

HOUSE No.**The Commonwealth of Massachusetts**

PRESENTED BY:

Joan Meschino and Mathew J. Muratore*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 modernize funding for community media programming.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Joan Meschino</i>	<i>3rd Plymouth</i>	<i>1/9/2023</i>
<i>Mathew J. Muratore</i>	<i>1st Plymouth</i>	<i>1/11/2023</i>
<i>Josh S. Cutler</i>	<i>6th Plymouth</i>	<i>1/18/2023</i>
<i>Peter Capano</i>	<i>11th Essex</i>	<i>1/19/2023</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>1/25/2023</i>
<i>Susannah M. Whipps</i>	<i>2nd Franklin</i>	<i>1/25/2023</i>
<i>Sally P. Kerans</i>	<i>13th Essex</i>	<i>1/26/2023</i>
<i>Ruth B. Balser</i>	<i>12th Middlesex</i>	<i>1/26/2023</i>
<i>Brian W. Murray</i>	<i>10th Worcester</i>	<i>1/27/2023</i>
<i>James K. Hawkins</i>	<i>2nd Bristol</i>	<i>1/27/2023</i>
<i>Hannah Kane</i>	<i>11th Worcester</i>	<i>1/30/2023</i>
<i>Susan Williams Gifford</i>	<i>2nd Plymouth</i>	<i>1/30/2023</i>
<i>John J. Cronin</i>	<i>Worcester and Middlesex</i>	<i>1/30/2023</i>
<i>Danielle W. Gregoire</i>	<i>4th Middlesex</i>	<i>1/31/2023</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>1/31/2023</i>
<i>William C. Galvin</i>	<i>6th Norfolk</i>	<i>1/31/2023</i>
<i>Michael P. Kushmerek</i>	<i>3rd Worcester</i>	<i>2/1/2023</i>
<i>Simon Cataldo</i>	<i>14th Middlesex</i>	<i>2/1/2023</i>

HOUSE No.

[Pin Slip]

The Commonwealth of Massachusetts

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

An Act to modernize funding for community media programming.

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. The General Laws of 2020 are hereby amended by inserting after Chapter
2 166A the following chapter:-

3 Chapter 166B.

4 Section 1. The purposes of this chapter are to --

5 (a) establish a comprehensive statewide policy concerning compensation for the use of
6 digital infrastructure in the public rights-of-way;

7 (b) establish legislative findings that digital infrastructure in the public rights-of-way is of
8 valuable economic and public interest;

9 (c) establish standards which encourage a competitive environment for growth and
10 development of streaming entertainment services and which assure that streaming entertainment
11 services are responsive to the needs and interests of the local community;

(d) establish guidelines for the exercise of Commonwealth and local authority with respect to the regulation of the commercial use of the public rights-of-way by entities that provide and deliver streaming entertainment services;

(e) assure that streaming entertainment operators are encouraged to provide the widest possible diversity of information sources and services to the public;

(f) establish an orderly process for the Department of Revenue to assess and recover payments from streaming entertainment operators;

(g) establish an orderly process to collect unpaid assessments and monetary fines from non-compliant streaming entertainment operators operating in the Commonwealth;

(h) protect the substantial interest of the Commonwealth in preventing false and deceptive business practices; and,

(i) promote competition among streaming entertainment service operators and minimize regulation that would impose an undue economic burden on streaming entertainment operators.

Section 2. Definitions.

For the purposes of this Act, the following words shall have the following meanings:

“Commonwealth”, the Commonwealth of Massachusetts;

“cable operator”, any entity that is providing cable services under a franchise agreement with a city, town or district and remitting a franchise fee to such city, town or district as permitted by the Cable Communications Policy Act of 1984, 47 U.S.C. § 522, et seq.;

“gross revenues”, all revenue received directly or indirectly by a streaming entertainment operator arising from, attributable to, or in any way derived from the sale of streaming entertainment services in the Commonwealth. The term “gross revenues” shall not include bad debts, investment income, refunded deposits, or any taxes on services furnished by streaming entertainment providers and imposed directly upon any user by the local, state, federal or other governmental unit;

