HOUSE . . . . . No. 4541

By Mr. DiMasi of Boston, petition of Salvatore F. DiMasi relative to certain open space and parkland known as the Rose Kennedy Greenway in the city of Boston. Environment, Natural Resources and Agriculture.

The Commonwealth of Massachusetts

In the Year Two Thousand and Eight.

AN ACT ESTABLISHING THE ROSE KENNEDY GREENWAY.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to provide for the creation, preservation, operation, maintenance and improvement of certain open space and parkland in the city of Boston, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. The Rose Fitzgerald Kennedy Greenway Conservancy, Inc., a private, charitable, non-profit corporation created by articles of organization duly filed with the secretary of state's office on July 15, 2004, the city of Boston, the Massachusetts Turnpike Authority, and the Commonwealth (together "the parties"), shall have all the rights, powers and responsibilities enumerated herein notwithstanding any other general or special law to the contrary.

SECTION 2. As used in this act, the following words shall, unless the context requires otherwise, have the meanings set forth below:—

"Articles", the articles of organization of the conservancy, duly recorded with the secretary of state's office on July 15, 2004.

"Audit and risk management plan", the plan created by the audit and risk management committee setting forth auditing, accounting and insurance protocols with respect to the greenway.

"Authority", the Massachusetts Turnpike Authority.

"By-laws", the by-laws of the conservancy attached to the articles of organization as may be amended from time to time.

"City", the city of Boston.

"City layout", the system of city streets and sidewalks within the greenway.

"Commonwealth", the commonwealth of Massachusetts, acting by and through its executive office for administration and finance and its executive office for transportation and construction.

"Conservancy", the Rose Fitzgerald Kennedy Greenway Conservancy, Inc.

"Conservancy board" the board of directors managing the conservancy.

"Development parcels", those parcels located between Causeway street and Kneeland street that have been designated as "future building sites" on the plan referred to herein.

"Endowment and finance plan", the plan developed by the endowment and finance committee to raise funds and manage the conservancy on a long-term basis.

"Events plan and budget", the plan to produce comprehensive year round programming, annual and long term budgets, and funding protocols to accommodate the programs.

"Greenway", the open space parcels and related areas between the northerly limit of Causeway street and the southerly limit of Kneeland street in the city and including at a minimum parcels 8, 10, 13, 14, 15, 16, 17a, 17b, 18, 19, 21, 22 and 23 a through d, inclusive, as shown on the plan, together with any additional parcels and other areas as may from time to time be agreed to by the parties; provided, however, that the greenway shall not be deemed to include: (a) any surface street or sidewalk that may be established within such area for the benefit of the city, including, without limitation, the adjacent city streets and sidewalks, and (b) the development parcels.

"Greenway leadership council", the body of community members providing advice and expertise in the management and programming of the greenway.

"Mayor", the mayor of the city of Boston.

"Operations and maintenance" or "operate and maintain", the activities and the conduct of such activities necessary to keep the greenway in a high quality condition and appearance and to be specified in the long-term operations and maintenance plan, including without limitation, specialty horticultural maintenance and repairs.

"Plan", a plan entitled "Parcel Land Use", drawn by Don Kinsvatter, April 1999 and being file EURBCAS:[PLAN]UDSAPCAS,

revised April 2004, the original of which is kept on file at the office of the authority.

"Plans and protocols", collectively, the long-term operations and maintenance plan, the safety and security protocol, the endowment and finance plan, the events plan and budget and the audit and risk management plan.

"Program and events plan, funding protocol and budget" the events plan and budget.

"Programming" or "program", the scheduling and permitting of events and other activities to be conducted on the greenway in accordance with the events plan and budget.

"Safety and security protocol" the plan and standards developed by the programming and events committee and the operations and maintenance committee to ensure a safe environment.

"Special agreements" agreements with the city governing maintenance responsibility issues arising from special features, materials, treatment or use of the adjacent city streets and sidewalks.

SECTION 3. The conservancy shall operate, preserve, care, maintain and manage the greenway as a first class public space.

There shall be an initial period during which the conservancy shall demonstrate the ability to secure financing to oversee the greenway. The authority shall coordinate, direct and complete the design and construction and oversee the day to day operations and maintenance of the greenway until such time as the conservancy is vested with those obligations under the provisions of this act.

