

SENATE No. 2133

The Commonwealth of Massachusetts

PRESENTED BY:

Adam Gomez

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to establish standards for the pole attachment process to facilitate the construction of broadband networks.

PETITION OF:

NAME:

Adam Gomez

DISTRICT/ADDRESS:

Hampden

SENATE No. 2133

By Mr. Gomez, a petition (accompanied by bill, Senate, No. 2133) of Adam Gomez for legislation to establish standards for the pole attachment process to facilitate the construction of broadband networks. Telecommunications, Utilities and Energy.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act to establish standards for the pole attachment process to facilitate the construction of broadband networks.

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. Section 25A of Chapter 166 of the General Laws, as appearing in the 2020
2 Official Edition, is hereby amended by adding at the end of the eighth paragraph, after the words
3 “used principally for the supply of electricity in bulk”, the following new sentence:-

4 “Notwithstanding the foregoing, attachments may be made pursuant to 25B of this
5 chapter, or pursuant to order or regulation of the department.”

6 SECTION 2. Said Chapter 166 is hereby further amended by adding after Section 25A
7 the following new section:-

8 Section 25B. One Touch Make Ready Applications

9 (a) The following terms as used in this section shall have the following meanings:

10 (1) "Abandoned Joint-Use Utility Pole", means a joint-use utility pole from which all
11 attachments have been removed.

12 (2) "Assigned space", means the space on a utility pole assigned by this Statute for the
13 attachments of conductors or circuitry by joint-use entities, consistent with the provisions of the
14 National Electrical Safety Code, Blue Book, or other reasonable practices. Assigned space does
15 not include common space, including the communications worker safety zone. Space which may
16 be available on a joint-use utility pole for an additional attaching entity must not be considered
17 assigned space until an additional attachment is made, but must instead be considered common
18 space.

19 (3) "Attaching entity", means a joint-use entity with an attachment to a joint-use utility
20 pole.

21 (4) "Blue Book", means the "SR-1421, Blue Book – Manual of Construction Procedures"
22 as published by Telcordia.

23 (5) "Common Space", means space of a joint-use utility pole used by all joint users in
24 common and consists of the portion of a pole beneath ground level, the portion from ground
25 level to the lowest place on the pole at which a telecommunications circuit may be attached, plus
26 all but 6 inches of the telecommunications worker safety zone. The common space is equal to the
27 length of the pole minus the assigned spaces for each attaching entity. In addition, for the
28 purpose of assigning and allocating space and costs on a joint-use utility pole, space which may
29 be available for an additional attachment, and which would become assigned space if an
30 additional attachment were made, must be considered common space until such an attachment is
31 made.

32 (6) "Complex make-ready", means any make ready work above the communications
33 space; transfers and work within the communications space that would be reasonably likely to
34 cause a service outage or facility damage, including the splicing of any communication
35 attachment or relocation of an existing wireless attachment; and the replacement of a joint-use
36 utility pole. Any and all wireless activities, including those involving mobile, fixed, and point-to-
37 point wireless communications and wireless.

38 (7) "Communications space", means the portion on a joint-use utility pole that begins at
39 the bottom of the communications worker safety zone and ends at the lowest point above grade
40 to which a horizontal communications wire can be attached consistent with the National
41 Electrical Safety Code.

42 (8) "Communication worker safety zone", means a 40-inch vertical space, or other
43 amount as required by the National Electrical Safety Code for the purpose of safety, on which no
44 electric or communications circuitry may be attached. The zone is located between the areas to
45 which electric conductors and communication circuitry may be attached. All but six inches of the
46 "communications worker safety zone" must be considered part of the common space of a utility
47 pole.

48 (9) "Information service provider", means a provider of "information service" as defined
49 in Title 47 of the United States Code.

50 (10) "Joint-use entity", means a utility, licensee, or wireless provider.

