

# HOUSE . . . . . No. 3706

The committee on Ways and Means to whom was referred the Bill authorizing the Division of Capital Management and Maintenance to grant an easement over an access road in Upton State Forest (House, No. 1149, changed), reports recommending that the same ought to pass with an amendment substituting therefor the accompanying bill (House, No. 3706).

- For the committee,
- Brian S. Dempsey
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## The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act authorizing the Division of Capital Asset Management and Maintenance to grant an easement over an access road in Upton State Forest.

*Whereas*, The deferred operation of this act would tend to defeat its purpose, which is to grant an easement forthwith over an access road in Upton State Forest in the town of Upton to the owner of a wireless telecommunications tower, 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 40E to 40J inclusive of chapter 7 of the General  
2 Laws, the commissioner of capital asset management and maintenance, on behalf of, and in  
3 consultation with the commissioner of the department of conservation and recreation, may grant  
4 an easement along an access road in the Upton State Forest, currently under the care and control  
5 of said department of conservation and recreation to Industrial Tower and Wireless, LLC of 40  
6 Lone street, Marshfield, Massachusetts and its tenants, licensees, successors and assigns. The  
7 easement granted to Industrial Tower and Wireless, LLC and its tenants, licensees, successors  
8 and assigns shall follow the gravel road from Warren street to the proposed building site for a  
9 wireless telecommunications tower on land bordering the state forest and shall be for the purpose  
10 of accessing the tower and supplying utility service transmissions systems, including electrical  
11 and telephone lines, underground to the tower for Industrial Tower Wireless, LLC and its  
12 tenants, licensees, successors and assigns. The easement area contains approximately 23,412

13 square feet of land and is within the layout of the existing gravel roadway shown in a plan  
14 entitled "Proposed Communications Facility Off Warren St. Upton, MA Map 15 Lot 30"  
15 prepared by Industrial Communications Engineering Division and dated February 22, 2010. The  
16 exact boundaries of the easement shall be determined by the commissioner of capital asset  
17 management and maintenance, in consultation with the department of conservation and  
18 recreation, after completion of a survey. The value of the easement shall be determined by the  
19 commissioner of the division of capital asset management and maintenance pursuant to 1 or  
20 more independent professional appraisals. Said easement shall be conveyed by deed without  
21 warranties or representations by the commonwealth.

22 SECTION 2. In consideration for and as a condition of the grant of the easement  
23 authorized in section 1, Industrial Tower and Wireless, LLC and its tenants, licensees, successors  
24 and assigns shall construct and maintain 2 single leaf gate replacements in Upton State Forest,  
25 the locations of which shall be determined by the department of conservation and recreation; and  
26 provide 2 to 3 new radio systems to said department for the benefit and use by staff members at  
27 the Upton State Forest; provided, however, that if the value of this consideration is determined to  
28 be less than the value of the easement granted, Industrial Tower and Wireless, LLC shall pay the  
29 difference and said amount shall be paid into the Conservation Trust of the department.

30 SECTION 3. Notwithstanding any general or special law to the contrary, the Industrial  
31 Tower and Wireless, LLC and its tenants, licensees, successors and assigns shall be responsible  
32 for all costs and expenses, including but not limited to, costs associated with any engineering,  
33 surveys, appraisals, and deed preparation, and preconstruction, construction and postconstruction  
34 costs to mitigate and remedy erosion and grading issues on the access road and annual  
35 maintenance of said road, related to the grant authorized under this act as such costs may be  
36 determined by the commissioner of the division of capital asset management and maintenance in  
37 conjunction with the department of conservation and recreation.

38 SECTION 4. Notwithstanding any general or special law to the contrary, the inspector  
39 general shall review and approve the appraisal required pursuant to section 1. The inspector  
40 general shall prepare a report of his review of the methodology utilized for the appraisal and  
41 shall file the report with the commissioner of capital asset management and maintenance, the  
42 house and senate committees on ways and means and the joint committee on bonding, capital  
43 expenditures and state assets. The commissioner of capital asset management and maintenance  
44 shall, 30 days before the execution of any grant of easement authorized by this act, or any  
45 subsequent amendment thereto, submit the proposed grant of easement or amendment and a  
46 report thereon to the inspector general for his review and comment. The inspector general shall  
47 issue his review and comment within 15 days of receipt of the proposed grant of easement or  
48 amendment. The commissioner of capital asset management and maintenance shall submit the  
49 proposed grant of easement or amendment, and the reports and the comments of the inspector  
50 general, if any, to the house and senate committees on ways and means and the joint committee  
51 on bonding, capital expenditures and state assets at least 15 days before execution of the grant.

52           SECTION 5. The grantee and its tenants, licensees, successors and assigns shall use the  
53 easement solely for the purposes of access to the wireless communications tower and to supply  
54 utility service transmissions systems, including electrical and telephone lines to said tower as  
55 determined by the commissioner of capital asset management and maintenance. The easement or  
56 other agreement pertaining to the grant of the easement shall include a provision restricting the  
57 use of the property by the grantee and its tenants, licensees, successors and assigns to such  
58 purposes and providing that such easement shall terminate if the property ceases to be so used or  
59 is used for any other purpose.

60           SECTION 6. If the easement granted pursuant to section 1 ceases to be used by the  
61 grantee and its tenants, licensees, successors and assigns for the purposes of access to the  
62 wireless communications tower and to supply utility service transmissions systems, the easement  
63 shall terminate.