SECTION 4. The initial period shall commence on the effective date of this act and end on the date which is the earlier of December 31, 2009 or such date on which the conservancy's initial endowment reaches $20,000,000.

SECTION 5. The conservancy shall be governed by a board of directors which shall be dedicated to ensuring that the greenway is created, operated and maintained, managed and actively programmed, financed and improved to the highest limits and in accordance with this act, its articles of organization and by-laws. The by-laws shall be amended to comply with the provisions of this act

as needed. In the event of conflict between the by-laws and any portion of his act, the provisions of this act shall control.

The authority shall direct, supervise, undertake and complete the design and construction of the greenway in accordance with the final design specifications as agreed to by the parties.

The construction of the greenway may be completed in segments, hereinafter referred to as a "greenway segment", and that as each greenway segment is opened to the general public, responsibility for the programming, operation and maintenance for each such greenway segment shall vest in the conservancy in accordance with the provisions of this act.

SECTION 6. From the effective date of this act and ending on December 31, 2008 , the authority shall develop job descriptions for the following staff positions for the conservancy:— an executive director, a fundraising specialist, and at the conservancy's request, up to 2 staff positions. During the initial staffing period, the authority shall provide the conservancy with funds to support payment of the salaries of the initial staff, provided that such payments by the authority to the conservancy shall not exceed $125,000 each quarter, and shall not exceed in the aggregate $2,000,000 during the initial staffing period.

SECTION 7. The conservancy has received, in addition to other funds, $5,000,000 from the authority as a dollar for dollar match from private and other contributors (the "authority's matching contribution"). These funds shall be retained by the conservancy as part of its permanent endowment. Funds received from any other source shall be principally allocated to the endowment; provided, however, that the conservancy shall have the ability to make appropriate expenditures from such funds for purposes that are related to its obligations pursuant to this act and the by-laws.

SECTION 8. The commonwealth shall, in consultation with the authority and the city, lay out and establish a system of city streets and sidewalks and vest the city with a public way easement within the area of the greenway. The city layout shall be subject to the prior approval of the city, acting by and through its public improvement commission.

Upon request the Commonwealth shall participate in the committees established by this act and the by-laws.

SECTION 9. The city shall cooperate with the authority and the commonwealth in establishing the city layout.

In the event that trees planted within the adjacent streets and sidewalks and the greenway need to be replaced because of their condition within 18 months following planting, the authority shall implement and pay for a 1 time replacement of trees of a type and quality reasonably equivalent to the initially planted trees, and the authority shall secure a 1 year warranty for such replacement trees.

The conservancy shall be responsible for programming on the greenway. Programming shall be conducted in accordance with the events plan and budget.

All programming, once approved by the conservancy shall be subject to necessary permits and licenses from the city and adhere to all city ordinances and regulations.

The conservancy may charge reasonable fees for programming on the greenway to the party sponsoring the program. Revenues earned from such programming fees shall be paid to the conservancy in a manner and on a schedule to be established in the events plan and budget.

The conservancy and the city may enter into a memorandum of understanding relative to programming, permitting and fee agreements.

Any costs for programming on the greenway by the commonwealth, city or authority that are not paid by the party sponsoring the event shall be paid by the conservancy, provided, however, that all such costs shall be consistent with the events plan and budget and no such costs may be incurred without the prior written approval of the conservancy.

SECTION 10. The conservancy shall be managed by its board of directors and in accordance with this section and by its articles of organization and by-laws. The by-laws shall contain at a minimum provisions to advance the public's interest in the greenway and create an important resource of national, regional and statewide significance for residents and visitors to the city and the neighborhoods and districts in which it is situated.

Except as otherwise provided by law, the articles of organization or the by-laws shall contain provisions ensuring that as a director's term expires, the board of directors fill each vacant position guaranteeing that, at all times, the composition of the board shall be as follows:—

The board of directors shall consist of 13 persons who shall be voting members.

(i) The initial chairman of the board shall be the chairman of the conservancy then serving in that capacity at the time of passage of this act and he shall serve as a director for a term of 3 years and as chairman for 1 year from the effective date of this act. All voting of directors by board members shall be in compliance with the by-laws.

