

SENATE No. 41**The Commonwealth of Massachusetts**

PRESENTED BY:

Jason M. Lewis

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:	
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>1/23/2025</i>
<i>Joan B. Lovely</i>	<i>Second Essex</i>	<i>1/23/2025</i>
<i>Susannah M. Whipps</i>	<i>2nd Franklin</i>	<i>1/27/2025</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>1/27/2025</i>
<i>John F. Keenan</i>	<i>Norfolk and Plymouth</i>	<i>1/29/2025</i>
<i>Mark C. Montigny</i>	<i>Second Bristol and Plymouth</i>	<i>1/29/2025</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>	<i>2/3/2025</i>
<i>Dylan A. Fernandes</i>	<i>Plymouth and Barnstable</i>	<i>2/3/2025</i>
<i>John J. Cronin</i>	<i>Worcester and Middlesex</i>	<i>2/7/2025</i>
<i>Jacob R. Oliveira</i>	<i>Hampden, Hampshire and Worcester</i>	<i>2/7/2025</i>
<i>Cindy F. Friedman</i>	<i>Fourth Middlesex</i>	<i>2/10/2025</i>
<i>Manny Cruz</i>	<i>7th Essex</i>	<i>2/11/2025</i>
<i>Paul R. Feeney</i>	<i>Bristol and Norfolk</i>	<i>2/18/2025</i>
<i>Julian Cyr</i>	<i>Cape and Islands</i>	<i>2/18/2025</i>
<i>Paul W. Mark</i>	<i>Berkshire, Hampden, Franklin and Hampshire</i>	<i>2/27/2025</i>
<i>William J. Driscoll, Jr.</i>	<i>Norfolk, Plymouth and Bristol</i>	<i>3/4/2025</i>

Robyn K. Kennedy

First Worcester

3/10/2025

SENATE No. 41

By Mr. Lewis, a petition (accompanied by bill, Senate, No. 41) of Jason M. Lewis, Joanne M. Comerford, Joan B. Lovely, Susannah M. Whipps and other members of the General Court for legislation to establish a comprehensive statewide policy concerning streaming entertainment services and the recovery of municipal costs for digital infrastructure. Advanced Information Technology, the Internet and Cybersecurity.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 2771 OF 2023-2024.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Fourth General Court
(2025-2026)

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 2022 are hereby amended by inserting after Chapter
2 166A the following chapter:- Chapter 166B.

3 Section 1. The purposes of this chapter are to

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

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

(c) establish standards which encourage a competitive environment for growth and development of streaming entertainment services and which assure that streaming entertainment 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 chapter, 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 or PEG 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 chapter 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. PEG Access Facilities Revenue Advisory Board.

There shall be within the department of telecommunications and cable a PEG access facilities revenue advisory board. The advisory board shall consist of: the commissioner of the department of revenue or their designee, who shall serve as chair; the director of rural affairs or their designee; the commissioner of the department of telecommunications and cable or their designee; the president of Massachusetts Community Media, Inc. or their designee; and the president of the New England Connectivity and Telecommunications Association or their designee.

The advisory board shall meet not less than annually. The advisory board shall collect industry data including, but not limited to: (i) historical and existing revenue levels for PEG access facilities in the commonwealth; (ii) historical and current revenues paid by cable operators as part of any franchise fee; (iii) historical and current streaming entertainment service revenues derived from the sale or provision of streaming entertainment services to individuals and businesses in the Commonwealth; and (iv) any additional information as requested by the advisory board. The results of the data collected shall be reviewed and analyzed by the advisory

board annually and the board shall make a recommendation for a streaming entertainment service assessment rate in its annual report that would, together with any revenue provided under a franchise fee, provide each operator of PEG access facilities with at least the same level of total revenue as the average of the three highest years of revenue for each operator of PEG access facilities prior to the enactment of this chapter.

Annually, not later than December 31, the advisory board shall file a report of its findings, conclusions and recommendations, including an assessment distribution table for each operator of PEG access facilities, with the clerks of the senate and house of representatives, the department of telecommunications and cable, and the department of revenue.

Not more than 30 days after receiving the annual report from the PEG access facilities revenue advisory board under this section, the commissioner of revenue shall set an assessment rate equal to the recommendation of the advisory board.

Section 5. 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 the assessment rate set by the commissioner of revenue under section 4 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 rate set by the commissioner of revenue under section 4.

(d) Subject to audit and revision pursuant to the Department of Revenue's authority in Section 6, the Department of Revenue shall utilize the financial statement of a streaming entertainment operator to assess an amount equal to the assessment rate set by the commissioner of revenue under section 4 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 the assessment rate set by the commissioner of revenue under section 4.

(f) In accordance with Section 8 of this chapter, 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 6. 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 7. 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

196 treasurer and held in trust exclusively for the purposes of this section. The state treasurer shall be
197 treasurer-custodian of the fund and shall have the custody of its monies and securities.

198 (b) The Streaming Entertainment Fund shall consist of: (i) revenues collected from the
199 assessment imposed by this chapter; (ii) revenue from appropriations or other money specifically
200 designated to be credited to the fund; (iii) interest earned on money in the fund; and (iv) funds
201 from private sources including, but not limited to, gifts, grants and donations received by the
202 Commonwealth that are specifically designated to be credited to the fund. Amounts credited to
203 the fund shall not be subject to further appropriation and any money remaining in the fund at the
204 end of a fiscal year shall not revert to the General Fund. The secretary of the Commonwealth
205 shall annually, not later than December 31, report on the activity of the fund to the clerks of the
206 Senate and House of Representatives and the Senate and House Committees on Ways and
207 Means.

208 (c) The Streaming Entertainment Fund shall make bi-annual distributions on March 1 and
209 September 1 of each year. On those dates, the Streaming Entertainment Fund shall allocate, with
210 no remainder left, all monies then held in the Fund according to the yearly distribution table in
211 the annual report of the advisory board under section 4.

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

215 (e) All sums distributed under subsection (c) of this section shall be deposited in
216 accordance with Section 53F³/₄ of Chapter 44.

(f) 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 chapter; and (iii) legal and administrative expenses incurred in collecting any assessment due under this chapter.

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

(h) All officials and employees of an agency, board, department, commission or division receiving monies under this chapter 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 termination, rates of compensation, in-service or apprenticeship training programs and all terms and conditions of employment.

Section 8. Judicial remedy.

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

(b) Any local government, or class thereof, or community media center adversely impacted by the action, or failure to act, of any streaming entertainment operator under this

239 chapter, may, within seven (7) years, bring an action to recover any unpaid assessments and
240 monetary penalties, or enjoin the operations of any non-compliant entity, in any court of
241 competent jurisdiction.

242 SECTION 2. Municipal streaming fund.

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

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

251 SECTION 3. Effective date.

252 This act shall take effect upon its passage.