51 (11) "Joint-use utility pole" is a utility pole on which there are circuit or electric
52 conductor attachments by an electric utility and attachments by one or more joint-use entities.
53 Joint-use utility poles do not include poles whose sole purpose is supporting electrical

54 transmission conductors as defined by the Federal Energy Regulatory Commission. However, if
55 an electric utility under-builds a transmission line with distribution, those poles are considered
56 joint-use utility poles.

57 (12) "Licensee", means any person, firm or corporation other than a utility, which is
58 authorized to construct lines or cables upon, along, under and across the public ways. For the
59 purposes of this section, the term shall also include a municipal lighting plant or cooperative that
60 operates a telecommunications system outside the limits of its service territory pursuant to
61 section 47E of chapter 164, but only for those attachments that are outside its service territory.

62 (13) "Make-ready work" or "make-ready", means the modification or replacement of a
63 joint-use utility pole, or of the lines or equipment on the joint-use utility pole, to accommodate
64 additional facilities on the joint-use utility pole.

65 (14) "National Electric Safety Code" or "NESC", means published by the Institute of
66 Electrical and Electronics Engineers and approved by the American National Standards Institute
67 Code C2.

68 (15) "Overlash", means the tying or lashing of additional communications wires, cables,
69 and facilities to existing communications wires, cables, or supporting strand already attached to
70 poles.

71 (16) "Pole attachment" or "attachment", means the physical connection of a facility that a
72 joint-use entity uses to provide communications or electric service.

73 (17) "Pole owner", means an entity that owns or jointly owns a joint-use utility pole, or
74 controls usable space on a joint-use utility pole.

75 (18) "Replaced joint-use utility pole", means a joint-use utility pole that has been
76 replaced by a new joint-use utility pole. Once the last attachment has been removed from the
77 pole, the pole becomes an abandoned joint-use utility pole.

78 (19) "Requesting party", means a utility or joint-use entity that is seeking to place
79 attachments on joint-use utility poles.

80 (20) "Simple make-ready", means make-ready work where existing attachments in the
81 communications space of a joint-use utility pole can be transferred without any reasonable
82 expectation of a service outage or facility damage and where the transfer does not require
83 splicing of any existing communication attachment or relocation of an existing wireless
84 attachment. Simple make ready does not apply to attachments above the communications space
85 or pole replacements.

86 (21) "Usable Space", means the space on a joint-use utility pole above the minimum
87 grade level which can be used for the attachment of wires, cables, and associated equipment.

88 (22) "Utility", means any person, firm, corporation or municipal lighting plant that owns
89 or controls or shares ownership or control of poles, ducts, conduits or rights of way used or
90 useful, in whole or in part, for supporting or enclosing wires or cables for the transmission of
91 intelligence by telegraph, telephone or television or for the transmission of electricity for light,
92 heat or power.

93 (23) "Wireless provider", means any city or town incorporated in the commonwealth,
94 person, firm, or corporation which provides telecommunications service. A utility shall not be
95 considered a wireless provider for the purposes of this section.

96 (b) Qualified Contractors:

97 (1) A pole owner may make available a list of contractors it authorizes to perform
98 surveys and make-ready in the communications space on its utility poles in cases involving One
99 Touch Make-Ready under Subsection (c) of this Section. Listed contractors must be trained to
100 work with coaxial and fiber optic cable and be reasonably insured or bonded.

101 (2) If a requesting party hires a contractor for purposes specified in Subsection (c) of this
102 Section, the requesting party may choose from the pole owner's list of authorized contractors or
103 request the addition to the pole owner's authorized contractor list any contractor that meets the
104 minimum qualifications in Subsection (b)(5) of this Section, and the pole owner may not
105 unreasonably deny such a request.

106 (3) If a pole owner does not provide a list of approved contractors for surveys or simple
107 make-ready or no contractor on the pole owner's contractor list is available within a reasonable
108 time period then the requesting party may choose its own qualified contractor that meets the
109 requirements in Subsection (b)(5) of this Section. When choosing a contractor that is not on the
110 pole owner's list, the requesting party must certify to pole owner that its contractor meets the
111 minimum qualifications described in Subsection (b)(5) of this Section when providing notices
112 required by Subsection (c) of this Section.

