

**HOUSE . . . . . No.**

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**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>

**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;

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

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

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

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

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

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

## 25 Section 2. Definitions.

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

27 “Commonwealth”, the Commonwealth of Massachusetts;

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

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

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

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

41 “streaming entertainment services”, any paid service that provides audio, video, or  
42 computer-generated or computer-augmented entertainment and delivers such entertainment via  
43 digital infrastructure to users and delivers such services through facilities located at least in part  
44 in the public rights-of-way without regard to delivery technology, including internet protocol  
45 technology or other intelligences. This definition does not include any cable service defined in  
46 47 U.S.C. § 522(6) or any video programming provided by a commercial mobile service  
47 provider defined in 47 U.S.C § 332(d) or provided solely as part of, and via, a service that  
48 enables users to access content, information, electronic mail, or other services offered over the  
49 public internet;

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

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

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

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

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

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

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

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

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

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

77 (a) A streaming entertainment operator shall pay an assessment equal to five percent  
78 (5%) of such streaming entertainment operator's gross annual revenues derived from the sale or  
79 provision of streaming entertainment services to individuals and businesses in the  
80 Commonwealth.

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

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

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

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

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

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

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

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

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

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

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

119 (1) Streaming entertainment operators that fail to submit payment within thirty (30) days  
120 of the aforesated deadline shall be assessed a monetary penalty amount equal to two percent  
121 (2%) of the gross revenues derived from, or pertaining to, the sale or provision of streaming  
122 entertainment services to individuals and businesses in the Commonwealth during the applicable  
123 time period;

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

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



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

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

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

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

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

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

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

## 165 Section 6. Streaming Entertainment Fund

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

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

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

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

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

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

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

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

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

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

199 (g) All sums distributed under (c)(1) of this section shall be deposited in the  
200 Commonwealth General Fund. All sums distributed under (c)(2) of this section shall be  
201 deposited in the general fund of the respective municipality. All sums distributed under (c)(3) of  
202 this section shall be deposited in accordance with Section 53F<sup>3</sup>/<sub>4</sub> of Chapter 44, as amended by  
203 Section 8 of this act.

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

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

210 (j) All officials and employees of an agency, board, department, commission or division  
211 receiving monies under this Act shall take affirmative steps to ensure equality of opportunity and  
212 nondiscrimination in the internal affairs of state government, as well as in their relations with the  
213 public, including those persons and organizations doing business with the Commonwealth. Each  
214 agency, board, department, commission or division, in spending appropriated sums and  
215 discharging its statutory responsibilities, shall adopt measures to ensure equal opportunity and  
216 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 F<sup>3</sup>/<sub>4</sub> 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.