

HOUSE No. 5228

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, January 4, 2021.

The committee on Ways and Means, to whom was referred the Senate Bill relative to an easement in Lynn (Senate, No. 2875), reports recommending that the same ought to pass with an amendment striking all after the enacting clause and inserting in place thereof the text contained in House document numbered 5228.

For the committee,

AARON MICHLEWITZ.

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Text of an amendment, recommended by the committee on Ways and Means, to the Senate Bill relative to an easement in Lynn (Senate, No. 2875). January 4, 2021.

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

By striking out all after the enacting clause and inserting in place thereof the following:—

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 referred to as Edge, a 20-foot-wide permanent surface and subsurface easement upon a parcel of
6 land, being currently held by the department of conservation and recreation for conservation and
7 recreation purposes, located in the city of Lynn. The easement area, identified as “Proposed
8 Easement Area”, on a plan of land entitled “Edge Cable Holdings USA, LLC Horizontal
9 Directional Drill Easement” prepared by Michael Baker International Consulting Engineers,
10 dated March 2020 and containing approximately 15,572 square feet of land. The plan shall be on
11 file with the department of conservation and recreation and recorded with the southern Essex
12 district registry of deeds along with the easement.

13 Modifications to the easement description set forth in the plan and the plan may be made
14 by the division of capital asset management and maintenance for conformance with this act. The
15 easement shall be granted without warranties 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 and above-grade portion of the easement area, which shall be
21 used for such conservation and recreation purposes as the commissioner of conservation and
22 recreation may reasonably determine, and Edge's use shall be limited to access necessary for
23 installation, operation and maintenance of its subsurface cables, and Edge shall restore the
24 surface to the reasonable satisfaction of the department of conservation and recreation; and (ii)
25 exclusive as to the subsurface and below-grade portion of the easement area; provided, however
26 the department may install, operate and maintain, or authorize other state agencies or political
27 subdivisions of the commonwealth and public utility companies to do the same, transportation,
28 utility and communication systems along, through or across the easement area, provided that any
29 such access shall not interfere with Edge's full enjoyment and use of the easement for the stated
30 purposes. The foregoing right as to incursions into and uses of the subsurface portion of the
31 easement area by the commonwealth or public utility companies, as set forth in clause (ii), shall
32 be subject to clearance and notice standards for vertical and horizontal separation from Edge's
33 facilities to be agreed upon between the division of capital asset management and maintenance,
34 in consultation with the department of conservation and recreation, and Edge and included in the
35 easement deed.

36 SECTION 2. Notwithstanding any general or special law to the contrary, the
37 commissioner of conservation and recreation may grant a license or permit for nominal
38 consideration to Edge to provide Edge with use and occupation of the above referenced parcel,

and liability and responsibility for such use and occupation, and, for the purposes of this act, such licenses or permits shall govern until the grant of easement authorized in this act takes effect.

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

61 SECTION 4. As a condition of the conveyance authorized in section 1, Edge shall, in
62 addition to any compensation from Edge to the commonwealth required pursuant to section 3,
63 compensate the commonwealth for the easement described in this act through the transfer to the
64 department of conservation and recreation of land or an interest therein or funding for the
65 acquisition of land or an interest therein equal to or greater than the appraised value of the
66 easement as determined pursuant to this act. The fair market value of any land or interest in land
67 proposed to be conveyed by Edge to the department pursuant to this section shall be included
68 within the appraisal required by section 3. The land or interest therein or funding shall be
69 acceptable to the department of conservation and recreation and any land or interest therein,
70 whether conveyed by Edge or acquired by the department, shall be permanently held and
71 managed for conservation and recreation purposes by the department. All payments made to the
72 commonwealth pursuant to this section shall be deposited in the Conservation Trust established
73 in section 1 of chapter 132A of the General Laws.

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