

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

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

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

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

16 Beginning at a point on the dividing line Between Lot 9, Map 5 N  
17 4, lands now or formerly Berman and Lot 16, Map 6 N 6, lands now  
18 or formerly Isle of Capri Associates, L.P., Said point being  
19 distant the following two (2) courses and distances from the  
20 intersection and southeasterly right-of-way line of Penn Street  
21 (60 foot wide right-of-way, legally open) and the easterly  
22 right-of-way line of Delaware Avenue (A.K.A. Christopher  
23 Columbus Boulevard, A.K.A. SR. 2001, 150 foot wide right-of-way,  
24 legally open):

25 A. Along the southeasterly right-of-way of Penn Street,  
26 North 43 degrees 30 minutes 00 seconds East, a distance of  
27 140.229 feet to a drill hole, THENCE;

28 B. Along the dividing line between Lot 9, Map 5 N 4 and  
29 Lot 16, Map 6 N 6, South 47 degrees 02 minutes 00 seconds  
30 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

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

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

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

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

28 (h) Costs and fees.--Costs and fees incidental to the lease  
29 authorized under this section shall be borne by the lessee,  
30 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  $S20^{\circ}46'27''E$  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  $S54^{\circ}04'10''W$ , along the said Pierhead line, the  
21 distance of 57.397' to a point;  
22 THENCE,

23 3. Extending  $N23^{\circ}18'27''W$  (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  $N63^{\circ}51'33''E$ , 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.

1           050465, passed by the City Council on June 16, 2005, and  
2           signed by the Mayor on July 8, 2005).

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

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

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

29          (g) Consideration.--The Department of General Services shall  
30          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.