(ii) One director shall be voted to the board from nominees selected by the governor and shall serve a 5 year term;

(iii) Two directors shall be voted to the board from nominees selected by the mayor. One such director shall serve a 5 year term, while the other such director shall serve a 3 year term.

(iv) Two directors shall be residents of the neighborhoods adjoining the greenway. One such director shall be voted from nominees selected by the state representative representing the third Suffolk district for a term of 5 years and one such director shall be voted from nominees selected by the state senator representing the first Suffolk and first Middlesex district for a term of 5 years.

(v) Seven directors shall be voted from the existing board of directors by a majority vote of said board then serving, each member serving for a term of 3 years. If at the time of the effective date of this act any vacancies exist on the board, those vacancies may be filled so as to adhere to the provisions of this section.

(vi) After the cessation of the initial chairman's term, the future director position caused by the initial chairman's end of term shall be chosen by the then board of directors and the new chairman of the board of directors shall be chosen in accordance with the by-laws.

(vii) Until the appointment and selection of the 13 directors is made in accordance with this section, those directors presently serving shall continue to serve as directors. As each appointment or selection of a new director is made, a present director shall resign so that at all times there are 13 directors. If the combination of new and present directors exceeds 13, then the most recently voted present director shall resign as a new director is voted in accordance with the

by-laws. This process shall continue until all 13 new directors have been voted. Upon the effective date of this act the directors, as defined herein, shall be duly appointed and their terms commence.

(viii) As a vacancy on the board of directors is created by end of term, resignation or any other reason, by any of the directors appointed pursuant to clauses (ii) to (iv), inclusive, it shall be filled in the same manner as the original appointment.

All directors and committee members shall serve without compensation. No director or committee member shall be deemed a public employee or a special public employee or a civil officer by virtue of his position as a director or committee member.

Other provisions relative to tenure, removal, resignation, quorum, meetings, notices, etc., shall be contained in the articles of organization and by-laws.

The conservancy shall have the following powers:—

(a) to adopt, amend and re-state its by-laws for the regulation of its affairs and the conduct of its business;.

(b) to lease open space and park parcels from the authority for park purposes, and to manage said open space and park parcels in accordance with the terms of any such lease;

(c) to accept, by transfer of deed, lease or otherwise, public or private property that relates to or enhances the conservancy's mission as set forth herein;

(d) to review and approve, in consultation with the mayor (i) all proposals or initiatives related to any addition, alteration, or improvement of the open space and park parcels, and (ii) all proposals or initiatives regarding the development or construction of any design-features, memorials, buildings or structures of any kind located within the greenway;

(e) to review in consultation with the Boston parks and recreation commission and in a manner consistent with city of Boston ordinances 7-3.2 and 7-4.11, the construction or alteration of any building or structure within 100 feet of the greenway;

(f) to receive and accept contributions or grants for aid in the operation, management and maintenance of the open space and park parcels from the commonwealth, or any public instrumentality or any political subdivision thereof, or any federal agency or private entity or individual;

(g) to operate, manage and maintain the open space and park parcels beginning December 31, 2008 or sooner as the responsibility for those activities is transferred from the authority, and to adopt rules and regulations governing conduct and activity within the open space and park parcels;

(h) to take action, consistent with its powers enumerated herein, to ensure that the greenway is designed and maintained at a high standard, as the conservancy sees fit;

(i) to enter into contracts and agreements with the commonwealth, the authority, the city, any leaseholder of a development parcel, and any owner or leaseholder of property adjacent to the greenway, in furtherance of its rights and powers under this act; and

(j) to do all other acts and things that are consistent with its powers as set forth herein and with its status as a charitable corporation under applicable internal revenue service rules.

(k) The conservancy shall not have the power to sublease, mortgage, alienate, pledge as security or encumber the premises without the enactment of further legislation.

