

HOUSE No. 130

The Commonwealth of Massachusetts

PRESENTED BY:

Joan Meschino and Paul F. Tucker

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 relative to a streaming entertainment operator’s use of the public rights-of-way.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Joan Meschino</i>	<i>3rd Plymouth</i>	<i>2/5/2021</i>
<i>Paul F. Tucker</i>	<i>7th Essex</i>	<i>2/5/2021</i>
<i>Paul A. Schmid, III</i>	<i>8th Bristol</i>	<i>2/9/2021</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>	<i>2/9/2021</i>
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>	<i>2/9/2021</i>
<i>Daniel R. Carey</i>	<i>2nd Hampshire</i>	<i>2/9/2021</i>
<i>Mathew J. Muratore</i>	<i>1st Plymouth</i>	<i>2/10/2021</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>	<i>2/10/2021</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>2/10/2021</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>2/13/2021</i>
<i>Carmin Lawrence Gentile</i>	<i>13th Middlesex</i>	<i>2/15/2021</i>
<i>Adam J. Scanlon</i>	<i>14th Bristol</i>	<i>2/16/2021</i>
<i>Steven G. Xiarhos</i>	<i>5th Barnstable</i>	<i>2/16/2021</i>
<i>Kathleen R. LaNatra</i>	<i>12th Plymouth</i>	<i>2/16/2021</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>2/16/2021</i>
<i>Michael P. Kushmerek</i>	<i>3rd Worcester</i>	<i>2/17/2021</i>
<i>James Arciero</i>	<i>2nd Middlesex</i>	<i>2/18/2021</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Bristol</i>	<i>2/18/2021</i>

<i>Alyson M. Sullivan</i>	<i>7th Plymouth</i>	<i>2/18/2021</i>
<i>David F. DeCoste</i>	<i>5th Plymouth</i>	<i>2/19/2021</i>
<i>Josh S. Cutler</i>	<i>6th Plymouth</i>	<i>2/19/2021</i>
<i>Vanna Howard</i>	<i>17th Middlesex</i>	<i>2/19/2021</i>
<i>Maria Duaine Robinson</i>	<i>6th Middlesex</i>	<i>2/19/2021</i>
<i>Carol A. Doherty</i>	<i>3rd Bristol</i>	<i>2/20/2021</i>
<i>Tram T. Nguyen</i>	<i>18th Essex</i>	<i>2/21/2021</i>
<i>Christine P. Barber</i>	<i>34th Middlesex</i>	<i>2/22/2021</i>
<i>Carole A. Fiola</i>	<i>6th Bristol</i>	<i>2/22/2021</i>
<i>Tami L. Gouveia</i>	<i>14th Middlesex</i>	<i>2/22/2021</i>
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>	<i>2/22/2021</i>
<i>Hannah Kane</i>	<i>11th Worcester</i>	<i>2/23/2021</i>
<i>Alan Silvia</i>	<i>7th Bristol</i>	<i>2/23/2021</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>	<i>2/23/2021</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>2/23/2021</i>
<i>Danillo A. Sena</i>	<i>37th Middlesex</i>	<i>2/24/2021</i>
<i>Christina A. Minicucci</i>	<i>14th Essex</i>	<i>2/24/2021</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>	<i>2/24/2021</i>
<i>David Allen Robertson</i>	<i>19th Middlesex</i>	<i>2/25/2021</i>
<i>James K. Hawkins</i>	<i>2nd Bristol</i>	<i>2/26/2021</i>
<i>Kate Lipper-Garabedian</i>	<i>32nd Middlesex</i>	<i>2/26/2021</i>
<i>Susan L. Moran</i>	<i>Plymouth and Barnstable</i>	<i>2/26/2021</i>
<i>Michelle L. Ciccolo</i>	<i>15th Middlesex</i>	<i>2/26/2021</i>
<i>Thomas P. Walsh</i>	<i>12th Essex</i>	<i>2/26/2021</i>
<i>Tackey Chan</i>	<i>2nd Norfolk</i>	<i>3/4/2021</i>
<i>William C. Galvin</i>	<i>6th Norfolk</i>	<i>3/2/2021</i>
<i>Danielle W. Gregoire</i>	<i>4th Middlesex</i>	<i>3/2/2021</i>
<i>Patrick M. O'Connor</i>	<i>Plymouth and Norfolk</i>	<i>3/3/2021</i>
<i>Smitty Pignatelli</i>	<i>4th Berkshire</i>	<i>3/8/2021</i>
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>	<i>3/9/2021</i>
<i>Natalie M. Higgins</i>	<i>4th Worcester</i>	<i>3/9/2021</i>
<i>Walter F. Timilty</i>	<i>Norfolk, Bristol and Plymouth</i>	<i>3/17/2021</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	<i>3/21/2021</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>	<i>4/12/2021</i>
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>	<i>4/13/2021</i>
<i>James M. Kelcourse</i>	<i>1st Essex</i>	<i>4/23/2021</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>4/25/2021</i>

HOUSE No. 130

By Representatives Meschino of Hull and Tucker of Salem, a petition (accompanied by bill, House, No. 130) of Joan Meschino, Paul F. Tucker and others for legislation to establish a comprehensive statewide policy concerning streaming entertainment services and the recovery of municipal costs for the management and maintenance of digital infrastructure. Advanced Information Technology, the Internet and Cybersecurity.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act relative to a streaming entertainment operator’s use of the public rights-of-way.

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 2018 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 in from the sale
79 or 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 afore stated 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 afore stated 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 afore stated 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 afore stated 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 53F³/₄ 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 F3/4 of Chapter 44 of the General Laws shall be amended by adding at the
231 end 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, 2022.