“person”, an individual, partnership, association, joint stock company, trust, corporation, or governmental entity;

“public, educational, or governmental access facilities”, facilities and equipment for the use of channel capacity designated for public, educational, or governmental use;

“streaming entertainment services”, any paid service that provides audio, video, or computer-generated or computer-augmented entertainment and delivers such entertainment via digital infrastructure to users and delivers such services through facilities located at least in part in the public rights-of-way without regard to delivery technology, including internet protocol technology or other intelligences. This definition does not include any cable service defined in 47 U.S.C. § 522(6) or any video programming provided by a commercial mobile service provider defined in 47 U.S.C § 332(d) or provided solely as part of, and via, a service that enables users to access content, information, electronic mail, or other services offered over the public internet;

“streaming entertainment operator”, any company, entity, or organization that

(1) provides streaming entertainment services and delivers such entertainment via digital infrastructure provided through facilities located at least in part in the public rights-of-way with regard to delivery technology, including internet technology or other intelligences, and

(2) earns more than two-hundred and fifty thousand dollars (USD \$250,000.00) in gross annual revenues from providing such services to users in the Commonwealth;

“video programming”, programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

Section 3. Authority of the Commonwealth to regulate streaming entertainment services and collect compensation for the use of the public rights-of-way.

(a) Pursuant to the authority of the Commonwealth to regulate trade under Section 1 of Chapter 93 and to promote economic competition under Section 4 of Chapter 93, and to regulate business practices for consumer protection under Section 1 of Chapter 93A, the Commonwealth shall regulate the commercial sale of streaming entertainment services to individuals and businesses in the Commonwealth;

(b) pursuant to the authority of the Commonwealth to collect payments from commercial operators doing business with individuals and businesses physically located in the Commonwealth and to levy assessments under Section 1 of Chapter 58, the Commonwealth shall collect payments from the private sector use of the public rights-of-way by imposing an assessment upon streaming entertainment providers;

(c) nothing in this Act shall limit or affect the authority of the Commonwealth or local government or instrumentality thereof regarding ownership and control of public property and public rights-of-way;

(d) no agency of the Commonwealth or local government shall have any authority to regulate the rates charged by any streaming entertainment operator.

Section 4. Imposition and collection of an assessment for the use of the public rights-of-way.

(a) A streaming entertainment operator shall pay an assessment equal to five percent (5%) of such streaming entertainment operator's gross annual revenues derived from the sale or provision of streaming entertainment services to individuals and businesses in the Commonwealth.

(b) The assessment authorized in this section shall be for each year, or part of each year, that such streaming entertainment operator is engaged in the sale of streaming entertainment services to individuals and businesses in the Commonwealth.

(c) A streaming entertainment operator shall file bi-annual financial statements reporting its gross revenues derived in such period from the sale of streaming entertainment services to individuals and businesses in the Commonwealth.

(1) Financial statements shall be filed with the Department of Revenue and shall not be classified as a public record pursuant to Section 1 of Chapter 66;

(2) financial statements shall contain a complete accounting and itemization of gross revenues derived from, or pertaining to, the sale or provision of streaming entertainment services to individuals and businesses in the Commonwealth;

(3) financial statements shall conform to Generally-Accepted Accounting Principles (GAAP) and shall be submitted in writing;

(4) for the period inclusive of January 1 through June 30, a streaming entertainment operator shall submit a financial statement on or before August 15. For the period inclusive of July 1 through December 31, a streaming entertainment operator shall submit a financial statement on or before February 15 of the following year;

(5) streaming entertainment operators that fail to submit financial statements within thirty (30) days of the aforestated deadlines shall be assessed a monetary penalty amount equal to one percent (1%) of the gross revenues derived from, or pertaining to, the sale or provision of streaming entertainment services to individuals and businesses residing in the Commonwealth during the applicable time period;

(6) streaming entertainment operators that fail to submit financial statements within sixty (60) days of the aforestated deadlines shall be assessed a monetary penalty amount equal to two percent (2%) of the gross revenues derived from, or pertaining to, the sale or provision of streaming entertainment services to individuals and businesses residing in the Commonwealth during the applicable time period;

(7) any monetary penalty assessed upon a streaming entertainment operator for failure to submit financial statements before the deadline shall be cumulative to the assessment of five percent (5%) of gross revenues.