113 (4) A pole owner may disqualify any contractor chosen by a requesting party that is not
114 on the pole owner's contractor list, but such disqualification must be based on reasonable safety
115 or reliability concerns related to the contractor's failure to meet any of the minimum
116 qualifications described in Subsection (b)(5) of this Section or to meet the pole owner's publicly
117 available and commercially reasonable safety or reliability standards. The pole owner must

118 provide notice of its contractor objection within the notice requirements of Subsection (c) of this
119 Section and in its objection must identify at least one available qualified contractor.

120 (5) In addition to the requirements in Subsection (b)(1) of this Section, pole owners must
121 ensure that contractors on their lists as described in this Section, and requesting parties must
122 ensure that contractors they select pursuant to Subsection (b)(3) of this Section, meet the
123 following minimum requirements:

124 (6) The contractor has agreed to follow published safety and operational guidelines of the
125 pole owner, if available, but if unavailable, the contractor shall agree to follow National
126 Electrical Safety Code guidelines;

127 (7) The contractor has acknowledged that it knows how to read and follow licensed-
128 engineered pole designs for make-ready, if required by the pole owner;

129 (8) The contractor has agreed to follow all local, state, and federal laws and regulations
130 including, but not limited to, the rules regarding Qualified and Competent Persons under the
131 requirements of the Occupational and Safety Health Administration rules; and

132 (9) The contractor has agreed to meet or exceed any uniformly applied and reasonable
133 safety and reliability thresholds set by the pole owner, if made available.

134 (10) A requesting party that hires a contractor for survey or make-ready work must
135 provide a pole owner or affected attaching entity with a reasonable opportunity for a
136 representative to accompany and consult with the authorized contractor and the requesting party.

137 (11) The consulting representative of an electric utility may make determinations, on a
138 nondiscriminatory basis, where there is insufficient capacity and for reasons of safety, reliability,
139 and generally applicable engineering purposes.

140 (c) One touch make ready application process

141 (1) One Touch Make-Ready Option for Simple Make-Ready: For attachments involving
142 simple make-ready, a requesting party may elect to proceed with the process described in this
143 Subsection. It is the responsibility of the requesting party to ensure that its contractor determines
144 whether the make-ready requested in an attachment application is simple make-ready.

145 (i) An application for attachment must be submitted in writing and must provide the pole
146 owner with the information necessary to grant or deny the application.

147 (ii) A requesting party electing the one touch make-ready option must indicate that it
148 intends to perform one-touch make-ready in its attachment application and must identify the
149 simple make-ready it will perform.

150 (iii) A pole owner must review the requesting party's attachment application for
151 completeness before reviewing the application on its merits. An attachment application is
152 considered complete if it provides the pole owner with the information necessary under its
153 procedures, as specified in a master service agreement or in publicly-released requirements at the
154 time of submission of the application, to make an informed decision on the application.

155 (iv) A pole owner must complete its review for completeness within 10 business days of
156 receipt of the application and notify the requesting party of that decision. If the pole owner does
157 not respond within 10 business days after receipt of the application, or if the pole owner rejects

158 the application as incomplete but fails to specify any reasons in the application, then the
159 application is deemed complete.

160 (v) If the pole owner timely notifies the requesting party that its attachment application is
161 not complete, then the pole owner must specify all reasons for finding it incomplete. Any
162 resubmitted application need only address the pole owner's reasons for finding the application
163 incomplete and must be deemed complete within 5 business days after its resubmission, unless
164 the pole owner specifies to the requesting party which reasons were not addressed and how the
165 resubmitted application did not sufficiently address the reasons. The requesting party may follow
166 the resubmission procedure in this paragraph as many times as it chooses so long as in each case
167 it makes a bona fide attempt to correct the reasons identified by the pole owner, and in each case
168 the deadline set forth in this paragraph shall apply to the utility's review.