SECTION 11. The by-laws shall provide for the following standing committees: an endowment and finance committee; an operations and maintenance committee; a programs and events committee; and an audit and risk committee. The board of directors shall also appoint a greenway leadership council as described herein. The board of directors shall appoint individuals to serve as members of the following committees:—

(a) The endowment and finance committee shall develop an endowment and finance plan focused on raising and investing funds, managing the conservancy on a long-term basis, developing a long-term business plan for the conservancy, and identifying all sources of funding sufficient to fulfill the requirements of the long-term operations and maintenance plan, the safety and security protocol, and the events plan and budget for the greenway.

The endowment and finance committee shall be comprised of all members of the board and such additional persons as the board shall from time to time, appoint. The chair of the endowment and finance committee shall be elected by the board and shall be a member of the board. There shall be no limit to the number of committee mem-

20 bers on the endowment and finance committee unless the by-laws
21 provide otherwise.
22 The endowment and finance committee shall raise an initial
23 endowment of $20,000,000 by December 31, 2008. If the audit and
24 risk management committee fails to verify, on or before January 15,
25 2009, that this endowment budget target date has been met, then the
26 initial period shall be extended to December 31, 2009. In the event
27 of failure to secure the initial endowment amount by December 31,
28 2009, then and in that event the conservancy's endowment shall be
29 transferred to the Rose Kennedy Greenway Expendable Trust, a trust
30 to be established by the commonwealth in the event of such default
31 and the purpose of which shall be to secure the covenants herein.
32 (b) The operations and maintenance committee shall consist of 7
33 committee members to be chosen by the board: 1 of whom shall be a
34 nominee or nominees presented by the mayor; 1 of whom shall be a
35 member of the greenway leadership council; and 1 from a nominee
36 or nominees presented to the board by the governor. The remaining
37 members shall be chosen by a majority vote of the board.
38 During the initial period the chair of the operations and mainte-
39 nance committee shall be elected by the board of directors from a
40 nominee or nominees presented to the board by the chairman of the
41 authority, and shall serve 1 or more 2 year terms. Thereafter, the
42 chair of the operations and maintenance committee shall be elected
43 by the board.
44 In addition to the voting committee members, the board of direc-
45 tors shall fill any vacancies that may arise from time to time on the
46 operations and maintenance committee in the same manner in which
47 the outgoing member was nominated and elected.
48 The Boston parks and recreation department, the Common-
49 wealth's department of conservation and recreation and the authority
50 (or the agency vested with the control, management and mainte-
51 nance of the Thomas P. O'Neill Tunnel) shall each designate 1 indi-
52 vidual who shall serve in a non-voting advisory capacity to the
53 operations and maintenance committee.
54 The operations and maintenance committee shall develop a long-
55 term operations maintenance plan. The long-term operations and
56 maintenance plan shall include, but not be limited to, a comprehen-
57 sive plan and budget for routine and programmed maintenance, spe-
58 cialty horticultural maintenance, and other activities deemed

59 necessary to ensure that the greenway is maintained in a consistent
60 high standard of excellence. The long-term operations and mainte-
61 nance plan shall also address the performance and payment for horti-
62 cultural maintenance activities on or within appropriate portions of
63 the adjacent city streets and sidewalks, through the recommenda-
64 tions of special agreements or otherwise. The committee shall also
65 make specific recommendations for the process by which the public
66 parties and the conservancy shall recommend, consider, approve,
67 and implement future capital improvements to the greenway.
68 (c) The programs and events committee shall consist of 7 com-
69 mittee members appointed to annual terms:— 1 of whom shall be a
70 nominee or nominees presented by the mayor; 1 of whom shall be
71 appointed by and be a member of the greenway leadership council
72 and a resident of one of the neighborhoods abutting the greenway;
73 and 1 from a nominee or nominees presented to the board by the
74 governor. The remaining members shall be chosen by a majority
75 vote of the board.
76 During the initial period the board shall elect the chair of the com-
77 mittee from a nominee or nominees presented to the board by the
78 mayor. Thereafter the chair of the programs and events committee
79 shall be elected by a majority vote of the board. The board shall fill
80 any vacancies that may arise on the programs and events committee
81 in the same manner in which the outgoing committee member was
82 nominated and elected. The Boston parks and recreation department,
83 mayor's office of arts, tourism and special events and film, and the
84 Commonwealth's department of conservation and recreation shall
85 each designate 1 individual who shall serve in a non-voting advisory
86 capacity to the programs and events committee.
87 The program and events committee shall develop a comprehen-
88 sive program and events plan, funding protocol and budget (the
89 "events plan and budget") for year-round programs and events on
90 the greenway, including specific recommendations to the conser-
91 vancy board regarding protocol for funding and establishing an
92 annual budget for programming and a process for establishing, plan-
93 ning, accommodating and managing concessions and related activi-
94 ties. The events and budget committee shall recognize and
95 accommodate the fact that once completed, the greenway is to be
96 treated as a public park and entitled to protections similar to those
97 afforded to public parkland under article 97 of the Massachusetts

