

SENATE No. 2875

The Commonwealth of Massachusetts

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

SENATE, July 31, 2020.

The committee on State Administration and Regulatory Oversight, to whom was referred the petition (accompanied by bill, Senate, No. 2817) (subject to Joint Rule 12) of Brendan P. Crighton, Peter Capano, Lori A. Ehrlich and Daniel Cahill for legislation relative to an easement in Lynn, reports the accompanying bill (Senate, No. 2875).

For the committee,
Marc R. Pacheco

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An Act relative to an easement in Lynn.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to allow an underground fiber optic cable system to be installed in the city of Lynn by way of a permanent easement, which is immediately necessary to carry out to accomplish important public purposes for which there is no feasible alternative, 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:

1 SECTION 1. Notwithstanding sections 32 to 37, inclusive, of chapter 7C of the General
2 Laws or any other general or special law to the contrary, the commissioner of capital asset
3 management and maintenance, in consultation with the commissioner of conservation and
4 recreation, may convey by deed of easement to Edge Cable Holdings USA, LLC, hereinafter
5 “Edge”, a 20-foot-wide permanent surface and subsurface easement upon a parcel of land, being
6 currently held by the department of conservation and recreation for conservation and recreation
7 purposes, located in the city of Lynn. The easement area contains approximately 15,572 square
8 feet of land as detailed on a plan of land entitled “Edge Cable Holdings USA, LLC Horizontal
9 Directional Drill Easement Lynn, Essex County, Massachusetts,” prepared by Michael Baker
10 International Consulting Engineers, dated March 2020, to be filed with the department of

11 conservation and recreation and recorded with the southern Essex district registry of deeds along
12 with the easement.

13 Modifications to the easement description set forth in the plan and the plan may be made
14 by the division for conformance with this act. The easement shall be granted without warranties
15 or representations by the commonwealth.

16 The easement shall be used for the installation, operation and maintenance of fiber optic
17 cables, which shall be installed underground, together with necessary appliances and
18 appurtenances. For the purposes of this act, fiber optic cables shall be used for the transmission,
19 reception and switching of broadband, voice, data and video signals. The easement shall be: (i)
20 non-exclusive as to the surface/above-grade portion of the easement area, which shall be used for
21 such conservation and recreation purposes as the commissioner of conservation and recreation
22 may reasonably determine, and Edge's use will be limited to access necessary for installation,
23 operation and maintenance of its subsurface cables, and Edge will restore the surface to the
24 reasonable satisfaction of the department; and (ii) exclusive as to the subsurface/below-grade
25 portion of the easement area, provided however the department may install, operate and
26 maintain, or authorize other state agencies or political subdivisions of the commonwealth and
27 public utility companies to do the same, for transportation, utility and communication systems
28 along, through or across the easement area, provided that any such access shall not interfere with
29 Edge's full enjoyment and use of the easement for the stated purposes. The foregoing right as to
30 incursions into and uses of the subsurface portion of the easement area by the commonwealth or
31 public utility companies, as set forth in clause (ii), shall be subject to clearance and notice
32 standards for vertical and horizontal separation from Edge's facilities to be agreed upon between
33 the division, in consultation with the department, and Edge and included in the easement deed.

34 SECTION 2. Notwithstanding any general or special law to the contrary, the
35 commissioner of the department of conservation and recreation may grant a license or permit for
36 nominal consideration to Edge to provide Edge with use and occupation of the above referenced
37 parcel, and liability and responsibility for such use and occupation, and, for the purposes of this
38 act, such licenses or permits shall govern until the grant of easement authorized in this act takes
39 effect.

40 SECTION 3. The fair market value of the easement described in section 1, or the value in
41 use as proposed, shall be based on independent professional appraisals, as commissioned by the
42 commissioner of capital asset management and maintenance. Edge shall compensate the
43 commonwealth in an amount greater than or equal to the full and fair market value, or the value
44 in use of the easement as proposed, whichever is greater, as determined by the independent
45 appraisals, plus the reasonable cost of such appraisal. All money paid to the commonwealth by
46 Edge as a result of the conveyances authorized by this section shall be deposited in the General
47 Fund. The commissioner of capital asset management and maintenance shall submit the
48 appraisals and a report thereon to the inspector general for review and comment. The inspector
49 general shall review and approve the appraisals and the review shall include an examination of
50 the methodology utilized for the appraisals. The inspector general shall prepare a report of the
51 review and file the report with the commissioner of capital asset management and maintenance
52 for submission by the commissioner to the house and senate committees on ways and means and
53 the senate and house chairs of the joint committee on state administration and oversight. The
54 commissioner shall submit copies of the appraisals, the report thereon and the inspector general's
55 review and approval, and comments, if any, to the house and senate committees on ways and

56 means and the senate and house chairs of the joint committee on state administration and
57 regulatory oversight prior to the execution of the conveyances authorized by this act.

58 SECTION 4. To ensure a no-net-loss of lands protected for natural resource purposes and
59 as a condition of the conveyance authorized in section 1, Edge shall, in addition to any
60 compensation from Edge to the commonwealth required pursuant to section 3, compensate the
61 commonwealth for the easement described in this act through the transfer to the department of
62 conservation and recreation of land or an interest therein or funding for the acquisition of land or
63 an interest therein equal to or greater than the appraised value of the easement as determined
64 pursuant to this act. The fair market value of any land or interest in land proposed to be conveyed
65 by Edge to the department shall be included within the appraisal required by section 3. The land
66 or interest therein or funding shall be acceptable to the department of conservation and recreation
67 and any land or interest therein, whether conveyed by Edge or acquired by the department, shall
68 be permanently held and managed for conservation and recreation purposes by the department.
69 All payments paid to the commonwealth as a result of this section shall be deposited in the
70 Conservation Trust established in section 1 of chapter 132A of the General Laws.

71 SECTION 5. Edge shall assume all costs associated with engineering, surveys,
72 appraisals, deed preparation and other expenses deemed necessary by the commissioner of
73 capital asset management and maintenance to execute the conveyance authorized in this act.