

353--C

2015-2016 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2015

Introduced by M. of A. RYAN -- read once and referred to the Committee on Environmental Conservation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Environmental Conservation in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to authorize an easement on a portion of real property within the Boutwell Hill state forest in the county of Chautauqua for the location of electric collection or distribution facilities in connection with a wind powered electric generation project located in the towns of Charlotte and/or Cherry Creek; and providing for the repeal of such provisions upon expiration thereof

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 Section 1. Notwithstanding the contrary provisions of section 9-0501
2 of the environmental conservation law and the contrary provisions of the
3 public lands law, the department of environmental conservation is
4 authorized to grant an easement for an electric collection or distrib-
5 ution line on real property within the Boutwell Hill state forest, which
6 meets the following conditions:
7 (a) The easement is for an electric collection or distribution line
8 which is part of a wind powered electric generation project located in
9 the towns of Charlotte and/or Cherry Creek.
10 (b) The easement is for a portion of property within the Boutwell Hill
11 state forest owned by the state and managed by the department of envi-
12 ronmental conservation. The collection or distribution line shall be:
13 (i) located within 50 feet of the center line of Housington Road, Mill
14 Creek Road, Boutwell Hill Road and East Road corridors within the state

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

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1 forest and in no event shall the location of the electric collection or
2 distribution line require the cutting of trees greater than 50 feet from
3 such collection or distribution line placed in or adjacent to such road;
4 provided however, at such land located around the premises located at RD
5 #1 Boutwell Hill Rd, Cherry Creek, New York, being part of Lot 61, Town-
6 ship 4, Range 10 of the Holland Land Company's Survey, described more
7 fully in paragraph (ii) of this subdivision, beginning at a point of 50
8 feet north from the northeast corner of such parcel and east to Boutwell
9 Hill Road, for a distance not to exceed a total of 1500 feet, the
10 collection or distribution line may be located within 500 feet of the
11 center line of Boutwell Hill Road and 250 feet of the center line of
12 East road. Provided further that in such areas tree cutting shall be
13 minimized to the maximum extent practicable;

14 (ii) commencing at a point in the center of the highway leading from
15 Charlotte Center to the Neub Road (also leading to Kent Road Highway) at
16 the southwest corner of lands now or formerly owned by May V. Emley;
17 running thence north along the west line of lands now or formerly owned
18 by said Emley and Henry DuBursted, a distance of 8 rods to a point;
19 thence westerly and parallel with the road center, 10 rods to a point;
20 thence southerly and parallel to the first described line, 8 rods to the
21 center of the highway; and thence easterly along the center of the high-
22 way, 10 rods to the place of beginning, containing one half acre of
23 land, be the same more or less; and

24 (iii) a total distance of not more than 1.4 miles.

25 (c) The easement will be conveyed by the department of environmental
26 conservation and take effect only in the event a collection or distrib-
27 ution line proposed to be located on such easement lands is certified
28 and approved as part of a wind powered electric generation facility
29 pursuant to articles 7 and 10 of the public service law.

30 (d) The easement shall terminate when the associated wind powered
31 electric generation project ceases to operate for 18 months as set forth
32 in the easement and the easement shall then revert to the state to be
33 managed by the department of environmental conservation as state forest
34 land.

35 (e) The use of chemicals/herbicides for clearing said easement is
36 prohibited unless prior approval for the same is granted by the depart-
37 ment of environmental conservation, division of lands and forests.

38 S 2. (a) In entering into the easement described in section one of
39 this act, the department of environmental conservation is authorized to
40 grant such easement for fair market value plus twenty percent of the
41 value of the easement and one hundred thousand dollars, upon application
42 by Everpower. An amount, not less than fair market value plus twenty
43 percent of the value of the easement plus one hundred thousand dollars
44 shall be used to obtain for the state an interest in real property for
45 open space purposes in region 9 of the department of environmental
46 conservation from the regional priority conservation projects list in
47 region 9 as part of this state's open space conservation plan. The total
48 payment for such acquisition(s) shall not be less than the value of the
49 easement to be conveyed by the state plus twenty percent of the value of
50 such easement plus one hundred thousand dollars.

51 (b) The description of the easement to be conveyed contained by this
52 act is not intended to be a legal description, but is intended to iden-
53 tify the easement to be conveyed. As a condition of conveyance Everpow-
54 er shall submit to the commissioner of environmental conservation for
55 his or her approval an accurate survey and description of lands general-

1 ly described in this section which may be used in the conveyance there-
2 of.

3 (c) The grant of the easement is conditioned on, first, the acquisi-
4 tion of the exchange parcel by the state, and second, issuance of
5 certificates of environmental compatibility and public need pursuant to
6 the provisions of articles 7 and 10 of the public service law.

7 (d) Compensation for the stumpage value for trees to be felled by the
8 entity shall be used for the same purpose as in subdivision (a) of this
9 section with the felled trees to become the property of Everpower. Stum-
10 page value is to be determined by a department of environmental conser-
11 vation forester based on the most recent department of environmental
12 conservation stumpage price report at the time the trees are felled.

13 S 3. The commissioner of environmental conservation may prescribe
14 additional terms for such exchange of real property. Such contract shall
15 not become binding upon the state until approved by the state comp-
16 troller. Title to the land to the people of the state of New York pursu-
17 ant to the provisions of such contract shall be approved by the attorney
18 general, and the deed to the state shall be approved by him or her as to
19 form and manner of execution and recordability before such deed shall be
20 accepted on behalf of the state. Notwithstanding the contrary provisions
21 of the public lands law, the conveyance of the state-owned easement
22 pursuant to such contract shall be without reservation or exception,
23 except as provided for in such contract. Upon certification by the
24 commissioner of environmental conservation to the commissioner of gener-
25 al services of a copy of the contract, and certification that Everpower
26 has complied with all terms and conditions of the contract upon their
27 part to be kept and performed, together with a description of any of the
28 easements to be exchanged, conveyed and/or payments to be made the
29 commissioner of general services shall convey the easement described in
30 section one of this act in accordance with the provisions of the
31 contract.

32 S 4. This act shall take effect immediately, and shall expire and be
33 deemed repealed five years after such date; provided, however, should
34 the easement be granted within the 5 years, the terms of the easement
35 will establish the end date of the easement. At such time the land will
36 revert back to the state of New York for state forest purposes.