constitution. Any lease or license of any portion of the premises shall contain a recitation protecting these rights.

The conservancy shall fund the approved events plan and budget. All concessions granted on the greenway shall be approved by the conservancy board and be subject to the applicable city permitting and licensing rules. The conservancy may enter into 1 or more contracts regarding implementation of the events plan and budget, including any "first year" program of events deemed suitable for the greenway, in consultation with the operations and maintenance committee.

The program and events committee shall, in collaboration with the operations and maintenance committee, develop and complete a safety and security protocol by June 30, 2008.

(d) The audit and risk management committee shall consist of 3 committee members appointed by the board to annual terms, each of whom shall be a director. The board shall fill any vacancies that may arise on the audit and risk management committee in the same manner in which the outgoing member was nominated and elected.

The audit and risk management committee shall develop an audit and risk management plan setting forth auditing, accounting and insurance protocols with respect to the use and management of the greenway, as well as a plan for compliance with all applicable public charities laws and regulations and other applicable finance and reporting-related legal requirements.

(e) The greenway leadership council shall consist of 13 citizens of the Commonwealth appointed to bi-annual terms and shall include residents of each neighborhood abutting the greenway. Three council members shall be appointed by the board from nominations made by the mayor; 3 council members shall be appointed by the board from nominations made by the governor; 2 council members shall be appointed from nominations made by the state representative representing the third Suffolk district and 2 council members shall be appointed from nominations made by the state senator representing the first Suffolk and first Middlesex. The remaining councilors shall be chosen by the board and have expertise and background in any of the areas of landscape design, landscape maintenance, horticulture, architectural design, urban design, urban parks city planning, cultural events and programs, visual and performing arts, youth programming and programming for those with disabilities.

The council may contribute to the fundraising, management and programming activities of the conservancy as desired by the board. The council shall assist the corporation as representatives of the public interest in the success of the greenway. Council membership shall strive to reflect the gender, ethnic, cultural, and applicable neighborhood demography of the city of Boston.

SECTION 12. The authority shall lease to the conservancy for a period of 99 years, commencing no later than December 31, 2008, at nominal consideration, for park purposes, the open space and park parcels within the greenway. The terms of such lease shall be reviewed by the secretary of transportation, contain covenants preserving the Greenway as park land, address liability, and shall include such other terms and conditions, consistent with this act, as the said secretary shall deem to be in the public interest. At a minimum the terms of such lease shall contain language defining an event of default as a breach of any covenant contained therein and provide remedies including, but not limited to, specific performance, leasehold termination, transfer of funds to the Rose Fitzgerald Kennedy Greenway Expendable Trust and dissolution of the conservancy. On or before June 30, 2008, the secretary of transportation shall prepare and complete the execution of the lease in accord with the provisions of this act. In the event of a failure by the secretary to complete said lease execution by such date all liability for segments of the Greenway accepted by the conservancy shall become the responsibility of the conservancy.

SECTION 13. To provide for the operation, management and maintenance of the open space and park parcels within the greenway, (i) the authority shall provide the conservancy with $10,000,000 on or before January 1, 2009, and upon payment of said funds, the authority shall have no further obligation to pay any costs related to the operation, management or maintenance of the said greenway, and (ii) the commonwealth shall provide financial assistance to the conservancy within 30 days following the beginning of each fiscal year, beginning July 1, 2009, in an amount equal to $5,500,000, from fees received by the registrar of motor vehicles pursuant to section 33 of chapter 90 of the General Laws.

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