

SENATE No. 1973

The Commonwealth of Massachusetts

PRESENTED BY:

Adam G. Hinds

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 providing oversight to leverage economic security in rural Massachusetts.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Adam G. Hinds</i>	<i>Berkshire, Hampshire, Franklin and Hampden</i>	
<i>Mindy Domb</i>	<i>3rd Hampshire</i>	<i>2/1/2019</i>

SENATE No. 1973

By Mr. Hinds, a petition (accompanied by bill, Senate, No. 1973) of Adam G. Hinds and Mindy Domb for legislation to provide oversight to leverage economic security in rural Massachusetts. Telecommunications, Utilities and Energy.

The Commonwealth of Massachusetts

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

An Act providing oversight to leverage economic security in rural Massachusetts.

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. Chapter 166 of the General Laws, as appearing in the 2016 Official Edition,
2 is hereby amended by adding the following new sections after section 25A:-

3 Section 25B. Definitions

4 As used in this section and in Sections 25C to 25E, inclusive, the following words shall
5 have the following meanings:

6 “Attachment”, means any wire or cable for transmission of intelligence by telegraph,
7 wireless communication, telephone or television, including cable television, or for the
8 transmission of electricity for light, heat, or power and any related device, apparatus, appliance
9 or equipment installed on any pole or in any telegraph or telephone duct or conduit owned or
10 controlled, in whole or in part, by one or more utilities.

11 “Complaints”, shall include any disputes or claims that arise after a licensee is granted
12 their request for access to a utility’s attachments.

13 “Department”, means the department of telecommunications and energy.

14 “Joint Owner,” means any person, corporation or other legal entity having an ownership
15 interest in a pole.

16 “Licensee”, means any person, firm or corporation other than a utility, which is
17 authorized to construct lines or cables upon, along, under and across the public ways. For the
18 purposes of this section, the term shall also include a municipal lighting plant or cooperative that
19 operates a telecommunications system outside the limits of its service territory pursuant to
20 section 47E of chapter 164, but only for those attachments that are outside its service territory.

21 “Make ready estimate,” means the cost estimate agreed upon by the licensee and the
22 utility upon completion of the make ready survey, reflecting the projected cost of the work
23 necessary to allow the licensee to add its attachment to all of the poles included within the
24 request for access.

25 “Make ready work,” means all work, including, but not limited to, installation of
26 attachments, rearrangement or transfer of existing facilities, replacement of a pole or any other
27 changes required to accommodate the attachment of licensee’s facilities to a pole.

28 “Municipality”, means any city or town.

29 “Persons”, shall include individuals, firms, corporations, partnerships, and their agents
30 and employees.

31 “Utility”, means any person, firm, corporation or municipal lighting plant that owns or
32 controls or shares ownership or control of poles, ducts, conduits or rights of way used or useful,
33 in whole or in part, for supporting or enclosing wires or cables for the transmission of
34 intelligence by telegraph, telephone or television or for the transmission of electricity for light,
35 heat or power.

36 Section 25C: Duty to provide timely access to install attachments

37 Requests for access to utility poles, ducts, conduits, rights-of-way, used or useful, in
38 whole or in part, owned or controlled by it for the purpose of installing attachments, as described
39 in section 25A, shall be in writing directed to an appropriate named recipient designated by the
40 utility.

41 If access is not granted within 30 days of a licensee’s request for access, the utility must
42 confirm the denial in writing by the 30th day. The utility's denial of access shall be specific,
43 shall include all relevant information supporting its denial, and shall explain how such
44 information relates to a denial of access for reasons of lack of capacity, safety, reliability or
45 engineering standards.

46 Section 25D: Duty to timely complete make read ready work

47 A utility that grants access to a licensee to install attachments, for purposes described in
48 section 25C, shall be responsible for ensuring that all licensees, including third party licensees,
49 complete all necessary make ready work within 60 days from the date that the utility receives the
50 make ready estimate from a licensee. Make ready work, as defined in section 25B, shall include,
51 but is not limited to, replacing poles, constructing additional poles, modifying existing

52 attachments, and directing third party licensees to modify their attachments. A utility that does
53 not complete all make ready work by the 60th day shall be in violation of this section.

54 The Department shall have the authority to assess fines to any utility found in violation of
55 section 25D on the 61st day that all make ready work remains incomplete in an amount of
56 \$10,000. For each week thereafter that the make ready work remains incomplete, the department
57 shall direct the utility to pay to the licensee an additional \$10,000. The department shall direct
58 the utility in violation to make payments for said fines to the licensee requesting grant access, for
59 purposes described in section 25A.

60 Section 25E: Make Ready Ombudsman

61 The director of the department shall appoint an ombudsman for the purpose of receiving,
62 investigating and resolving complaints, as defined in section 25B, received by licensees, utilities,
63 municipalities or other persons. The ombudsman's responsibilities shall include, but shall not be
64 limited to, the following:

65 (a) be a person qualified by training and experience to perform the duties of the office;

66 (b) serve as a liaison and mediator between licensees, municipalities, utilities, the
67 department, and other affected parties to a complaint;

68 (c) develop policies and procedures to assist all affected parties to a complaint, for
69 purposes of ensuring a licensee, utility or municipality completes all make ready work on utility
70 attachments within 60 days of the licensee submitting the make ready estimated payment,
71 pursuant to section 25D;

72 (d) develop policies and procedures to facilitate compliance with provisions of this
73 section, for filing, investigating, and resolving complaints;

74 (e) maintain complete records of complaints received, actions taken, findings, outcomes
75 and recommendations in response to complaints and other actions;

76 (f) annually provide a report to the director that includes, but not limited to, an analysis of
77 said records and identifies and makes recommendations for improving policies, procedures, laws
78 or regulations; and

79 (h) monitor the development and implementation of federal and state statutes, regulations
80 and policies regarding modifications to utility attachments.

81 SECTION 2. Notwithstanding any general or special law to the contrary, the department
82 shall promulgate necessary rules and regulations for purposes of implementing Section 1.