(d) Subject to audit and revision pursuant to the Department of Revenue's authority in Section 5, the Department of Revenue shall utilize the financial statement of a streaming entertainment operator to assess an amount equal to five percent (5%) of such streaming entertainment operator's gross revenues derived in such period from the sale or provision of streaming entertainment service to individuals and businesses in the Commonwealth.

(e) Upon assessment by written notice of the Department of Revenue, a streaming entertainment operator must submit payment to the Commonwealth within thirty (30) days of such notice.

(1) Streaming entertainment operators that fail to submit payment within thirty (30) days of the aforesated deadline shall be assessed a monetary penalty amount equal to two percent (2%) of the gross revenues derived from, or pertaining to, the sale or provision of streaming entertainment services to individuals and businesses in the Commonwealth during the applicable time period;

(2) streaming entertainment operators that fail to submit remuneration of the assessment within sixty (60) days of the aforesated deadline shall be assessed a penalty equal to three percent (3%) of the gross revenues derived from, or pertaining to, the sale or provision of streaming entertainment service to individuals and businesses in the Commonwealth during the applicable time period;

(3) any monetary penalty assessed upon a streaming entertainment operator for failure to submit payment before the deadline shall be in addition to the assessment of five percent (5%) of gross revenues.

(f) In accordance with Section 7 of this Act, the Commonwealth, local governments, or instrumentalities thereof, may levy additional monetary and legal penalties upon any streaming entertainment operator that fails to timely provide written financial statements or remuneration of assessments.

Section 5. Right to audit financial records pertaining to assessable gross revenues.

(a) The Commonwealth shall have the right to conduct an audit or review of the records reasonably related to the sources, amounts and computation of assessable gross revenues derived from, or pertaining to, the sale or provision of streaming entertainment service to individuals and businesses residing in the Commonwealth within the previous three (3) years.

(b) Within thirty (30) days of a written request, a streaming entertainment operator shall provide the Department of Revenue with copies of financial records related to the review or audit of assessable gross revenues derived from, or pertaining to, the sale or provision of streaming entertainment services to individuals and businesses residing in the Commonwealth.

(c) In the event of an alleged underpayment, the Department of Revenue shall provide the streaming entertainment operator with a written statement indicating the basis for the alleged underpayment. The streaming entertainment operator shall have thirty (30) days from the receipt of a statement regarding an alleged underpayment to provide the Department of Revenue any written objection to the results of any assessable gross revenue review or audit, including any substantiating documentation. Based on this exchange of information, the Department of Revenue shall make a final determination of the underpayment(s), if any, within thirty (30) days of the streaming entertainment operator's objection and shall provide the operator with written notice of the determination.

(d) Any additional assessments due to the Commonwealth as a result of the assessable gross revenue review or audit shall be paid to the Department of Revenue by the streaming entertainment operator within forty-five (45) days from the date of written notification of the final decision. If the assessable gross revenue review or audit shows that amounts have been underpaid, then the streaming entertainment operator shall pay the underpaid amount plus monetary fines equal to ten percent (10%) of the underpayment.

(e) A streaming entertainment operator adversely affected by any final action, or failure to act, of the Department of Revenue that is inconsistent with this section may, within thirty (30) days after such action or failure to act, commence an action in any court of competent jurisdiction within the Commonwealth. The court shall hear and decide such action on an expedited basis.

Section 6. Streaming Entertainment Fund

(a) There shall be a Streaming Entertainment Fund which shall consist of amounts credited to the fund in accordance with this section. The fund shall be administered by the state treasurer and held in trust exclusively for the purposes of this section. The state treasurer shall be treasurer-custodian of the fund and shall have the custody of its monies and securities.

(b) The Streaming Entertainment Fund shall consist of: (i) revenues collected from the assessment imposed by this Act; (ii) revenue from appropriations or other money specifically designated to be credited to the fund; (iii) interest earned on money in the fund; and (iv) funds from private sources including, but not limited to, gifts, grants and donations received by the Commonwealth that are specifically designated to be credited to the fund. Amounts credited to the fund shall not be subject to further appropriation and any money remaining in the fund at the

end of a fiscal year shall not revert to the General Fund. The secretary of the Commonwealth shall annually, not later than December 31, report on the activity of the fund to the clerks of the Senate and House of Representatives and the Senate and House Committees on Ways and Means.