169 (vi) The pole owner shall review on the merits a complete application requesting one-
170 touch make-ready and respond to the requesting party either granting or denying an application
171 within 30 days of the pole owner's receipt of a complete application.

172 (vii) If the pole owner denies the application on its merits, then its decision shall be
173 specific, shall include all relevant evidence and information supporting its decision, and shall
174 explain how such evidence and information relate to a denial of access for reasons of lack of
175 capacity, safety, reliability, or engineering standards.

176 (viii) Within the 30-day application review period, a pole owner may object to the
177 designation by the requesting party's contractor that certain make-ready is simple. If the pole
178 owner objects to the contractor's determination that make-ready is simple, then it is deemed
179 complex. The pole owner's objection is final and determinative so long as it is specific and in

180 writing, includes all relevant evidence and information supporting its decision, made in good
181 faith, and explains how such evidence and information relate to a determination that the make-
182 ready is not simple.

183 (2) Surveys. The requesting party is responsible for all surveys required as part of the
184 one-touch make-ready process and must use a contractor that is appropriately trained and
185 licensed as well as reasonably insured or bonded and otherwise meets the requirements of
186 Subsection (b)(5) of this Section.

187 (i) A requesting party may need to perform a survey to determine whether the necessary
188 make-ready work is simple or complex before filing an application for one-touch make-ready.

189 (ii) The requesting party must permit the pole owner and any affected attaching entity to
190 be present for any field inspection conducted as part of the requesting party's surveys. The
191 requesting party must use commercially reasonable efforts to notify the pole owner and any
192 affected attaching entities three business days before a field inspection as part of any survey and
193 must provide the date, time, and location of the surveys, and the name of the contractor
194 performing the surveys.

195 (3) Make-Ready. If the pole owner approves the requesting party's attachment application
196 and if the requesting party has provided 15 calendar days' prior written notice of the make-ready
197 to the pole owner and affected attaching entities, the requesting party may proceed with make-
198 ready using a contractor that is appropriately trained and licensed as well as reasonably insured
199 or bonded and otherwise meets the requirements of Subsection (b)(5) of this Section.

200 (i) The prior written notice must include the date and time of the make-ready work, a
201 description of the work involved, and the name of the contractor being used by the requesting

202 party and must provide the pole owner and any affected attaching entities a reasonable
203 opportunity to be present for any make-ready work.

204 (ii) The requesting party must immediately notify a pole owner or affected attaching
205 entity if the make-ready work damages any equipment or causes an outage that is reasonably
206 likely to interrupt service. Upon receiving notice from the requesting party, the pole owner or
207 affected attaching entity may either: Complete any necessary remedial work and bill the
208 requesting party for the reasonable costs related to fixing the damage or require the requesting
209 party to fix the damage at its expense immediately following notice from the pole owner or
210 affected attaching entity.

211 (iii) In performing make-ready work, if the requesting party, the pole owner, or an
212 affected attaching entity determines that any work classified as simple make-ready is actually
213 complex make-ready, then that specific make-ready work must be halted, and the determining
214 party must provide immediate notice to the other parties of its determination and the affected
215 poles. The affected make-ready will then be completed by the responsible party as soon as
216 reasonably practicable.

217 (4) Post-Make-Ready Timeline. A requesting party must notify the pole owner and any
218 affected attaching entities with notice of the completion of the make-ready work within 15
219 calendar days of completion. Such notice must provide the pole owner and any affected attaching
220 entities 90 calendar days from receipt of the notice to inspect the make-ready work, and that the
221 pole owner and any affected attaching entities have 14 calendar days from the completion of
222 their inspection to notify the requesting party of any damage or code violation resulting from the
223 make-ready work. The pole owner or affected attaching entity may either complete any

224 necessary remedial work and bill the requesting party for reasonable costs associate with the
225 remediation or require the requesting party to perform the remediation at the requesting party's
226 expense within 14 calendar days of notification.