

# SENATE . . . . . No. 2133

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## The Commonwealth of Massachusetts

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PRESENTED BY:

*Adam Gomez*

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*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.

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PETITION OF:

NAME:

*Adam Gomez*

DISTRICT/ADDRESS:

*Hampden*

# SENATE . . . . . No. 2133

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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.

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## The Commonwealth of Massachusetts

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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:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Qualified Contractors:

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

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

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

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

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

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

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

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

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

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

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



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

(c) One touch make ready application process

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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