(c) The Streaming Entertainment Fund shall make bi-annual distributions on March 1 and September 1 of each year. On those dates, the Streaming Entertainment Fund shall distribute, with no remainder left, all monies then held in the Fund according to the following formula:

(1) One-fifth ($1/5$) of the monies in the Streaming Entertainment Fund shall be distributed to the Commonwealth General Fund;

(2) Two-fifths ($2/5$) of the monies in the Streaming Entertainment Fund shall be distributed to municipalities and local governments in the Commonwealth and further allocated proportionally based upon population;

(3) Two-fifths ($2/5$) of the monies in the Streaming Entertainment Fund shall be distributed to community media centers in the Commonwealth and further allocated proportionally based upon population.

(d) The Department of Revenue shall use the most recent city and town population estimates of the United States Bureau of the Census in calculating distributions pursuant to(c)(2) and (c)(3) of this section.

(e) Distributions pursuant to (c)(2) of this section shall be listed upon each municipality's cherry sheet for the upcoming fiscal year.

(f) The Commissioner of Revenue or any official responsible, shall, without further appropriation and upon certification of the Commissioner, distribute all sums allocated under (c) under this section.

(g) All sums distributed under (c)(1) of this section shall be deposited in the Commonwealth General Fund. All sums distributed under (c)(2) of this section shall be deposited in the general fund of the respective municipality. All sums distributed under (c)(3) of this section shall be deposited in accordance with Section 53F³/₄ of Chapter 44, as amended by Section 8 of this act.

(h) No expenditures from the Streaming Entertainment Fund shall be made except to provide funding for: (i) the operating expenses of the fund; (ii) legal and administrative expenses incurred in enforcing the provisions of this Act; and (iii) legal and administrative expenses incurred in collecting any assessment due under this act.

(i) All sums appropriated under this Act shall be expended in a manner reflecting and encouraging a policy of nondiscrimination and equal opportunity.

(j) All officials and employees of an agency, board, department, commission or division receiving monies under this Act shall take affirmative steps to ensure equality of opportunity and nondiscrimination in the internal affairs of state government, as well as in their relations with the public, including those persons and organizations doing business with the Commonwealth. Each agency, board, department, commission or division, in spending appropriated sums and discharging its statutory responsibilities, shall adopt measures to ensure equal opportunity and nondiscrimination in the areas of hiring, promotion, demotion or transfer, recruitment, layoff or

217 termination, rates of compensation, in-service or apprenticeship training programs and all terms
218 and conditions of employment.

219 Section 7. Judicial remedy.

220 (a) In accordance with Section 1 of Chapter 12, the Attorney General is authorized to
221 enforce this Act. The Attorney General may, within seven (7) years, bring an action to recover
222 any unpaid assessments and monetary penalties, or enjoin the operations of any non-compliant
223 entity, in any court of competent jurisdiction.

224 (b) Any local government, or class thereof, or community media center adversely
225 impacted by the action, or failure to act, of any streaming entertainment operator under this Act,
226 may, within seven (7) years, bring an action to recover any unpaid assessments and monetary
227 penalties, or enjoin the operations of any non-compliant entity, in any court of competent
228 jurisdiction.

229 SECTION 2. Municipal streaming fund.

230 Section 53 F³/₄ of Chapter 44 of the General Laws shall be amended by adding at the end
231 thereof the following new section: -

232 “Notwithstanding section 53 or any other general or special law to the contrary, a
233 municipality that accepts this section may establish in the treasury a separate revenue account to
234 be known as the PEG Access and Streaming Entertainment Funds, into which may be deposited
235 funds received in connection with assessments derived from streaming entertainment providers.
236 Monies in the fund shall only be appropriated to support public, educational or governmental
237 access media centers.”

238 SECTION 3. Effective date.

239 This act shall take effect on January 1, 2024.