

6005--A

Cal. No. 1005

2015-2016 Regular Sessions

I N   S E N A T E

June 19, 2015

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Introduced by Sen. YOUNG -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- recommitted to the Committee on Environmental Conservation in accordance with Senate Rule 6, sec. 8 -- committee discharged and said bill committed to the Committee on Rules -- reported favorably from said committee, ordered to a third reading, passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

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  
15 forest and in no event shall the location of the electric collection or

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

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1 distribution line require the cutting of trees greater than 50 feet from  
2 such collection or distribution line placed in or adjacent to such road;  
3 provided however, at such land located around the premises located at RD  
4 #1 Boutwell Hill Rd, Cherry Creek, New York, being part of Lot 61, Town-  
5 ship 4, Range 10 of the Holland Land Company's Survey, described more  
6 fully in paragraph (ii) of this subdivision, beginning at a point of 50  
7 feet north from the northeast corner of such parcel and east to Boutwell  
8 Hill Road, for a distance not to exceed a total of 1500 feet, the  
9 collection or distribution line may be located within 500 feet of the  
10 center line of Boutwell Hill Road and 250 feet of the center line of  
11 East road. Provided further that in such areas tree cutting shall be  
12 minimized to the maximum extent practicable;

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

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

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

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

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

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

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

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

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

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

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