050465, passed by the City Council on June 16, 2005, and signed by the Mayor on July 8, 2005).

(3) Should the lessee, a sublessee or any of their respective successors or assigns wish to modify the public access and parking required under this section, it must obtain the prior written approval of the Department of Environmental Protection and the Department of General Services, which approval shall not be unreasonably withheld. The public access and parking shall be completed and open to the public no later than the date the first tenant or resident occupies either the leasehold or the land adjacent to the leasehold.

(4) The provisions of this section may not affect or otherwise limit the requirements of the provisions of the act of November 26, 1978 (P.L.1375, No.325), known as the Dam Safety and Encroachments Act, which may require further measures to provide for public access and use of the land and adjacent water.

(5) The conditions set forth in this subsection shall be covenants that run with the land and shall be binding upon the lessee, any sublessee and their respective successors and assigns. Should the lessee, any sublessee or any of their respective successors or assigns permit the parcels authorized to be leased under this section, or any portion of the parcels, to be used in a manner inconsistent with the conditions under this subsection, all rights and interests in the lease authorized under this act shall terminate immediately.

(g) Consideration.--The Department of General Services shall lease the land within the bed of the Delaware River as described

1 in subsection (b) upon the terms and conditions and for the
2 other nonmonetary considerations as it shall establish in the
3 lease agreement, with the concurrence of the Department of
4 Environmental Protection.

5 (h) Costs and fees.--Costs and fees incidental to the lease
6 authorized under this section shall be borne by the lessee,
7 including the costs incurred by the Department of General
8 Services and the Department of Environmental Protection in the
9 preparation, execution and review of the lease, nondisturbance
10 agreements and related documents.

11 Section 3. Affirmation of exclusive authority of General
12 Assembly.

13 The General Assembly affirms its existing, sole and exclusive
14 authority to consider and specifically authorize the conveyance
15 of any title, easement, right-of-way or other interest in
16 Commonwealth-owned lands, such as those described in section
17 1(b), under the act of April 9, 1929 (P.L.177, No.175), known as
18 The Administrative Code of 1929, and the act of November 26,
19 1978 (P.L.1375, No.325), known as the Dam Safety and
20 Encroachments Act. Nothing in this section may affect or
21 otherwise limit the authority of the Department of Environmental
22 Protection under section 15 of the Dam Safety and Encroachments
23 Act or section 514 of The Administrative Code of 1929.

24 Section 4. Effective date.

25 This act shall take effect immediately.